

<b>Tab 1</b>	<b>CS/SB 122 by CJ, Joyner, Bradley;</b> (Identical to H 0331) Compensation of Victims of Wrongful Incarceration					
<b>Tab 2</b>	<b>SB 314 by Diaz de la Portilla (CO-INTRODUCERS) Smith;</b> (Similar to CS/H 0129) Juvenile Justice					
<b>Tab 3</b>	<b>CS/SB 436 by CJ, Simpson (CO-INTRODUCERS) Dean;</b> (Similar to CS/CS/H 0257) Terroristic Threats					
310752	D	S	RCS	ACJ, Hutson	Delete everything after	02/15 03:41 PM
<del>881368</del>	AA	S L	WD	ACJ, Bradley	Delete L.89 - 122:	02/15 03:41 PM
<b>Tab 4</b>	<b>CS/SB 636 by CJ, Benacquisto (CO-INTRODUCERS) Flores;</b> (Identical to CS/CS/H 0179) Evidence Collected in Sexual Offense Investigations					
<b>Tab 5</b>	<b>SB 700 by Soto;</b> (Similar to CS/CS/H 0293) Public Records/Juvenile Criminal History Information					
662766	A	S	RCS	ACJ, Soto	Delete L.87:	02/12 04:19 PM
<b>Tab 6</b>	<b>CS/SB 784 by CJ, Flores;</b> (Identical to CS/CS/H 0545) Human Trafficking					
<b>Tab 7</b>	<b>SB 850 by Bradley;</b> (Similar to H 0549) Offenses Concerning Racketeering and Illegal Debts					
<b>Tab 8</b>	<b>CS/SB 936 by CJ, Ring;</b> (Compare to CS/H 1043) Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability					
479128	D	S		ACJ, Hutson	Delete everything after	02/10 11:11 AM
<b>Tab 9</b>	<b>CS/SB 954 by CJ, Simmons;</b> (Identical to CS/CS/H 0075) Electronic Monitoring Devices					
228972	D	S L	WD	ACJ, Bradley	Delete everything after	02/11 02:40 PM
<b>Tab 10</b>	<b>CS/SB 1044 by CJ, Brandes (CO-INTRODUCERS) Negron, Clemens;</b> (Similar to H 0883) Forfeiture of Contraband					
<del>503286</del>	D	S	WD	ACJ, Hutson	Delete everything after	02/15 03:41 PM
<del>892208</del>	A	S	WD	ACJ, Negron	Delete L.114:	02/15 03:41 PM
396278	A	S L	RCS	ACJ, Hutson	Delete L.54 - 94:	02/15 03:41 PM
895130	A	S L	RCS	ACJ, Hutson	Delete L.114:	02/15 03:41 PM
<b>Tab 11</b>	<b>CS/SB 1086 by JU, Bradley;</b> (Similar to H 1005) Prejudgment Interest					
<b>Tab 12</b>	<b>CS/SB 1256 by CJ, Brandes;</b> (Identical to CS/H 1149) Alternative Sanctioning					
<b>Tab 13</b>	<b>SB 1322 by Latvala;</b> (Identical to H 1279) Juvenile Detention Costs					
285226	D	S L	RS	ACJ, Evers	Delete everything after	02/15 04:36 PM
883106	SD	S	RCS	ACJ, Evers	Delete everything after	02/15 04:36 PM
<b>Tab 14</b>	<b>CS/SB 1528 by RI, Simpson;</b> (Similar to CS/H 1347) Illicit Drugs					
657954	A	S L	RCS	ACJ, Hutson	Delete L.637 - 638:	02/15 03:41 PM
717368	A	S L	RCS	ACJ, Hutson	Delete L.969:	02/15 03:41 PM
<b>Tab 15</b>	<b>CS/SB 1584 by TR, Smith (CO-INTRODUCERS) Thompson, Joyner;</b> (Similar to H 0787) Suspended Driver Licenses					

<b>Tab 16</b>	<b>SB 7046 by TR (CO-INTRODUCERS) Thompson;</b> (Similar to CS/H 0207) Penalties and Fees
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The Florida Senate  
**COMMITTEE MEETING EXPANDED AGENDA**  
**APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND  
 CIVIL JUSTICE**  
**Senator Negrón, Chair**  
**Senator Joyner, Vice Chair**

**MEETING DATE:** Thursday, February 11, 2016

**TIME:** 10:00 a.m.—12:00 noon

**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

**MEMBERS:** Senator Negrón, Chair; Senator Joyner, Vice Chair; Senators Bradley, Evers, Flores, Hutson, and Soto

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 122</b> Criminal Justice / Joyner / Bradley (Identical H 331)	Compensation of Victims of Wrongful Incarceration; Providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to any violent felony, or was serving a concurrent sentence for another felony; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation, etc.  CJ 11/02/2015 Fav/CS JU 01/20/2016 Favorable ACJ 02/11/2016 Favorable AP	Favorable Yeas 7 Nays 0
2	<b>SB 314</b> Díaz de la Portilla (Similar CS/H 129, Compare H 239, CS/CS/H 293, S 282, S 558, S 700)	Juvenile Justice; Revising the circumstances under which a state attorney may file an information when a child of a certain age range commits or attempts to commit specified crimes; revising the crimes and the age of a child who is subject to the jurisdiction of a circuit court; requiring the adult court to render an order including specific findings of fact and the reasons for its decision; removing a provision that requires a court to impose adult sanctions under certain circumstances, etc.  CJ 11/02/2015 Favorable ACJ 02/11/2016 Favorable AP	Favorable Yeas 7 Nays 0
3	<b>CS/SB 436</b> Criminal Justice / Simpson (Similar CS/CS/H 257)	Terroristic Threats; Providing definitions; providing that a person commits the crime of terroristic threats if he or she threatens to commit a crime of violence under certain circumstances; providing criminal penalties; requiring payment of restitution, etc.  CJ 01/25/2016 Fav/CS ACJ 02/11/2016 Fav/CS AP	Fav/CS Yeas 7 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Criminal and Civil Justice  
Thursday, February 11, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 636</b> Criminal Justice / Benacquisto (Identical CS/CS/H 179, Compare H 167, H 1331, S 368, S 1614)	Evidence Collected in Sexual Offense Investigations; Requiring that a sexual offense evidence kit or other DNA evidence be submitted to a member of the statewide criminal analysis laboratory system within a specified timeframe after specified occurrences; requiring a medical provider or law enforcement agency to inform an alleged victim of a sexual offense of certain information relating to sexual offense evidence kits; requiring the testing of sexual offense evidence kits within a specified timeframe after submission to a member of the statewide criminal analysis laboratory, etc.  CJ 01/25/2016 Fav/CS ACJ 02/11/2016 Favorable AP	Favorable Yeas 7 Nays 0
5	<b>SB 700</b> Soto (Similar CS/CS/H 293, Compare CS/H 129, S 314, S 558)	Public Records/Juvenile Criminal History Information; Specifying that certain confidential information obtained under chapter 985, F.S., relating to juvenile justice, is exempt from public records requirements; providing for future review and repeal of such applicability provisions; providing an exemption from public records requirements for juvenile information compiled by the Criminal Justice Information Program from intrastate sources; providing for future review and repeal of the exemption; providing a statement of public necessity, etc.  CJ 02/01/2016 Favorable ACJ 02/11/2016 Fav/CS FP	Fav/CS Yeas 7 Nays 0
6	<b>CS/SB 784</b> Criminal Justice / Flores (Identical CS/CS/H 545, Compare H 1367, H 4033, S 874, S 1294)	Human Trafficking; Revising the definition of the term "sexual abuse of a child" to delete a reference to a child being arrested or prosecuted for specified offenses; creating an increased penalty for causing great bodily harm, permanent disability, or permanent disfigurement; requiring the Department of Health to issue an emergency order suspending the license of a massage therapist or massage establishment if the therapist or a specified person connected to the establishment is convicted of owning, establishing, maintaining, or operating a place, structure, building, or conveyance for lewdness, assignation, or prostitution in conjunction with the establishment; requiring a person convicted of specified racketeering offenses to register as a sexual predator or sexual offender under certain circumstances, etc.  CJ 01/25/2016 Fav/CS ACJ 02/11/2016 Favorable FP	Favorable Yeas 7 Nays 0



**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Criminal and Civil Justice  
Thursday, February 11, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 850</b> Bradley (Similar H 549)	Offenses Concerning Racketeering and Illegal Debts; Specifying the earliest date that incidents constituting a pattern of racketeering activity may have occurred; authorizing an investigative agency to institute a civil proceeding for forfeiture in a circuit court in certain circumstances; authorizing a court to order the forfeiture of other property of the defendant up to the value of unavailable property in certain circumstances; deleting the definition of "investigative agency" for purposes of provisions relating to civil investigative subpoenas, etc.  CJ 02/01/2016 Favorable ACJ 02/11/2016 Not Considered AP	Not Considered
8	<b>CS/SB 936</b> Criminal Justice / Ring (Compare CS/H 1043)	Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability; Citing this act as the "The Wes Kleinert Fair Interview Act"; encouraging the use of certain state-of-the-art digital devices for the purposes of identification and notification; requiring that certain professionals with experience in treating, teaching, or assisting persons with autism, an autism spectrum disorder, or a related developmental disability be present during an interview of a person with autism, an autism spectrum disorder, or a related developmental disability conducted by specified persons unless extenuating circumstances exist, etc.  CJ 02/01/2016 Fav/CS ACJ 02/11/2016 Not Considered AP	Not Considered
9	<b>CS/SB 954</b> Criminal Justice / Simmons (Identical CS/CS/H 75)	Electronic Monitoring Devices; Prohibiting a person from removing, destroying, altering, tampering with, damaging, or circumventing the operation of an electronic monitoring device being worn or used pursuant to any court order or an order by the Florida Commission on Offender Review; specifying that the Department of Corrections may electronically monitor an offender sentenced to community control when the court has imposed electronic monitoring as a condition of community control, etc.  CJ 01/25/2016 Fav/CS ACJ 02/11/2016 Favorable FP	Favorable Yeas 7 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Criminal and Civil Justice  
Thursday, February 11, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	<b>CS/SB 1044</b> Criminal Justice / Brandes (Similar H 883)	Forfeiture of Contraband; Providing for the acquisition of the provisional title of seized property under certain circumstances; prohibiting the seizure of property under the Florida Contraband Forfeiture Act until the owner of such property is arrested for a criminal offense that renders the property a contraband article; providing that the property is deemed a contraband article and forfeited subject to forfeiture proceedings under certain circumstances; specifying circumstances under which the seizing law enforcement agency must return the property to the owner, etc.  CJ 01/25/2016 Fav/CS ACJ 02/11/2016 Fav/CS FP	Fav/CS Yeas 5 Nays 2
11	<b>CS/SB 1086</b> Judiciary / Bradley (Similar H 1005)	Prejudgment Interest; Requiring a court to include interest on economic damages and costs in the final judgment of a negligence action as a result of a personal injury, etc.  JU 01/20/2016 Fav/CS ACJ 02/11/2016 Temporarily Postponed AP	Temporarily Postponed
12	<b>CS/SB 1256</b> Criminal Justice / Brandes (Identical CS/H 1149)	Alternative Sanctioning; Authorizing the chief judge of each judicial circuit, in consultation with specified entities, to establish an alternative sanctioning program; authorizing an offender who allegedly committed a technical violation of supervision to waive participation in or elect to participate in the program, admit to the violation, agree to comply with the recommended sanction, and agree to waive certain rights; authorizing the court to impose the recommended sanction or direct the Department of Corrections to submit a violation report, affidavit, and warrant to the court; specifying that an offender's participation in an alternative sanctioning program is voluntary, etc.  CJ 02/01/2016 Fav/CS ACJ 02/11/2016 Not Considered AP	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Criminal and Civil Justice  
Thursday, February 11, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	<b>SB 1322</b> Latvala (Identical H 1279)	Juvenile Detention Costs; Revising the annual contributions by certain counties for the costs of detention care for juveniles; requiring the state to pay all costs of detention care for juveniles residing out of state and for certain postdisposition detention care; deleting a requirement that the Department of Revenue and the counties provide certain technical assistance to the Department of Juvenile Justice, etc.  ACJ 02/11/2016 Fav/CS AP RC	Fav/CS Yeas 7 Nays 0
14	<b>CS/SB 1528</b> Regulated Industries / Simpson (Similar CS/H 1347)	Illicit Drugs; Providing that class designation is a way to reference scheduled controlled substances; adding, deleting, and revising the list of Schedule I controlled substances; creating a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver any unlawful controlled substance in, on, or near an assisted living facility, etc.  RI 01/27/2016 Fav/CS ACJ 02/11/2016 Fav/CS AP	Fav/CS Yeas 7 Nays 0
15	<b>CS/SB 1584</b> Transportation / Smith (Similar H 787)	Suspended Driver Licenses; Establishing a Driver License Reinstatement Days pilot program in certain counties to facilitate reinstatement of suspended driver licenses; providing duties of the clerks of court and the Department of Highway Safety and Motor Vehicles, etc.  TR 01/27/2016 Fav/CS ACJ 02/11/2016 Favorable AP	Favorable Yeas 7 Nays 0
16	<b>SB 7046</b> Transportation (Similar CS/H 207, Compare CS/H 835, S 1522)	Penalties and Fees; Revising requirements relating to the payment of court-related fines or other monetary penalties, fees, charges, and costs; requiring traffic citation forms to include certain language relating to payment of a penalty; requiring a court to inquire regarding a person's ability to pay at the time a certain civil penalty is ordered; decreasing the period for revocation or suspension of, or delay of eligibility for, driver licenses or driving privileges for certain persons convicted of certain drug offenses, etc.  ACJ 02/11/2016 Not Considered AP	Not Considered
17	Discussion related to the Use of Naltrexone in the state court system to address opioid and alcohol addiction - early implementation efforts and results.		Discussed

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Criminal and Civil Justice  
Thursday, February 11, 2016, 10:00 a.m.—12:00 noon

BILL DESCRIPTION and SENATE COMMITTEE ACTIONS			
TAB	BILL NO. and INTRODUCER		COMMITTEE ACTION
18	Discussion related to operation of community release centers and re-entry centers in the Department of Corrections.		Not Considered
Other Related Meeting Documents			

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: CS/SB 122

INTRODUCER: Criminal Justice Committee and Senators Joyner and Bradley

SUBJECT: Compensation of Victims of Wrongful Incarceration

DATE: February 11, 2016

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
2. <u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3. <u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
4. _____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 122 amends chapter 961, F.S., which establishes an administrative process for compensation for a person who has been wrongfully incarcerated.

Under current law, a person is not eligible for compensation for wrongful incarceration if he or she has a criminal history that includes any felony.<sup>1</sup> This is commonly known as the “clean hands” provision of Florida’s wrongful incarceration compensation law. The bill narrows the list of felony offenses that disqualify a person from compensation from all felonies to violent felonies. What constitutes a violent felony is defined in the bill. By narrowing the types of disqualifying felonies, the bill expands the pool of potential applicants for compensation through the administrative process.

This bill has an indeterminate fiscal impact because it is unknown how many applicants would be eligible under the expanded criteria.

The bill has an effective date of October 1, 2016.

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<sup>1</sup> Section 961.04, F.S.

## II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act has been in effect since July 1, 2008.<sup>2</sup> The law establishes an administrative process for a person to petition the original sentencing court for an order finding the petitioner to have been wrongfully incarcerated and eligible for compensation.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.<sup>3</sup> The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.<sup>4</sup>

### **“Clean Hands” Provision of the Act – Section 961.04, Florida Statutes**

In cases in which sufficient evidence of actual innocence can be shown, the person is still ineligible for compensation if:

- Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense; or
- During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.<sup>5</sup>

Of the 30 states that have statutes that provide for compensation for wrongfully incarcerated persons, Florida is the only state with a “clean hands” provision.<sup>6</sup>

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<sup>2</sup> Chapter 961, F.S. (ch. 2008-39, L.O.F.).

<sup>3</sup> Section 961.05(2), F.S.

<sup>4</sup> Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any Florida College System Institution as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets and maintains the regular admission requirements; remains registered; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled. The wrongfully incarcerated person is also entitled to reimbursement of the amount of any fine, penalty, or court costs paid, and the amount of any reasonable attorney's fees and expenses incurred for all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon supporting documentation submitted as specified in s. 961.05, F.S.. Finally, the wrongfully incarcerated person is entitled to immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.

<sup>5</sup> Section 961.04, F.S.

<sup>6</sup> *Making Up for Lost Time*, page 19, The Innocence Project, Benjamin N. Cardozo School of Law, [www.innocenceproject.org](http://www.innocenceproject.org); (“Clean hands” meaning that a person is ineligible for compensation if he or she has prior felony offenses to the one for which compensation is being sought.). Other states generally take these matters up by “personal bills,” a process much like Florida's claim bill process.

### **Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense**

A person convicted of a felony may be sentenced to a split sentence, which is a sentence including both incarceration and release under supervision. Alternatively, a person could be granted parole if he or she meets the statutory criteria.<sup>7</sup> Therefore, a person could potentially be wrongfully incarcerated for a crime and then placed on parole or community supervision as part of the sentence. If a person violates a condition of parole or community supervision, he or she may have parole or community supervision revoked. The basis for revocation of parole or community supervision may affect eligibility for compensation for wrongful incarceration.

Under s. 961.06(2), F.S., if a person commits a misdemeanor or a technical violation while under supervision which results in revocation of the community supervision or parole, the person remains eligible for compensation. If, however, a felony law violation results in revocation, the person is no longer eligible for compensation.<sup>8</sup> Ineligibility based on a felony violation applies to any felony.

### **Wrongful Incarceration Claims**

To date, four persons have been compensated under the administrative process for a total of \$4,276,901. Six other claimants had their claims denied, based on either ineligibility or incomplete applications.<sup>9</sup>

### **III. Effect of Proposed Changes:**

The bill amends chapter 961, F.S., the Victims of Wrongful Incarceration Compensation Act. Chapter 961, F.S., currently provides an administrative process for a person who has been wrongfully incarcerated for a felony conviction to seek a court order finding the person to be eligible for compensation. Current law disqualifies a person who is otherwise eligible for compensation if he or she has a record of any prior felony, a felony committed while wrongfully incarcerated, or a felony committed while on parole or community supervision.

The bill limits disqualifying felonies to violent felonies. In other words, the bill provides that in order to be found ineligible for compensation based on other crimes, the person must have committed a violent felony, not a simple felony. Specifically:

- Before the person's wrongful incarceration, he or she committed a violent felony;<sup>10</sup>

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<sup>7</sup> Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines which was October 1, 1983, and only then if they meet the statutory criteria. Ch. 82-171, Laws of Florida; s. 947.16, F.S. The term "community supervision" as used in s. 961.06(2), F.S., could include controlled release, conditional medical or conditional release under the authority of the Commission on Offender Review (ch. 947, F.S.) or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

<sup>8</sup> Section 961.06(2), F.S.

<sup>9</sup> Email correspondence with the Office of the Attorney General (Jan. 14, 2016) (on file with the Senate Committee on Judiciary). Persons whose claims have been successful are Leroy McGee (2010), James Bain (2011), Luis Diaz (2012), and James Richardson (2015). Jarvis McBride's claim was denied (2012). Three persons had their claims rejected based on incomplete applications. These are Robert Lewis (2011), Edwin Lampkin (2012), and Robert Glenn Mosley (2014). Two other claimants were determined to be ineligible for compensation (Ricardo Johnson (2013) and Joseph McGowan (2015)).

<sup>10</sup> Section 961.04(1), F.S.

- During the person's wrongful incarceration, he or she committed a violent felony;<sup>11</sup> or
- During a period of parole or community supervision on the sentence that led to his or her wrongful incarceration, the person committed a violent felony which resulted in the revocation of the parole or community supervision.<sup>12</sup>

A violent felony is defined in the bill by a cross-reference to ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar.

Violent felony offenses which would preclude a wrongfully incarcerated person from being eligible for compensation under the bill are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

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<sup>11</sup> Section 961.04(2), F.S.

<sup>12</sup> Section 961.06(2), F.S.



In limiting disqualifying felonies to violent felonies, the pool of potential persons eligible for compensation due to wrongful incarceration may increase.

The bill takes effect October 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

More persons are potentially eligible for compensation under the provisions of CS/SB 122. A person who is entitled to compensation based on wrongful incarceration would be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million.<sup>13</sup> Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

Although statutory limits on compensation under the Act are clear, the fiscal impact of CS/SB 122 is unquantifiable. The possibility that a person would be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total \$4,276,901.

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<sup>13</sup> The Chief Financial Officer may adjust the annual rate of compensation for inflation for persons found to be wrongfully incarcerated after December 31, 2008. Section 961.06(1)(a), F.S.

The Office of the Attorney General, the Department of Financial Services and the Florida Department of Law Enforcement do not expect a fiscal impact from the provisions of this bill.<sup>14</sup> In addition, the Office of the State Courts Administrator does not expect a significant effect on judicial workload from this bill.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 961.02, 961.04, and 961.06, Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on November 2, 2015:**

Makes a clarifying change to the title of the bill.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>14</sup> Email correspondence with the Office of the Attorney General (Jan. 15, 2016) (on file with the Senate Judiciary Committee); The Department of Financial Services, Letter from Chief Financial Officer Jeff Atwater (Sept. 29, 2015) (on file with the Senate Judiciary Committee); The Florida Department of Law Enforcement, *2016 FDLE Legislative Bill Analysis* (on file with the Senate Judiciary Committee).

<sup>15</sup> The Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Nov. 2, 2015)

By the Committee on Criminal Justice; and Senators Joyner and Bradley

591-01035-16

2016122c1

A bill to be entitled

An act relating to compensation of victims of wrongful incarceration; reordering and amending s. 961.02, F.S.; defining the term "violent felony"; amending s. 961.04, F.S.; providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to any violent felony, or was serving a concurrent sentence for another felony; amending s. 961.06, F.S.; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation; reenacting s. 961.03(1)(a), (2), (3), and (4), F.S., relating to determination of eligibility for compensation, to incorporate the amendments made to s. 961.04, F.S., in references thereto; reenacting s. 961.055(1), F.S., relating to application for compensation for a wrongfully incarcerated person and exemption from application by nolle prosequi, to incorporate the amendments made to s. 961.06, F.S., in references thereto; providing an effective date.

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

Section 1. Section 961.02, Florida Statutes, is reordered

591-01035-16

2016122c1

and amended to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

(1) "Act" means the Victims of Wrongful Incarceration Compensation Act.

(2) "Department" means the Department of Legal Affairs.

(3) "Division" means the Division of Administrative Hearings.

~~(7)(4)~~ "Wrongfully incarcerated person" means a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and who is the subject of an order issued by the original sentencing court pursuant to s. 961.03, ~~with respect to whom pursuant to the requirements of s. 961.03, the original sentencing court has issued its order~~ finding that the person did not commit ~~neither committed~~ the act or ~~nor the~~ offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.

~~(4)(5)~~ "Eligible for compensation" means that a person meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.

~~(5)(6)~~ "Entitled to compensation" means that a person meets the definition of the term "eligible for compensation" and satisfies the application requirements prescribed in s. 961.05, and may receive compensation pursuant to s. 961.06.

(6) "Violent felony" means a felony listed in s. 775.084(1)(c)1. or s. 948.06(8)(c).

Section 2. Section 961.04, Florida Statutes, is amended to

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59 read:

60 961.04 Eligibility for compensation for wrongful  
61 incarceration.—A wrongfully incarcerated person is not eligible  
62 for compensation under the act if:

63 (1) Before the person's wrongful conviction and  
64 incarceration, the person was convicted of, or pled guilty or  
65 nolo contendere to, regardless of adjudication, any violent  
66 felony ~~offense~~, or a crime committed in another jurisdiction the  
67 elements of which would constitute a violent felony in this  
68 state, or a crime committed against the United States which is  
69 designated a violent felony, excluding any delinquency  
70 disposition;

71 (2) During the person's wrongful incarceration, the person  
72 was convicted of, or pled guilty or nolo contendere to,  
73 regardless of adjudication, any violent felony ~~offense~~; or

74 (3) During the person's wrongful incarceration, the person  
75 was also serving a concurrent sentence for another felony for  
76 which the person was not wrongfully convicted.

77 Section 3. Subsection (2) of section 961.06, Florida  
78 Statutes, is amended to read:

79 961.06 Compensation for wrongful incarceration.—

80 (2) In calculating monetary compensation under paragraph  
81 (1)(a), a wrongfully incarcerated person who is placed on parole  
82 or community supervision while serving the sentence resulting  
83 from the wrongful conviction and who commits anything less than  
84 a violent felony ~~law-violation~~ that results in revocation of the  
85 parole or community supervision is eligible for compensation for  
86 the total number of years incarcerated. A wrongfully  
87 incarcerated person who commits a violent felony ~~law-violation~~

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that results in revocation of the parole or community supervision is ineligible for any compensation under subsection (1).

Section 4. For the purpose of incorporating the amendments made by this act to section 961.04, Florida Statutes, in references thereto, paragraph (a) of subsection (1) and subsections (2), (3), and (4) of section 961.03, Florida Statutes, are reenacted to read:

961.03 Determination of status as a wrongfully incarcerated person; determination of eligibility for compensation.—

(1)(a) In order to meet the definition of a "wrongfully incarcerated person" and "eligible for compensation," upon entry of an order, based upon exonerating evidence, vacating a conviction and sentence, a person must set forth the claim of wrongful incarceration under oath and with particularity by filing a petition with the original sentencing court, with a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person was incarcerated. At a minimum, the petition must:

1. State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and

2. State that the person is not disqualified, under the provisions of s. 961.04, from seeking compensation under this act.

(2) The prosecuting authority must respond to the petition within 30 days. The prosecuting authority may respond:

(a) By certifying to the court that, based upon the

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petition and verifiable and substantial evidence of actual innocence, no further criminal proceedings in the case at bar can or will be initiated by the prosecuting authority, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from seeking compensation under the provisions of s. 961.04; or

(b) By contesting the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful incarceration, or whether the petitioner is ineligible from seeking compensation under the provisions of s. 961.04.

(3) If the prosecuting authority responds as set forth in paragraph (2)(a), the original sentencing court, based upon the evidence of actual innocence, the prosecuting authority's certification, and upon the court's finding that the petitioner has presented clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense, shall certify to the department that the petitioner is a wrongfully incarcerated person as defined by this act. Based upon the prosecuting authority's certification, the court shall also certify to the department that the petitioner is eligible for compensation under the provisions of s. 961.04.

(4)(a) If the prosecuting authority responds as set forth in paragraph (2)(b), the original sentencing court shall make a determination from the pleadings and supporting documentation whether, by a preponderance of the evidence, the petitioner is

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ineligible for compensation under the provisions of s. 961.04, regardless of his or her claim of wrongful incarceration. If the court finds the petitioner ineligible under the provisions of s. 961.04, it shall dismiss the petition.

(b) If the prosecuting authority responds as set forth in paragraph (2)(b), and the court determines that the petitioner is eligible under the provisions of s. 961.04, but the prosecuting authority contests the nature, significance or effect of the evidence of actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court shall set forth its findings and transfer the petition by electronic means through the division's website to the division for findings of fact and a recommended determination of whether the petitioner has established that he or she is a wrongfully incarcerated person who is eligible for compensation under this act.

Section 5. For the purpose of incorporating the amendments made by this act to section 961.06, Florida Statutes, in references thereto, subsection (1) of section 961.055, Florida Statutes, is reenacted to read:

961.055 Application for compensation for a wrongfully incarcerated person; exemption from application by nolle prosequi.—

(1) A person alleged to be a wrongfully incarcerated person who was convicted and sentenced to death on or before December 31, 1979, is exempt from the application provisions of ss. 961.03, 961.04, and 961.05 in the determination of wrongful incarceration and eligibility to receive compensation pursuant to s. 961.06 if:



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175       (a) The Governor issues an executive order appointing a  
176 special prosecutor to review the defendant's conviction; and

177       (b) The special prosecutor thereafter enters a nolle  
178 prosequi for the charges for which the defendant was convicted  
179 and sentenced to death.

180       Section 6. This act shall take effect October 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Criminal and  
Civil Justice, *Vice Chair*  
Appropriations  
Health Policy  
Higher Education  
Judiciary  
Rules

### JOINT COMMITTEE:

Joint Legislative Budget Commission

### SENATOR ARTHENIA L. JOYNER

*Democratic Leader*  
19th District

January 20, 2016

Senator Joe Negron, Chair  
Senate Appropriations Subcommittee on Criminal and Civil Justice  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Negron:

This is to request that Senate Bill 122, Compensation of Victims of Wrongful Incarceration, be placed on the agenda for the Appropriations Subcommittee on Criminal and Civil Justice. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner  
State Senator, District 19

#### REPLY TO:

☐ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277  
☐ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

122

*Bill Number (if applicable)*

Topic Wrongful Incarceration

*Amendment Barcode (if applicable)*

Name Larry Eger

Job Title Public Defender, 12th Circuit

Address 2071 Ringling Blvd.

Phone 941.861.5500

*Street*

Sarasota

Florida

34237

Email egersrq@gmail.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: SB 314

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Juvenile Justice

DATE: February 11, 2015

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2. <u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
3. _____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 314 substantially amends two of Florida's current methods for transferring a juvenile to adult court for criminal prosecution. These transfer methods are indictment and direct file. It also amends current provisions requiring the court to impose juvenile and adult sanctions upon juveniles transferred to adult court.

The bill amends the indictment transfer statute, s. 985.56, F.S., by limiting the state attorney's authority to convene a grand jury to cases in which the juvenile is 14 years of age or older (currently available for juveniles of any age who are charged with an offense punishable by death or life imprisonment).

The bill also amends the direct file transfer statute, s. 985.557, F.S., by eliminating the mandatory direct file system and modifying the discretionary direct file system to a two-tiered system based on the juvenile's age and enumerated offense.

- In the first tier, the state attorney may direct file a juvenile who is 16 years of age or older and less than 18 years at the time of the alleged offense if he or she committed an enumerated offense.
- In the second tier, the state attorney may direct file a juvenile who is 14 or 15 years of age at the time of the offense if he or she committed murder, manslaughter, or sexual battery.

The bill prohibits a juvenile from being transferred to adult court by indictment or direct file if the juvenile:

- Has a pending competency hearing in juvenile court; or
- Has been previously found to be incompetent and has not been restored to competency by a court.

The bill provides that a juvenile transferred to adult court by direct file who is found to have committed a violation of law or a lesser included offense may be sentenced as an adult, a

youthful offender, or a juvenile. It removes, modifies, and adds criteria that the court must consider when determining whether these sanctions are appropriate. The court must include specific findings of fact and reasons for its decision to impose adult sanctions under the bill.

The bill provides a reverse waiver process that allows a juvenile who is transferred to adult court by direct file to request a court hearing to determine whether he or she will remain in adult court. The adult court, after considering certain factors, can waive the case back to juvenile court.

Finally, the bill requires the Department of Juvenile Justice (DJJ) to collect and annually report direct file data to the Legislature.

The DJJ estimates that the bill would increase its operating costs by a minimum of \$35.8 million in the first year and \$44.5 million each year thereafter. In addition, the DJJ expects that the bill would require \$2.3 million to retrofit existing facilities for non-secure beds and as much as \$100 million in new construction to provide bed space sufficient for high-risk and maximum-risk residential programs. Operating costs for the Department of Corrections (DOC) would be reduced by diversion of juveniles from the adult correctional system. The Criminal Justice Impact Conference (CJIC) has determined that the bill would result in a reduction in the need for prison beds, but the amount of the reduction cannot be quantified. For purposes of comparison with the DJJ estimate, the maximum cost savings for the DOC would be \$12.5 million if all of the juveniles included in the DJJ estimate were diverted from sentences to prison.

This bill has an effective date of July 1, 2016.

## **II. Present Situation:**

### **Transferring Juveniles to Adult Court**

There are three methods of transferring a juvenile to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing of an information by a prosecutor.

#### ***Judicial Waiver of Juvenile Court Jurisdiction***

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. Section 985.556, F.S., creates three types of judicial waivers:

- Voluntary Waiver - the juvenile requests to have his or her case transferred to adult court;<sup>1</sup>
- Involuntary Discretionary Waiver - the state attorney may file a motion requesting the court to transfer any case where the juvenile is 14 years of age or older;<sup>2</sup> and
- Involuntary Mandatory Waiver - the state attorney must request the transfer of a juvenile 14 years of age or older if the juvenile:
  - Has been previously adjudicated delinquent for an enumerated felony<sup>3</sup> and the juvenile is currently charged with a second or subsequent violent crime against a person; or

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<sup>1</sup> Section 985.556(1), F.S.

<sup>2</sup> Section 985.556(2), F.S.

<sup>3</sup> The enumerated felonies listed in this subsection include the commission of, attempt to commit, or conspiracy to commit: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; aggravated assault; or burglary with an assault or battery.

- Was 14 years of age or older at the time of commission of a fourth or subsequent felony offense and the juvenile was previously adjudicated delinquent or had adjudication withheld for three felony offenses, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person.<sup>4</sup>

If the state attorney files a motion to transfer a juvenile to adult court, the court must hold a hearing to determine whether the juvenile should be transferred.<sup>5</sup> The court must consider a variety of statutorily articulated factors when determining whether transfer is appropriate (including, in part, the seriousness of the offense, the sophistication and maturity of the juvenile, the record and previous history of the juvenile, and whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner).<sup>6</sup> The court must also provide an order specifying the reasons for its decision to impose adult sanctions.<sup>7</sup>

If a juvenile transferred to adult court by a voluntary or involuntary discretionary waiver is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, a youthful offender, or a juvenile.<sup>8</sup> If the transfer was by an involuntary mandatory waiver, the court must impose adult sanctions.<sup>9</sup>

### ***Indictment by Grand Jury***

Section 985.56, F.S., specifies that a juvenile of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment is returned on the charge by a grand jury. If the grand jury returns an indictment on the charge, the juvenile must be transferred to adult court and be handled as an adult in every respect.<sup>10</sup>

If the juvenile is found to have committed the offense punishable by death or life imprisonment, the court must sentence the juvenile as an adult.<sup>11</sup> If the juvenile is found not to have committed the indictable offense, but is found to have committed a lesser included offense or any other offense for which he or she was indicted as part of the criminal episode, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.<sup>12</sup>

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<sup>4</sup> Section 985.556(3), F.S.

<sup>5</sup> Section 985.556(4), F.S.

<sup>6</sup> Section 985.556(4)(c), F.S.

<sup>7</sup> Section 985.556(4)(e), F.S.

<sup>8</sup> Section 985.565(4)(a)2., F.S.

<sup>9</sup> Section 985.565(4)(a)3., F.S.

<sup>10</sup> Section 985.56(1), F.S. The charge punishable by death or life imprisonment must be transferred, as well as all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or life imprisonment.

<sup>11</sup> Section 985.565(4)(a)1., F.S.

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

### ***Direct Filing an Information by the State Attorney***

Direct file transfer under s. 985.557, F.S., can either be discretionary or mandatory. Direct file is the predominant transfer method, according to the Department of Juvenile Justice (DJJ).<sup>13</sup>

#### **Discretionary Direct File**

Section 985.557(1), F.S., allows the state attorney to file an information<sup>14</sup> on certain juvenile cases when, in the state attorney's judgment and discretion, the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may file an information in adult court when a juvenile is:

- 14 or 15 years old and charged with one of the following felony offenses:
  - Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; specified burglary of a dwelling or structure; burglary with an assault or battery; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft; possessing or discharging any weapon or firearm on school property; home invasion robbery; carjacking; grand theft of a motor vehicle; or grand theft of a motor vehicle valued at \$20,000 or more if the child has a previous adjudication for grand theft of a motor vehicle.<sup>15</sup>
- 16 or 17 years old and charged with any felony offense;<sup>16</sup> or
- 16 or 17 years old and charged with any misdemeanor, provided the juvenile has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which is a felony.<sup>17</sup>

If a juvenile transferred to adult court by discretionary direct file is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.<sup>18</sup>

#### **Mandatory Direct File**

Section 985.557(2), F.S., requires the state attorney to file a case in adult court when the juvenile is:

- 16 or 17 years old at the time of the alleged offense and:

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<sup>13</sup> In Fiscal Year 2014-2015, 1,282 juveniles were transferred to the adult system. Approximately 98% of those were transferred by direct file. Department of Juvenile Justice, *2015 Bill Analysis for SB 314* (2015) (on file with the Senate Criminal Justice Committee).

<sup>14</sup> An "information" is the charging document that initiates prosecution. Section 985.557(4), F.S., provides that any information filed pursuant to the direct file statute may include all charges that are based on the same act, criminal episode, or transaction as the primary offenses.

<sup>15</sup> Section 985.557(1)(a), F.S.

<sup>16</sup> Section 985.557(1)(b), F.S.

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

<sup>18</sup> Section 985.565(4)(a)2. and (b), F.S.

- Has been previously adjudicated delinquent for an enumerated felony<sup>19</sup> and is currently charged with a second or subsequent violent crime against a person;
- Is currently charged with a forcible felony<sup>20</sup> and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other;<sup>21</sup> or
- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-q., F.S.,<sup>22</sup> and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device;<sup>23</sup> or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the juvenile, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.<sup>24</sup>

The court may sentence the following juveniles who are transferred to adult court by mandatory direct file as an adult, a youthful offender, or a juvenile:

- Juveniles found to have committed the offense or a lesser included offense who:
  - Are 16 or 17 years old at the time of the offense, the offense was listed in s. 775.087(2)(a)1.a.-q., F.S., and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device; and
  - Are any age and the offense involved stealing a vehicle in which the juvenile, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.<sup>25</sup>

The court must impose adult sanctions on the following juveniles who are transferred to adult court by mandatory direct file and who are found to have committed the offense or a lesser included offense:

- Juveniles 16 or 17 years old at the time of the offense who:
  - Have been previously adjudicated delinquent for an enumerated felony and the juvenile has been found to have committed a second or subsequent violent crime against a person; or

<sup>19</sup> The enumerated felonies listed in this subsection include the commission of, attempt to commit, or conspiracy to commit: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; or aggravated assault.

<sup>20</sup> Section 776.08, F.S., defines “forcible felony” to mean: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>21</sup> Section 985.557(2)(b), F.S., also states that this paragraph does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

<sup>22</sup> This list includes: murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1), F.S.

<sup>23</sup> The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

<sup>24</sup> Section 985.557(2)(c), F.S.

<sup>25</sup> Section 985.565(4)(a)2., F.S.



- Have been found to have committed a forcible felony and have been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other.<sup>26</sup>

### ***Imposing Adult or Juvenile Sanctions***

Judges often have discretion to impose adult or juvenile sanctions when a juvenile is transferred to adult court and is found to have committed the offense. In such instances, the judge must consider specified factors to determine whether adult or juvenile sanctions are appropriate. These include:

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;<sup>27</sup>
- The sophistication and maturity of the offender;
- The record and previous history of the offender, including:
  - Previous contacts with the Department of Corrections (DOC), the DJJ, the former Department of Health and Rehabilitative Services (HRS), the Department of Children and Families (DCF), law enforcement agencies, and the courts;
  - Prior periods of probation;
  - Prior adjudications that the offender committed a delinquent act or violation of law as a child;
  - Prior commitments to the DJJ, the former HRS, the DCF, or other facilities or institutions;
- The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to the DJJ services and facilities;
- Whether the DJJ has appropriate programs, facilities, and services immediately available; and
- Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than juvenile sanctions.<sup>28</sup>

The court is required to consider a presentence investigation (PSI) report prepared by the DOC regarding the suitability of a juvenile for disposition as an adult or juvenile.<sup>29</sup> The PSI report must include a comments section prepared by the DJJ, with its recommendations as to disposition.<sup>30</sup> The court must give all parties<sup>31</sup> present at the disposition hearing an opportunity

<sup>26</sup> Section 985.565(4)(a)3., F.S.

<sup>27</sup> Greater weight is given to offenses against persons, especially if personal injury resulted.

<sup>28</sup> Section 985.565(1)(b), F.S.

<sup>29</sup> Section 985.565(3), F.S. This report requirement may be waived by the offender.

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

<sup>31</sup> *Id.* This includes the parent, guardian, or legal custodian of the offender; the offender's counsel; the state attorney; representatives of DOC and DJJ; the victim or victim's representative; representatives of the school system; and law enforcement involved in the case.

to comment on the issue of sentence and any proposed rehabilitative plan, and may receive and consider any other relevant and material evidence.<sup>32</sup>

If juvenile sentences are imposed, the court must adjudge the juvenile to have committed a delinquent act.<sup>33</sup> Upon adjudicating a juvenile delinquent, the court may:

- Place the juvenile in a probation program under the supervision of the DJJ for an indeterminate period of time until he or she reaches the age of 19 years or sooner if discharged by order of the court;
- Commit the juvenile to the DJJ for treatment in an appropriate program for an indeterminate period of time until he or she is 21 or sooner if discharged by the DJJ;<sup>34</sup> or
- Order disposition under ss. 985.435,<sup>35</sup> 985.437,<sup>36</sup> 985.439,<sup>37</sup> 985.441,<sup>38</sup> 985.45,<sup>39</sup> and 985.455<sup>40</sup>, F.S., as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.<sup>41</sup>

If the court imposes a juvenile sanction and the DJJ determines that the sanction is unsuitable for the juvenile, the DJJ must return custody of the juvenile to the sentencing court for further proceedings, including the imposition of adult sanctions.<sup>42</sup>

Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or list the criteria used as any basis for its decision to impose adult sanctions.<sup>43</sup>

The court may not sentence the juvenile to a combination of adult and juvenile punishments.<sup>44</sup>

### ***Effect of Transferring a Juvenile to Adult Court***

If a juvenile transferred to adult court for prosecution is found to have committed the offense or a lesser included offense, the juvenile must have any subsequent violations of law handled

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<sup>32</sup> *Id.* Other relevant evidence may include other reports, written or oral, in its effort to determine the action to be taken with regard to the child. This evidence may be relied upon by the court to the extent of its probative value even if the evidence would not be competent in an adjudicatory hearing.

<sup>33</sup> Section 985.565(4)(b), F.S. Adjudication of delinquency is not deemed a conviction, nor does it operate to impose any of the civil disabilities ordinarily resulting from a conviction.

<sup>34</sup> The DJJ must notify the court of its intent to discharge the juvenile from the commitment program no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

<sup>35</sup> Probation and postcommitment probation or community service.

<sup>36</sup> Restitution.

<sup>37</sup> Violation of probation or postcommitment probation.

<sup>38</sup> Commitment.

<sup>39</sup> Work program liability and remuneration.

<sup>40</sup> Other dispositional issues.

<sup>41</sup> Section 985.565(4)(b), F.S.

<sup>42</sup> *Id.* The DJJ also has recourse if the judge imposes a juvenile sanction and the juvenile proves not to be suitable to the sanction. In such instances, the DJJ must provide the sentencing court a written report outlining the basis for its objections to the juvenile sanction and schedule a hearing. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any adult sanction it may have originally lawfully imposed, s. 985.565(4)(c), F.S.

<sup>43</sup> Section 985.565(4)(a)4., F.S.

<sup>44</sup> Section 985.565(4)(b), F.S.

thereafter in every respect as an adult.<sup>45</sup> The court must also immediately transfer and certify all unresolved<sup>46</sup> felony cases pertaining to the juvenile to adult court for prosecution.<sup>47</sup>

If the juvenile is acquitted of all charged offenses (or lesser included offenses) contained in the original direct filed case, all felony cases transferred to adult court as a result of the direct file case must be subject to juvenile sanctions.<sup>48</sup>

### ***Juvenile Transfer Statistics from the DJJ***

Statistics made available by the DJJ's Office of Research and Data Integrity show a downward trend in adult court transfers between FY 2010-2011 and FY 2014-2015, which exceeded the decline in felony arrests. Transfers declined 46 percent over the five-year period, while felony arrests declined 20 percent.<sup>49</sup>

During FY 2014-2015, a total of 1,282 individual youths were transferred to the adult court in Florida.<sup>50</sup> The majority of them were 16 or 17 years of age.<sup>51</sup> These youths had a total of 1,607 arrests that resulted in transfer to the adult court. For this population, the most common offenses that resulted in transfer included the following:

- Burglary (430 arrests-26.8%);
- Armed robbery (258 arrests-16.1%);
- Aggravated assault or battery (198 arrests-12.3%);
- Weapon/Firearm offenses (117 arrests-7.3%);
- Auto theft (77 arrests-4.8%)
- Other robbery (72 arrests-4.5%)
- Sexual battery (68 arrests-4.2%);
- Drug-related felonies (55 arrests-3.4%);
- Murder/manslaughter (49 arrests-3.0%); and
- Grand larceny (42 arrests-2.6%).<sup>52</sup>

### **III. Effect of Proposed Changes:**

The bill substantially amends two of Florida's current methods for transferring a juvenile to adult court for criminal prosecution. These transfer methods are indictment and direct file. It also

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<sup>45</sup> Sections 985.556(5), 985.56(4), and 985.557(3), F.S. This provision does not apply if the adult court imposes juvenile sanctions under s. 985.565, F.S.

<sup>46</sup> Unresolved cases include those which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not been made. *See* s. 985.557(3), F.S.

<sup>47</sup> Sections 985.556(5), 985.56(4), and 985.557(3), F.S.

<sup>48</sup> *Id.*

<sup>49</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 314* (2016) (on file with Senate Criminal Justice Committee).

<sup>50</sup> *Id.*

<sup>51</sup> 331 youths were 16 years old (25.8%) and 674 youths (52.6%) were 17 years old. There were also 123 (9.6%) 15 year olds, 103 (8.0%) 18 year olds, 25 (2.0%) 14 year olds, 12 (0.9%) 19 year olds, 6 (.5%) 21 year olds, 4 (.3%) 20 year olds, 3 (.2%) 13 year olds, and 1 (.1%) 12 year old. Email from Department of Juvenile Justice (October 29, 2015) (on file with Senate Criminal Justice Committee).

<sup>52</sup> Email from Department of Juvenile Justice (October 29, 2015) (on file with Senate Criminal Justice Committee).

amends current provisions requiring the court to impose juvenile or adult sanctions upon juveniles transferred to the adult court.

### **Direct Filing an Information by the State Attorney**

The bill amends s. 985.557, F.S., by eliminating the mandatory direct file system and modifying the discretionary direct file system to a two-tiered system based on the juvenile's age and enumerated offense.

#### ***Tier One***

The bill permits the state attorney to file an information in adult court when, in his or her judgment and discretion, the public interest requires that adult sanctions be considered and:

- The juvenile is 16 years of age or older and less than 18 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:
  - Murder;
  - Manslaughter;
  - Sexual battery as defined in s. 794.011(3), F.S.;
  - Armed robbery;
  - Aggravated assault with a firearm;
  - Aggravated child abuse;
  - Aggravated stalking;
  - Kidnapping;
  - Unlawful throwing, placing, or discharging of a destructive device or bomb;
  - Aggravated battery resulting in great bodily harm, permanent disability, or permanent disfigurement to a person;
  - Carrying, displaying, using, or threatening or attempting to use a weapon or firearm in furtherance of the commission of a felony, provided the use or threatened use does not include the mere acquisition of a deadly weapon or firearm during the felony;
  - Possessing or discharging a firearm on school property in violation of s. 790.115, F.S.;
  - Home invasion robbery;
  - Carjacking;
  - Aggravated animal cruelty by intentional acts;
  - Driving under the influence or boating under the influence resulting in fatality, great bodily harm, permanent disability, or permanent disfigurement to a person; or
  - Arson in violation of s. 806.031, F.S.

#### ***Tier Two***

The bill allows the state attorney to file an information in adult court when, in his or her judgment and discretion, the public interest requires adult sanctions be considered and:

- The juvenile is 14 or 15 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:
  - Murder;
  - Manslaughter; or
  - Sexual battery in violation of s. 794.011(3), F.S.

A juvenile eligible for direct file cannot be transferred if he or she has:

- A pending competency hearing in juvenile court; or
- Been previously found to be incompetent to proceed and has not been restored to competency by a court.

The bill allows, rather than requires, the court to transfer any unresolved felony cases when the transfer is by direct file.

The bill allows a juvenile who is transferred by direct file to request a court hearing, in writing, to determine whether he or she will remain in adult court. The adult court, after considering certain factors, can waive the case back to juvenile court under the bill. These factors include the seriousness of the offense, the extent of the juvenile's alleged participation or role in the offense, the sophistication and maturity of the juvenile, and any prior offenses. This process is called a reverse waiver under the bill.

The bill also requires the Department of Juvenile Justice (DJJ) to collect and annually report data to the President of the Senate and Speaker of the House of Representatives relating to juveniles who qualify for transfer by direct file. This data includes, but is not limited to the following:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence;
- Circuit and county of offense;
- Prior adjudicated offenses;
- Prior periods of probation;
- Previous contacts with law enforcement agencies or the courts;
- Initial charges;
- Charges at disposition;
- Whether adult codefendants were involved;
- Whether child codefendants were involved who were transferred to adult court;
- Whether the child was represented by counsel;
- Whether the child had waived counsel;
- Risk assessment instrument score;
- The child's medical, mental health, substance abuse, or trauma history;
- The child's history of physical or mental impairment or disability-related accommodations;
- The child's history of abuse or neglect;
- The child's history of foster care placements, including the number of prior placements;
- Whether the child has experienced a failed adoption;
- Whether the child has fetal alcohol syndrome or was exposed to controlled substances at birth;
- Whether the child has below-average intellectual functioning or is eligible for exceptional student education services;
- Whether the child has received mental health services or treatment;
- Whether the child has been the subject of a Children in Need of Services or Family in Need of Services (CINS/FINS) petition or a dependency petition;

- Plea offers made by the state and the outcome of any plea offers;
- Whether the child was transferred for criminal prosecution as an adult;
- The case resolution in juvenile court;
- The case resolution in adult court; and
- Disposition data, including, but not limited to, whether the child received adult sanctions, juvenile sanctions, or diversion, and, if sentenced to prison, length of prison sentence or enhanced sentence.

### **Indictment by Grand Jury**

The bill amends s. 985.56, F.S., by:

- Limiting the state attorney's authority to convene a grand jury to apply to juveniles who are 14 years of age or older (currently available for juveniles of any age charged with an offense punishable by death or life imprisonment).
- Allowing, rather than requiring, the court to transfer any unresolved felony cases upon a returned indictment; and
- Prohibiting a juvenile who is eligible for indictment from being transferred to adult court for criminal prosecution if the juvenile is pending a competency hearing in juvenile court or has been previously found to be incompetent and has not been restored to competency by a court.

### **Imposing Adult or Juvenile Sanctions**

Unlike current law, the bill does not require the court to impose adult sanctions. It amends s. 985.565, F.S., to provide that a juvenile who is transferred by direct file or judicial waiver and is found to have committed a violation of law or a lesser included offense may be sentenced as:

- An adult;
- A youthful offender under ch. 958, F.S.; or
- A juvenile.

It also amends this section by modifying existing criteria and adding additional criteria the court must consider when determining whether juvenile sanctions or adult sanctions are appropriate. The bill includes the following additional criteria for courts to consider:

- The extent of the juvenile's participation or role in the offense;
- The effect, if any, of familial or peer pressure on the juvenile's actions; and
- Whether the Department of Corrections (DOC) has appropriate programs, facilities, and services immediately available for the juvenile.

The bill modifies the following existing criteria that a court considers:

- The sophistication and maturity of the juvenile, specifically adding consideration of:
  - The juvenile's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense;
  - The juvenile's background, including his or her family, home, and community environment;
  - The effect, if any, of immaturity, impetuosity, or failure to appreciate the risks and consequences on the juvenile's participation in the offense; and

- The effect, if any, of characteristics attributable to the juvenile's age on his or her judgment.
- The record and previous history of the juvenile, including:
  - Previous contacts with the DOC, the DJJ, the former Department of Health and Rehabilitative Services (HRS), or the Department of Children and Families (DCF), adding consideration of the adequacy and appropriateness of any services provided to address the juvenile's needs;
  - Prior commitments to the DJJ, the former HRS, the DCF, or other facilities or institutions, adding consideration of the adequacy and appropriateness of any services provided to address the juvenile's needs;
  - Previous contacts with law enforcement agencies and the courts (added);
  - Consideration of history of abuse, abandonment, or neglect; foster care placements, failed adoption, fetal alcohol syndrome, exposure to controlled substances at birth, and below-average intellectual functioning (added);
  - Identification of the juvenile as having a mental, physical, or intellectual or developmental disability or having previously received mental health services or treatment (added).

The bill removes the provision of current law allowing the court to consider whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.

The bill requires the court to render an order including specific findings of fact and the reasons for its decisions to impose adult sanctions. The order is reviewable on appeal under s. 985.534, F.S., and the Florida Rules of Appellate Procedure.

The bill requires the court to consider any reports that may assist the court in its decision to impose juvenile or adult sanctions. These include, but are not limited to: prior predisposition reports; psychosocial assessments; individual education plans; developmental assessments; school records; abuse or neglect reports; home studies; protective investigations; and psychological or psychiatric evaluations.

Under the bill, the juvenile, state attorney, and defense counsel have the right to examine these reports, and to question the parties responsible for them at the hearing.

The bill amends this section by removing the prohibition on imposing both adult and juvenile sanctions. It also removes the requirement that the DJJ return the juvenile to the sentencing court for further proceedings if the department determines that the juvenile sanction is unsuitable for the juvenile. (Current law still requires the DJJ to provide the sentencing court with written reasons upon determining that a juvenile is not suitable to a commitment program, juvenile probation program, or a treatment program within the department. If that occurs, the court must then determine whether to resentence the juvenile.)

The effective date of the bill is July 1, 2016.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

SB 314 has the effect of increasing the number of juveniles committed to the Department of Juvenile Justice (DJJ) and reducing the number of juveniles in the Department of Corrections' (DOC) custody (community supervision or state prison).

**Impact to DJJ (need for additional beds)**

According to the DJJ, the bill is likely to reduce the number of juveniles transferred to the adult system and increase the number of juveniles within the juvenile justice system. The DJJ estimates that this will result in at least 644 additional youths remaining in the juvenile system who would be diverted into the adult system under current practice. Based on the population of youths recently transferred to the adult system, the DJJ estimates that 17.7% of these youths (114) would be placed in probation, 17.7% (114) would be placed in non-secure commitment, 34.18% (220) would be placed in high-risk secure commitment and 30.38% (196) would be placed in maximum-risk secure commitment. Based upon these estimates and using the average per diem rates and average cost per youth supervision rates for Fiscal Year 2014-2015, the DJJ estimates the fiscal impact to be a minimum of \$35.8 million in the first year and \$44.5 million annually in subsequent years.<sup>53</sup>

According to the department, this fiscal impact estimate does not take into consideration the need to procure additional programs, staff needed to monitor or administer additional

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<sup>53</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 314* (2016) (on file with Senate Criminal Justice Committee).



programs, or the need to build or procure facilities to accommodate this additional population. The DJJ currently has an operating capacity of just over 2,100 residential beds and has a current utilization rate of 92%. If sufficient beds are not made available, youths awaiting placement in a residential program would be housed in secure detention or in their home communities, creating a significant back log of youths awaiting placement. Alternately, the department would require funding to procure additional programs and to retrofit current facilities, build or procure new facilities to house these youths in addition to the per diem fiscal addressed previously. The department could address the need for non-secure beds by retrofitting current facilities for use, which would require nearly \$2.3 million. Construction costs could exceed \$100 million to provide bed space sufficient for the high-risk and maximum-risk residential programs. The per diem rates used are based on per diems for programs that utilize the DJJ (state-owned) facilities. Per diem rates for programs that do not utilize state-owned facilities are potentially higher.<sup>54</sup>

The bill also requires the DJJ to collect and report on specific data that will require modification of the Juvenile Justice Information (JJIS) System, which the DJJ estimates will cost \$93,600.<sup>55</sup>

#### **Impact to DOC (cost savings)**

The Criminal Justice Impact Conference (CJIC) met on January 29, 2016, and determined that this bill would have a negative indeterminate prison bed impact on the DOC (i.e., an unquantifiable reduction in the need for prison beds).

Although there are too many variables to determine how many youths would be diverted from prison, diversion of all 644 juveniles in the DJJ estimate from prison would result in as much as \$12.5 million in cost savings to the DOC.<sup>56</sup> It is likely that actual cost savings would be lower because of several factors, including the probability that some juveniles would have been sentenced to community supervision rather than prison.

#### **VI. Technical Deficiencies:**

The bill appears to delete language that mandates how the court must sentence a juvenile who has been transferred to adult court by indictment. The word “indictment” may need to be added on line 352 to ensure that the court has authority to sentence such a juvenile as an adult, a youthful offender, or a juvenile.

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> This is based on the CJIC estimate of \$18,852 annual operating costs per inmate for Fiscal Year 2016-2017.

**VII. Related Issues:**

The DJJ indicates that the reconfiguration of the Juvenile Justice Information System that will be required to capture the pertinent data elements under the bill may take up to 6 months to complete, making implementation by the effective date (July 1, 2016) difficult.<sup>57</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.557, 985.56, and 985.565.

This bill makes technical and conforming changes to the following sections of the Florida Statutes: 985.556, 985.04, 985.15, 985.265, and 985.514.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>57</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 314* (2016) (on file with Senate Criminal Justice Committee). Additional items required by the bill that the DJJ does not currently capture include whether adult codefendants were involved, whether child codefendants were involved who were transferred to adult court, whether the child was represented by counsel, whether the child waived counsel, whether the child has fetal alcohol syndrome or was exposed to controlled substances at birth, whether the child has below-average intellectual functioning or is eligible for exceptional student education services, any plea offers and resulting outcomes, and length of prison sentence or enhanced sentence. *Id.*

By Senator Diaz de la Portilla

40-00398-16

2016314\_\_

A bill to be entitled

An act relating to juvenile justice; amending s. 985.557, F.S.; revising the circumstances under which a state attorney may file an information when a child of a certain age range commits or attempts to commit specified crimes; deleting a requirement that a state attorney file an information under certain circumstances; deleting a provision that prohibits physical contact with adult offenders under certain circumstances; revising the effects of the direct filing of a child; prohibiting the transfer of a child under certain circumstances based on the child's competency; authorizing a child to request a hearing to determine whether he or she must remain in adult court; requiring the court to consider certain factors after a written request is made for a hearing; authorizing the court to waive the case back to juvenile court; requiring the Department of Juvenile Justice to collect specified data under certain circumstances; requiring the department to provide an annual report to the Legislature; amending s. 985.56, F.S.; revising the crimes and the age of a child who is subject to the jurisdiction of a circuit court; prohibiting the transfer of a child under certain circumstances based on the child's competency; removing provisions regarding sentencing of a child; authorizing, rather than requiring, a court to transfer a child indicted under certain circumstances; making technical changes; amending s. 985.565, F.S.;

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revising the criteria to be used in determining whether to impose juvenile or adult sanctions; requiring the adult court to render an order including specific findings of fact and the reasons for its decision; providing that the order is reviewable on appeal; requiring the court to consider any reports that may assist in the sentencing of a child; providing for the examination of the reports; removing a provision that requires a court to impose adult sanctions under certain circumstances; revising how a child may be sanctioned under certain circumstances; requiring the court to explain the basis for imposing adult sanctions; revising when juvenile sanctions may be imposed; amending s. 985.556, F.S.; conforming a cross-reference; amending s. 985.04, F.S.; conforming provisions to changes made by the act; reenacting ss. 985.15(1), 985.265(5), and 985.556(3), F.S., relating to filing decisions; detention transfer and release, education, and adult jails; and waiver of juvenile court jurisdiction and hearings, respectively, to incorporate the amendment made to s. 985.557, F.S., in references thereto; reenacting ss. 985.514(3) and 985.556(5) (a), F.S., relating to responsibility for cost of care and fees, and waiver of juvenile court jurisdiction and hearings, respectively, to incorporate the amendment made to s. 985.565, F.S., in references thereto; providing an effective date.

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

40-00398-16

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Section 1. Section 985.557, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 985.557, F.S., for present text.)

985.557 Direct filing of an information.—

(1) DIRECT FILE.—

(a) With respect to a child who was 16 years of age or older or less than 18 years of age at the time the alleged offense was committed, the state attorney may file an information if, in the state attorney's judgment and discretion, the public interest requires that adult sanctions be considered and the offense charged is for the commission of or attempt to commit:

1. Murder;

2. Manslaughter;

3. Sexual battery in violation of s. 794.011(3);

4. Armed robbery;

5. Aggravated assault with a firearm;

6. Aggravated child abuse;

7. Arson in violation of s. 806.031;

8. Kidnapping;

9. Unlawful throwing, placing, or discharging of a destructive device or bomb;

10. Aggravated battery resulting in great bodily harm, permanent disability, or permanent disfigurement to a person;

11. Carrying, displaying, using, or threatening or attempting to use a weapon or firearm in furtherance of the commission of a felony, if the use or threatened use does not

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88 include the mere acquisition of a deadly weapon or firearm  
89 during the felony;

90 12. Possessing or discharging a firearm on school property  
91 in violation of s. 790.115;

92 13. Home invasion robbery;

93 14. Aggravated stalking;

94 15. Carjacking;

95 16. Aggravated animal cruelty by intentional acts; or

96 17. DUI or BUI resulting in fatality, great bodily harm,  
97 permanent disability, or permanent disfigurement to a person.

98 (b) With respect to a child who was 14 or 15 years of age  
99 at the time the alleged offense was committed, the state  
100 attorney may file an information if, in the state attorney's  
101 judgment and discretion, the public interest requires that adult  
102 sanctions be considered and the offense charged is for the  
103 commission of or attempt to commit:

104 1. Murder;

105 2. Manslaughter; or

106 3. Sexual battery in violation of s. 794.011(3).

107 (2) EFFECT OF DIRECT FILE.—

108 (a) If a child is transferred for criminal prosecution as  
109 an adult, the court may transfer and certify to the adult  
110 circuit court for prosecution of the child as an adult all  
111 related felony cases pertaining to the child which have not yet  
112 resulted in a plea of guilty or nolo contendere or in which a  
113 finding of guilt has not been made. If the child is acquitted of  
114 all charged offenses or lesser included offenses contained in  
115 the original case transferred to adult court, any felony cases  
116 that were transferred to adult court under this subsection are

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subject to the same penalties they were subject to before their transfer.

(b) If a child has been convicted and sentenced to adult sanctions pursuant to this section, he or she shall be handled as an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under s. 985.565.

(3) TRANSFER PROHIBITION.—Notwithstanding any other law, a child who is eligible for direct file and who is pending a competency hearing in juvenile court or who has previously been found to be incompetent and has not been restored to competency by a court may not be transferred to adult court for criminal prosecution.

(4) REVERSE WAIVER.—A child who is transferred to adult court pursuant to this section may request, in writing, a hearing to determine whether he or she shall remain in adult court. The adult court, in determining whether public safety would be best served by retaining jurisdiction, shall consider the seriousness of the offense, the extent of the child's alleged participation or role in the offense, the sophistication and maturity of the child, and any prior offenses the child has committed. The adult court may, based on these considerations, waive the case back to juvenile court.

(5) DATA COLLECTION RELATING TO DIRECT FILE.—

(a) The department shall collect data regarding children who qualify for direct file under subsection (1), including, but not limited to:

1. Age.

2. Race and ethnicity.

3. Gender.

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- 146       4. Circuit and county of residence.  
147       5. Circuit and county of offense.  
148       6. Prior adjudicated offenses.  
149       7. Prior periods of probation.  
150       8. Previous contacts with law enforcement agencies or the  
151 courts.  
152       9. Initial charges.  
153       10. Charges at disposition.  
154       11. Whether adult codefendants were involved.  
155       12. Whether child codefendants were involved who were  
156 transferred to adult court.  
157       13. Whether the child was represented by counsel.  
158       14. Whether the child has waived counsel.  
159       15. Risk assessment instrument score.  
160       16. The child's medical, mental health, substance abuse, or  
161 trauma history.  
162       17. The child's history of physical or mental impairment or  
163 disability-related accommodations.  
164       18. The child's history of abuse or neglect.  
165       19. The child's history of foster care placements,  
166 including the number of prior placements.  
167       20. Whether the child has fetal alcohol syndrome or was  
168 exposed to controlled substances at birth.  
169       21. Whether the child has below-average intellectual  
170 functioning or is eligible for exceptional student education  
171 services.  
172       22. Whether the child has received mental health services  
173 or treatment.  
174       23. Whether the child has been the subject of a Children in



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175 Need of Services or Family in Need of Services (CINS/FINS)  
176 petition or a dependency petition.

177 24. Plea offers made by the state and the outcome of any  
178 plea offers.

179 25. Whether the child was transferred for criminal  
180 prosecution as an adult.

181 26. The case resolution in juvenile court.

182 27. The case resolution in adult court.

183 (b) If a child is transferred for criminal prosecution as  
184 an adult, the department shall also collect disposition data,  
185 including, but not limited to, whether the child received adult  
186 sanctions, juvenile sanctions, or diversion, and, if sentenced  
187 to prison, length of prison sentence or enhanced sentence.

188 (c) The department shall annually provide a report  
189 analyzing this aggregated data to the President of the Senate  
190 and the Speaker of the House of Representatives.

191 Section 2. Section 985.56, Florida Statutes, is amended to  
192 read:

193 985.56 Indictment of a juvenile.—

194 (1) A child 14 years of age or older ~~of any age~~ who is  
195 charged with a violation of state law punishable by death or by  
196 life imprisonment is subject to the jurisdiction of the court as  
197 set forth in s. 985.0301(2) unless and until an indictment on  
198 the charge is returned by the grand jury. When such indictment  
199 is returned, the petition for delinquency, if any, must be  
200 dismissed and the child must be tried ~~and handled in every~~  
201 ~~respect~~ as an adult:

202 (a) On the indicting offense ~~punishable by death or by life~~  
203 ~~imprisonment~~; and

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(b) On all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the indicting offense ~~punishable by death or by life imprisonment or on one or more acts or transactions connected with the offense punishable by death or by life imprisonment.~~

(2) An adjudicatory hearing may not be held until 21 days after the child is taken into custody and charged with having committed an indictable offense ~~punishable by death or by life imprisonment~~, unless the state attorney advises the court in writing that he or she does not intend to present the case to the grand jury, or has presented the case to the grand jury and the grand jury has not returned an indictment. If the court receives such a notice from the state attorney, or if the grand jury fails to act within the 21-day period, the court may proceed as otherwise authorized under this part.

(3) Notwithstanding any other law, a child who is eligible for indictment and who is pending a competency hearing in juvenile court or who has been previously found to be incompetent and has not been restored to competency by a court may not be transferred to adult court for criminal prosecution ~~If the child is found to have committed the offense punishable by death or by life imprisonment, the child shall be sentenced as an adult. If the juvenile is not found to have committed the indictable offense but is found to have committed a lesser included offense or any other offense for which he or she was indicted as a part of the criminal episode, the court may sentence under s. 985.565.~~

(4) (a) If ~~Once~~ a child has been indicted pursuant to this section and has been found to have committed any offense for

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which he or she was indicted as a part of the criminal episode,  
the child shall be handled thereafter ~~in every respect~~ as if an  
adult for any subsequent violation of state law, unless the  
court imposes juvenile sanctions under s. 985.565.

(b) ~~If When~~ a child has been indicted pursuant to this  
section, the court may ~~shall immediately~~ transfer and certify to  
the adult circuit court all related felony cases pertaining to  
the child, for prosecution of the child as an adult, which have  
not yet resulted in a plea of guilty or nolo contendere or in  
which a finding of guilt has not been made. If the child is  
acquitted of all charged offenses or lesser included offenses  
contained in the indictment case, any ~~all~~ felony cases that were  
transferred to adult court pursuant to this paragraph shall be  
subject to the same penalties such cases were subject to before  
being transferred to adult court.

Section 3. Subsection (1), paragraph (c) of subsection (3),  
and subsection (4) of section 985.565, Florida Statutes, are  
amended to read:

985.565 Sentencing powers; procedures; alternatives for  
juveniles prosecuted as adults.—

(1) POWERS OF DISPOSITION.—

(a) A child who is found to have committed a violation of  
law may, as an alternative to adult dispositions, be committed  
to the department for treatment in an appropriate program for  
children outside the adult correctional system or be placed on  
juvenile probation.

(b) In determining whether to impose juvenile or ~~sanctions~~  
~~instead of~~ adult sanctions, the court shall consider the  
following criteria:

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1. The seriousness of the offense to the community and whether the protection of the community would be best served ~~be~~ ~~protected~~ by juvenile or adult sanctions.

2. The extent of the child's participation in the offense.

3. The effect, if any, of familial or peer pressure on the child's actions.

4.2. Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.

5.3. Whether the offense was against persons or against property, with greater weight being given to offenses against persons, especially if personal injury resulted.

6.4. The sophistication and maturity of the child, including: ~~offender~~

a. The child's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

b. The child's background, including his or her family, home, and community environment.

c. The effect, if any, of immaturity, impetuosity, or failure to appreciate the risks and consequences on the child's participation in the offense.

d. The effect, if any, of characteristics attributable to the child's age on the child's judgment.

7.5. The record and previous history of the child ~~offender~~, including:

a. Previous contacts with the Department of Corrections, the Department of Juvenile Justice, the former Department of Health and Rehabilitative Services, or the Department of Children and Families, and the adequacy and appropriateness of the services provided to address the child's needs ~~law~~

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~~enforcement agencies, and the courts.~~

b. Prior periods of probation.

c. Prior adjudications that the offender committed a delinquent act or violation of law as a child.

d. Prior commitments to the Department of Juvenile Justice, the former Department of Health and Rehabilitative Services, the Department of Children and Families, or other facilities or institutions, and the adequacy and appropriateness of the services provided to address the child's needs.

e. Previous contacts with law enforcement agencies and the courts.

f. History of abuse, abandonment or neglect, foster care placements, failed adoption, fetal alcohol syndrome, exposure to controlled substances at birth, and below-average intellectual functioning.

g. Identification of the child as having a disability or having previously received mental health services or treatment.

~~8.6.~~ The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to services and facilities of the Department of Juvenile Justice.

~~9.7.~~ Whether the Department of Juvenile Justice has appropriate programs, facilities, and services immediately available.

~~8. Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.~~

10. Whether the Department of Corrections has appropriate programs, facilities, and services immediately available.

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320       (c) The adult court shall render an order including  
321 specific findings of fact and the reasons for its decision. The  
322 order shall be reviewable on appeal under s. 985.534 and the  
323 Florida Rules of Appellate Procedure.

324       (3) SENTENCING HEARING.—

325       (c) The court may receive and consider any other relevant  
326 and material evidence, including other reports, written or oral,  
327 in its effort to determine the action to be taken with regard to  
328 the child, and may rely upon such evidence to the extent of its  
329 probative value even if the evidence would not be competent in  
330 an adjudicatory hearing. The court shall consider any reports  
331 that may assist it, including prior predisposition reports,  
332 psychosocial assessments, individualized educational programs,  
333 developmental assessments, school records, abuse or neglect  
334 reports, home studies, protective investigations, and  
335 psychological and psychiatric evaluations. The child, the  
336 child's defense counsel, and the state attorney have the right  
337 to examine these reports and to question the parties responsible  
338 for them at the hearing.

339       (4) SENTENCING ALTERNATIVES.—

340       (a) ~~Adult~~ Sanctions.—

341       ~~1. Cases prosecuted on indictment. If the child is found to~~  
342 ~~have committed the offense punishable by death or life~~  
343 ~~imprisonment, the child shall be sentenced as an adult. If the~~  
344 ~~juvenile is not found to have committed the indictable offense~~  
345 ~~but is found to have committed a lesser included offense or any~~  
346 ~~other offense for which he or she was indicted as a part of the~~  
347 ~~criminal episode, the court may sentence as follows:~~

348       ~~a. As an adult;~~

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~~b. Under chapter 958; or~~

~~e. As a juvenile under this section.~~

~~2. Other cases.~~ If a child who has been transferred for criminal prosecution pursuant to information or waiver of juvenile court jurisdiction is found to have committed a violation of state law or a lesser included offense for which he or she was charged as a part of the criminal episode, the court may sentence as follows:

1.a. As an adult;

~~2.b.~~ As a youthful offender under chapter 958; or

~~3.e.~~ As a juvenile under this section.

~~3. Notwithstanding any other provision to the contrary, if the state attorney is required to file a motion to transfer and certify the juvenile for prosecution as an adult under s. 985.556(3) and that motion is granted, or if the state attorney is required to file an information under s. 985.557(2)(a) or (b), the court must impose adult sanctions.~~

~~(b)4. Findings.—The court must Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or enumerate the criteria in this subsection as any basis for its decision to impose adult sanctions.~~

~~(c)5. Restitution.—~~When a child has been transferred for criminal prosecution as an adult and has been found to have committed a violation of state law, the disposition of the case may include the enforcement of any restitution ordered in any juvenile proceeding.

~~(d)(b) Juvenile sanctions.—If a juvenile sentence is For juveniles transferred to adult court but who do not qualify for~~

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~~such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b),~~  
~~the court may impose juvenile sanctions under this paragraph. If~~  
~~juvenile sentences are imposed, the court shall, under this~~  
~~paragraph, adjudge the child to have committed a delinquent act.~~  
~~Adjudication of delinquency shall not be deemed a conviction,~~  
~~nor shall it operate to impose any of the civil disabilities~~  
~~ordinarily resulting from a conviction. The court shall impose~~  
~~an adult sanction or a juvenile sanction and may not sentence~~  
~~the child to a combination of adult and juvenile punishments. An~~  
~~adult sanction or a juvenile sanction may include enforcement of~~  
~~an order of restitution or probation previously ordered in any~~  
~~juvenile proceeding. However, if the court imposes a juvenile~~  
~~sanction and the department determines that the sanction is~~  
~~unsuitable for the child, the department shall return custody of~~  
~~the child to the sentencing court for further proceedings,~~  
~~including the imposition of adult sanctions. Upon adjudicating a~~  
child delinquent under subsection (1), the court may:

1. Place the child in a probation program under the supervision of the department for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court.

2. Commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 or sooner if discharged by the department. The department shall notify the court of its intent to discharge no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

3. Order disposition under ss. 985.435, 985.437, 985.439,



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985.441, 985.45, and 985.455 as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

(e)~~(e)~~ *Adult sanctions upon failure of juvenile sanctions.*—

If a child proves not to be suitable to a commitment program, juvenile probation program, or treatment program under paragraph (d) ~~(b)~~, the department shall provide the sentencing court with a written report outlining the basis for its objections to the juvenile sanction and shall simultaneously provide a copy of the report to the state attorney and the defense counsel. The department shall schedule a hearing within 30 days. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any sentence which it may lawfully impose, giving credit for all time spent by the child in the department. The court may also classify the child as a youthful offender under s. 958.04, if appropriate. For purposes of this paragraph, a child may be found not suitable to a commitment program, community control program, or treatment program under paragraph (d) ~~(b)~~ if the child commits a new violation of law while under juvenile sanctions, if the child commits any other violation of the conditions of juvenile sanctions, or if the child's actions are otherwise determined by the court to demonstrate a failure of juvenile sanctions.

(f)~~(d)~~ *Further proceedings heard in adult court.*—When a child is sentenced to juvenile sanctions, further proceedings involving those sanctions shall continue to be heard in the adult court.

(g)~~(e)~~ *School attendance.*—If the child is attending or is eligible to attend public school and the court finds that the

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victim or a sibling of the victim in the case is attending or may attend the same school as the child, the court placement order shall include a finding pursuant to the proceeding described in s. 985.455(2), regardless of whether adjudication is withheld.

It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 985.534.

Section 4. Subsection (1) of section 985.556, Florida Statutes, is amended to read:

985.556 Waiver of juvenile court jurisdiction; hearing.—

(1) VOLUNTARY WAIVER.—The court shall transfer and certify a child's criminal case for trial as an adult if the child is alleged to have committed a violation of law and, before ~~prior~~ ~~to~~ the commencement of an adjudicatory hearing, the child, joined by a parent or, in the absence of a parent, by the guardian or guardian ad litem, demands in writing to be tried as an adult. Once a child has been transferred for criminal prosecution pursuant to a voluntary waiver hearing and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under s. 985.565(4)(d) ~~s. 985.565(4)(b)~~.

Section 5. Subsection (2) of section 985.04, Florida Statutes, is amended to read:

985.04 Oaths; records; confidential information.—

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(2) Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:

(a) Taken into custody if the child has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

(b) Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;

(c) Transferred to the adult system under s. 985.557, indicted under s. 985.56, or waived under s. 985.556; or

~~(d) Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2) (b) or (d); or~~

(d) ~~(e)~~ Transferred to the adult system but sentenced to the juvenile system under s. 985.565

shall not be considered confidential and exempt from s. 119.07(1) solely because of the child's age.

Section 6. For the purpose of incorporating the amendment made by this act to section 985.557, Florida Statutes, in a reference thereto, subsection (1) of section 985.15, Florida Statutes, is reenacted to read:

985.15 Filing decisions.—

(1) The state attorney may in all cases take action independent of the action or lack of action of the juvenile probation officer and shall determine the action that is in the best interest of the public and the child. If the child meets the criteria requiring prosecution as an adult under s. 985.556, the state attorney shall request the court to transfer and

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certify the child for prosecution as an adult or shall provide written reasons to the court for not making such a request. In all other cases, the state attorney may:

- (a) File a petition for dependency;
- (b) File a petition under chapter 984;
- (c) File a petition for delinquency;
- (d) File a petition for delinquency with a motion to transfer and certify the child for prosecution as an adult;
- (e) File an information under s. 985.557;
- (f) Refer the case to a grand jury;
- (g) Refer the child to a diversionary, pretrial intervention, arbitration, or mediation program, or to some other treatment or care program if such program commitment is voluntarily accepted by the child or the child's parents or legal guardian; or
- (h) Decline to file.

Section 7. For the purpose of incorporating the amendment made by this act to section 985.557, Florida Statutes, in a reference thereto, subsection (5) of section 985.265, Florida Statutes, is reenacted to read:

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

(5) The court shall order the delivery of a child to a jail or other facility intended or used for the detention of adults:

- (a) When the child has been transferred or indicted for criminal prosecution as an adult under part X, except that the court may not order or allow a child alleged to have committed a misdemeanor who is being transferred for criminal prosecution pursuant to either s. 985.556 or s. 985.557 to be detained or

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held in a jail or other facility intended or used for the detention of adults; however, such child may be held temporarily in a detention facility; or

(b) When a child taken into custody in this state is wanted by another jurisdiction for prosecution as an adult.

The child shall be housed separately from adult inmates to prohibit a child from having regular contact with incarcerated adults, including trustees. "Regular contact" means sight and sound contact. Separation of children from adults shall permit no more than haphazard or accidental contact. The receiving jail or other facility shall contain a separate section for children and shall have an adequate staff to supervise and monitor the child's activities at all times. Supervision and monitoring of children includes physical observation and documented checks by jail or receiving facility supervisory personnel at intervals not to exceed 10 minutes. This subsection does not prohibit placing two or more children in the same cell. Under no circumstances shall a child be placed in the same cell with an adult.

Section 8. For the purpose of incorporating the amendment made by this act to section 985.557, Florida Statutes, in a reference thereto, subsection (3) of section 985.556, Florida Statutes, is reenacted to read:

985.556 Waiver of juvenile court jurisdiction; hearing.—

(3) INVOLUNTARY MANDATORY WAIVER.—

(a) If the child was 14 years of age or older, and if the child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the

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commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery, and the child is currently charged with a second or subsequent violent crime against a person; or

(b) If the child was 14 years of age or older at the time of commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person;

the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons to the court for not making such request, or proceed under s. 985.557(1). Upon the state attorney's request, the court shall either enter an order transferring the case and certifying the case for trial as if the child were an adult or provide written reasons for not issuing such an order.

Section 9. For the purpose of incorporating the amendment made by this act to section 985.565, Florida Statutes, in a reference thereto, subsection (3) of section 985.514, Florida Statutes, is reenacted to read:

985.514 Responsibility for cost of care; fees.—

(3) When the court under s. 985.565 orders any child prosecuted as an adult to be supervised by or committed to the

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department for treatment in any of the department's programs for children, the court shall order the child's parents to pay fees as provided in s. 985.039.

Section 10. For the purpose of incorporating the amendment made by this act to section 985.565, Florida Statutes, in a reference thereto, paragraph (a) of subsection (5) of section 985.556, Florida Statutes, is reenacted to read:

985.556 Waiver of juvenile court jurisdiction; hearing.—

(5) EFFECT OF ORDER WAIVING JURISDICTION.—

(a) Once a child has been transferred for criminal prosecution pursuant to an involuntary waiver hearing and has been found to have committed the presenting offense or a lesser included offense, the child shall thereafter be handled in every respect as an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under s. 985.565.

Section 11. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Judiciary, *Chair*  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Community Affairs  
Finance and Tax  
Regulated Industries  
Rules

**SENATOR MIGUEL DIAZ de la PORTILLA**

40th District

November 18, 2015

The Honorable Joe Negron  
Chairman  
Appropriations Subcommittee on Criminal and Civil Justice

Via email

Dear Chairman Negron:

My Senate Bill 314 passed out of Criminal Justice and the next reference is the Appropriations Subcommittee on Criminal and Civil Justice.

Please agenda the bill at the next available opportunity. Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla  
Senator, District 40

Cc: Mr. Tim Sadberry, Staff Director;  
Ms. Michelle Sanders, Committee Administrative Assistant

### REPLY TO:

- ☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- ☐ 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/11/16

Meeting Date

SB 314

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Buddy JACOBS

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Fernandina Bch FL

32034

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Zip

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing State Attorneys

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/11/16  
Meeting Date

314  
Bill Number (if applicable)

Topic DIRECT FILE - JUVENILES

Amendment Barcode (if applicable)

Name DIANA RAGBECK

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Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing THE CHILDREN'S TRUST

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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2-11-16

Meeting Date

314

Bill Number (if applicable)

Topic JUVENILE DIRECT FILE

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title LEGISLATIVE ADVOCATE

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Phone 254-632

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TAL

City

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State

32301

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE  
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2/11/16

Meeting Date

34

Bill Number (if applicable)

Topic Juvenile Justice / SB 34

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av  
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Phone \_\_\_\_\_

Tallahassee

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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2/11/16

Meeting Date

SB 314

Bill Number (if applicable)

Topic SB 314 - Direct File

Amendment Barcode (if applicable)

Name Natalie Kato

Job Title Human Rights Watch

Address 315 S. Calhoun St #830

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State

32301

Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Human Rights Watch

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/11/16

Meeting Date

SB 314

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Lawrence Clermont

Job Title \_\_\_\_\_

Address 2841 Englewood Drive

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State

Zip

Email lcclermont@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

2-11-16

Meeting Date

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314

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Consultant

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Tallahassee

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Zip

Email cmackin@canfor14id

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing The Children's Campaign

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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2/11/16  
Meeting Date

314  
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Judge Terry Ketchel

Job Title Unified Family Court judge, 1st Judicial Circuit

Address 101 E. James Lee Blvd. #204 Phone \_\_\_\_\_

Street

Crestview FL 32536 Email \_\_\_\_\_

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Supreme Court Steering Committee on Children + Families  
in the Court

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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2/11/2016

*Meeting Date*

314

*Bill Number (if applicable)*

Topic Juvenile Direct File

*Amendment Barcode (if applicable)*

Name Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th Street

Phone 305.545.1600

*Street*

Miami

Florida

33125

Email

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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2/11/16

Meeting Date

SB 314

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

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Job Title Florida State Director

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~~608-4300~~

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State

32303

Zip

Email ccamara@rstreet.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing R Street Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
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2/11/16

Meeting Date

SB 314

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Tania Galloni

Job Title Director, Florida Office

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City State Zip

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Email tania.galloni@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

314

Bill Number (if applicable)

Topic DIRECT FILE

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing THE JAMES MADISON INSTITUTE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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# DIRECT FILE REFORM

## Background Materials

Prepared by:

Rep. Katie Edwards

By Senator Diaz de la Portilla

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1                   A bill to be entitled  
2       An act relating to juvenile justice; amending s.  
3       985.557, F.S.; revising the circumstances under which  
4       a state attorney may file an information when a child  
5       of a certain age range commits or attempts to commit  
6       specified crimes; deleting a requirement that a state  
7       attorney file an information under certain  
8       circumstances; deleting a provision that prohibits  
9       physical contact with adult offenders under certain  
10      circumstances; revising the effects of the direct  
11      filing of a child; prohibiting the transfer of a child  
12      under certain circumstances based on the child's  
13      competency; authorizing a child to request a hearing  
14      to determine whether he or she must remain in adult  
15      court; requiring the court to consider certain factors  
16      after a written request is made for a hearing;  
17      authorizing the court to waive the case back to  
18      juvenile court; requiring the Department of Juvenile  
19      Justice to collect specified data under certain  
20      circumstances; requiring the department to provide an  
21      annual report to the Legislature; amending s. 985.56,  
22      F.S.; revising the crimes and the age of a child who  
23      is subject to the jurisdiction of a circuit court;  
24      prohibiting the transfer of a child under certain  
25      circumstances based on the child's competency;  
26      removing provisions regarding sentencing of a child;  
27      authorizing, rather than requiring, a court to  
28      transfer a child indicted under certain circumstances;  
29      making technical changes; amending s. 985.565, F.S.;

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revising the criteria to be used in determining whether to impose juvenile or adult sanctions; requiring the adult court to render an order including specific findings of fact and the reasons for its decision; providing that the order is reviewable on appeal; requiring the court to consider any reports that may assist in the sentencing of a child; providing for the examination of the reports; removing a provision that requires a court to impose adult sanctions under certain circumstances; revising how a child may be sanctioned under certain circumstances; requiring the court to explain the basis for imposing adult sanctions; revising when juvenile sanctions may be imposed; amending s. 985.556, F.S.; conforming a cross-reference; amending s. 985.04, F.S.; conforming provisions to changes made by the act; reenacting ss. 985.15(1), 985.265(5), and 985.556(3), F.S., relating to filing decisions; detention transfer and release, education, and adult jails; and waiver of juvenile court jurisdiction and hearings, respectively, to incorporate the amendment made to s. 985.557, F.S., in references thereto; reenacting ss. 985.514(3) and 985.556(5)(a), F.S., relating to responsibility for cost of care and fees, and waiver of juvenile court jurisdiction and hearings, respectively, to incorporate the amendment made to s. 985.565, F.S., in references thereto; providing an effective date.

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

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59  
60 Section 1. Section 985.557, Florida Statutes, is amended to  
61 read:

62 (Substantial rewording of section. See  
63 s. 985.557, F.S., for present text.)  
64 985.557 Direct filing of an information.-

65 (1) DIRECT FILE.-

66 (a) With respect to a child who was 16 years of age or  
67 older or less than 18 years of age at the time the alleged  
68 offense was committed, the state attorney may file an  
69 information if, in the state attorney's judgment and discretion,  
70 the public interest requires that adult sanctions be considered  
71 and the offense charged is for the commission of or attempt to  
72 commit:

73 1. Murder;

74 2. Manslaughter;

75 3. Sexual battery in violation of s. 794.011(3);

76 4. Armed robbery;

77 5. Aggravated assault with a firearm;

78 6. Aggravated child abuse;

79 7. Arson in violation of s. 806.031;

80 8. Kidnapping;

81 9. Unlawful throwing, placing, or discharging of a  
82 destructive device or bomb;

83 10. Aggravated battery resulting in great bodily harm,  
84 permanent disability, or permanent disfigurement to a person;

85 11. Carrying, displaying, using, or threatening or  
86 attempting to use a weapon or firearm in furtherance of the  
87 commission of a felony, if the use or threatened use does not



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88 include the mere acquisition of a deadly weapon or firearm  
89 during the felony;

90 12. Possessing or discharging a firearm on school property  
91 in violation of s. 790.115;

92 13. Home invasion robbery;

93 14. Aggravated stalking;

94 15. Carjacking;

95 16. Aggravated animal cruelty by intentional acts; or

96 17. DUI or BUI resulting in fatality, great bodily harm,  
97 permanent disability, or permanent disfigurement to a person.

98 (b) With respect to a child who was 14 or 15 years of age  
99 at the time the alleged offense was committed, the state  
100 attorney may file an information if, in the state attorney's  
101 judgment and discretion, the public interest requires that adult  
102 sanctions be considered and the offense charged is for the  
103 commission of or attempt to commit:

104 1. Murder;

105 2. Manslaughter; or

106 3. Sexual battery in violation of s. 794.011(3).

107 (2) EFFECT OF DIRECT FILE.-

108 (a) If a child is transferred for criminal prosecution as  
109 an adult, the court may transfer and certify to the adult  
110 circuit court for prosecution of the child as an adult all  
111 related felony cases pertaining to the child which have not yet  
112 resulted in a plea of guilty or nolo contendere or in which a  
113 finding of guilt has not been made. If the child is acquitted of  
114 all charged offenses or lesser included offenses contained in  
115 the original case transferred to adult court, any felony cases  
116 that were transferred to adult court under this subsection are

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117 subject to the same penalties they were subject to before their  
118 transfer.

119 (b) If a child has been convicted and sentenced to adult  
120 sanctions pursuant to this section, he or she shall be handled  
121 as an adult for any subsequent violation of state law, unless  
122 the court imposes juvenile sanctions under s. 985.565.

123 (3) TRANSFER PROHIBITION.—Notwithstanding any other law, a  
124 child who is eligible for direct file and who is pending a  
125 competency hearing in juvenile court or who has previously been  
126 found to be incompetent and has not been restored to competency  
127 by a court may not be transferred to adult court for criminal  
128 prosecution.

129 (4) REVERSE WAIVER.—A child who is transferred to adult  
130 court pursuant to this section may request, in writing, a  
131 hearing to determine whether he or she shall remain in adult  
132 court. The adult court, in determining whether public safety  
133 would be best served by retaining jurisdiction, shall consider  
134 the seriousness of the offense, the extent of the child's  
135 alleged participation or role in the offense, the sophistication  
136 and maturity of the child, and any prior offenses the child has  
137 committed. The adult court may, based on these considerations,  
138 waive the case back to juvenile court.

139 (5) DATA COLLECTION RELATING TO DIRECT FILE.—

140 (a) The department shall collect data regarding children  
141 who qualify for direct file under subsection (1), including, but  
142 not limited to:

143 1. Age.

144 2. Race and ethnicity.

145 3. Gender.

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- 146        4. Circuit and county of residence.  
147        5. Circuit and county of offense.  
148        6. Prior adjudicated offenses.  
149        7. Prior periods of probation.  
150        8. Previous contacts with law enforcement agencies or the  
151 courts.  
152        9. Initial charges.  
153        10. Charges at disposition.  
154        11. Whether adult codefendants were involved.  
155        12. Whether child codefendants were involved who were  
156 transferred to adult court.  
157        13. Whether the child was represented by counsel.  
158        14. Whether the child has waived counsel.  
159        15. Risk assessment instrument score.  
160        16. The child's medical, mental health, substance abuse, or  
161 trauma history.  
162        17. The child's history of physical or mental impairment or  
163 disability-related accommodations.  
164        18. The child's history of abuse or neglect.  
165        19. The child's history of foster care placements,  
166 including the number of prior placements.  
167        20. Whether the child has fetal alcohol syndrome or was  
168 exposed to controlled substances at birth.  
169        21. Whether the child has below-average intellectual  
170 functioning or is eligible for exceptional student education  
171 services.  
172        22. Whether the child has received mental health services  
173 or treatment.  
174        23. Whether the child has been the subject of a Children in

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Need of Services or Family in Need of Services (CINS/FINS)  
petition or a dependency petition.

24. Plea offers made by the state and the outcome of any  
plea offers.

25. Whether the child was transferred for criminal  
prosecution as an adult.

26. The case resolution in juvenile court.

27. The case resolution in adult court.

(b) If a child is transferred for criminal prosecution as  
an adult, the department shall also collect disposition data,  
including, but not limited to, whether the child received adult  
sanctions, juvenile sanctions, or diversion, and, if sentenced  
to prison, length of prison sentence or enhanced sentence.

(c) The department shall annually provide a report  
analyzing this aggregated data to the President of the Senate  
and the Speaker of the House of Representatives.

Section 2. Section 985.56, Florida Statutes, is amended to  
read:

985.56 Indictment of a juvenile.—

(1) A child 14 years of age or older ~~of any age~~ who is  
charged with a violation of state law punishable by death or by  
life imprisonment is subject to the jurisdiction of the court as  
set forth in s. 985.0301(2) unless and until an indictment on  
the charge is returned by the grand jury. When such indictment  
is returned, the petition for delinquency, if any, must be  
dismissed and the child must be tried ~~and handled in every~~  
~~respect~~ as an adult:

(a) On the indicting offense ~~punishable by death or by life~~  
~~imprisonment~~; and

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(b) On all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the indicting offense ~~punishable by death or by life imprisonment or on one or more acts or transactions connected with the offense punishable by death or by life imprisonment.~~

(2) An adjudicatory hearing may not be held until 21 days after the child is taken into custody and charged with having committed an indictable offense ~~punishable by death or by life imprisonment~~, unless the state attorney advises the court in writing that he or she does not intend to present the case to the grand jury, or has presented the case to the grand jury and the grand jury has not returned an indictment. If the court receives such a notice from the state attorney, or if the grand jury fails to act within the 21-day period, the court may proceed as otherwise authorized under this part.

(3) Notwithstanding any other law, a child who is eligible for indictment and who is pending a competency hearing in juvenile court or who has been previously found to be incompetent and has not been restored to competency by a court may not be transferred to adult court for criminal prosecution ~~If the child is found to have committed the offense punishable by death or by life imprisonment, the child shall be sentenced as an adult. If the juvenile is not found to have committed the indictable offense but is found to have committed a lesser included offense or any other offense for which he or she was indicted as a part of the criminal episode, the court may sentence under s. 985.565.~~

(4)(a) If ~~Once~~ a child has been indicted pursuant to this section and has been found to have committed any offense for

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233 which he or she was indicted as a part of the criminal episode,  
234 the child shall be handled thereafter ~~in every respect~~ as ~~if~~ an  
235 adult for any subsequent violation of state law, unless the  
236 court imposes juvenile sanctions under s. 985.565.

237 (b) ~~If~~ ~~When~~ a child has been indicted pursuant to this  
238 section, the court may ~~shall immediately~~ transfer and certify to  
239 the adult circuit court all related felony cases pertaining to  
240 the child, for prosecution of the child as an adult, which have  
241 not yet resulted in a plea of guilty or nolo contendere or in  
242 which a finding of guilt has not been made. If the child is  
243 acquitted of all charged offenses or lesser included offenses  
244 contained in the indictment case, any ~~all~~ felony cases that were  
245 transferred to adult court pursuant to this paragraph shall be  
246 subject to the same penalties such cases were subject to before  
247 being transferred to adult court.

248 Section 3. Subsection (1), paragraph (c) of subsection (3),  
249 and subsection (4) of section 985.565, Florida Statutes, are  
250 amended to read:

251 985.565 Sentencing powers; procedures; alternatives for  
252 juveniles prosecuted as adults.—

253 (1) POWERS OF DISPOSITION.—

254 (a) A child who is found to have committed a violation of  
255 law may, as an alternative to adult dispositions, be committed  
256 to the department for treatment in an appropriate program for  
257 children outside the adult correctional system or be placed on  
258 juvenile probation.

259 (b) In determining whether to impose juvenile or ~~sanctions~~  
260 ~~instead of~~ adult sanctions, the court shall consider the  
261 following criteria:

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262 1. The seriousness of the offense to the community and  
263 whether the protection of the community would be best served ~~be~~  
264 ~~protected~~ by juvenile or adult sanctions.

265 2. The extent of the child's participation in the offense.

266 3. The effect, if any, of familial or peer pressure on the  
267 child's actions.

268 4.2. Whether the offense was committed in an aggressive,  
269 violent, premeditated, or willful manner.

270 5.3. Whether the offense was against persons or against  
271 property, with greater weight being given to offenses against  
272 persons, especially if personal injury resulted.

273 6.4. The sophistication and maturity of the child,  
274 including: ~~offender~~

275 a. The child's age, maturity, intellectual capacity, and  
276 mental and emotional health at the time of the offense.

277 b. The child's background, including his or her family,  
278 home, and community environment.

279 c. The effect, if any, of immaturity, impetuosity, or  
280 failure to appreciate the risks and consequences on the child's  
281 participation in the offense.

282 d. The effect, if any, of characteristics attributable to  
283 the child's age on the child's judgment.

284 7.5. The record and previous history of the child ~~offender~~,  
285 including:

286 a. Previous contacts with the Department of Corrections,  
287 the Department of Juvenile Justice, the former Department of  
288 Health and Rehabilitative Services, or the Department of  
289 Children and Families, and the adequacy and appropriateness of  
290 the services provided to address the child's needs ~~law~~

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291 ~~enforcement agencies, and the courts.~~

292 b. Prior periods of probation.

293 c. Prior adjudications that the offender committed a  
294 delinquent act or violation of law as a child.

295 d. Prior commitments to the Department of Juvenile Justice,  
296 the former Department of Health and Rehabilitative Services, the  
297 Department of Children and Families, or other facilities or  
298 institutions, and the adequacy and appropriateness of the  
299 services provided to address the child's needs.

300 e. Previous contacts with law enforcement agencies and the  
301 courts.

302 f. History of abuse, abandonment or neglect, foster care  
303 placements, failed adoption, fetal alcohol syndrome, exposure to  
304 controlled substances at birth, and below-average intellectual  
305 functioning.

306 g. Identification of the child as having a disability or  
307 having previously received mental health services or treatment.

308 8.6. The prospects for adequate protection of the public  
309 and the likelihood of deterrence and reasonable rehabilitation  
310 of the offender if assigned to services and facilities of the  
311 Department of Juvenile Justice.

312 9.7. Whether the Department of Juvenile Justice has  
313 appropriate programs, facilities, and services immediately  
314 available.

315 ~~8. Whether adult sanctions would provide more appropriate~~  
316 ~~punishment and deterrence to further violations of law than the~~  
317 ~~imposition of juvenile sanctions.~~

318 10. Whether the Department of Corrections has appropriate  
319 programs, facilities, and services immediately available.



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320 (c) The adult court shall render an order including  
321 specific findings of fact and the reasons for its decision. The  
322 order shall be reviewable on appeal under s. 985.534 and the  
323 Florida Rules of Appellate Procedure.

324 (3) SENTENCING HEARING.—

325 (c) The court may receive and consider any other relevant  
326 and material evidence, including other reports, written or oral,  
327 in its effort to determine the action to be taken with regard to  
328 the child, and may rely upon such evidence to the extent of its  
329 probative value even if the evidence would not be competent in  
330 an adjudicatory hearing. The court shall consider any reports  
331 that may assist it, including prior predisposition reports,  
332 psychosocial assessments, individualized educational programs,  
333 developmental assessments, school records, abuse or neglect  
334 reports, home studies, protective investigations, and  
335 psychological and psychiatric evaluations. The child, the  
336 child's defense counsel, and the state attorney have the right  
337 to examine these reports and to question the parties responsible  
338 for them at the hearing.

339 (4) SENTENCING ALTERNATIVES.—

340 (a) ~~Adult~~ Sanctions.—

341 ~~1. Cases prosecuted on indictment. If the child is found to~~  
342 ~~have committed the offense punishable by death or life~~  
343 ~~imprisonment, the child shall be sentenced as an adult. If the~~  
344 ~~juvenile is not found to have committed the indictable offense~~  
345 ~~but is found to have committed a lesser included offense or any~~  
346 ~~other offense for which he or she was indicted as a part of the~~  
347 ~~criminal episode, the court may sentence as follows:~~

348 a. ~~As an adult;~~

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~~b. Under chapter 958; or~~

~~e. As a juvenile under this section.~~

~~2. Other cases.~~ If a child who has been transferred for criminal prosecution pursuant to information or waiver of juvenile court jurisdiction is found to have committed a violation of state law or a lesser included offense for which he or she was charged as a part of the criminal episode, the court may sentence as follows:

~~1.a.~~ As an adult;

~~2.b.~~ As a youthful offender under chapter 958; or

~~3.e.~~ As a juvenile under this section.

~~3. Notwithstanding any other provision to the contrary, if the state attorney is required to file a motion to transfer and certify the juvenile for prosecution as an adult under s. 985.556(3) and that motion is granted, or if the state attorney is required to file an information under s. 985.557(2)(a) or (b), the court must impose adult sanctions.~~

~~(b)4. Findings.~~ The court must ~~Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or enumerate the criteria in this subsection as any basis for its decision to impose adult sanctions.~~

~~(c)5. Restitution.~~ When a child has been transferred for criminal prosecution as an adult and has been found to have committed a violation of state law, the disposition of the case may include the enforcement of any restitution ordered in any juvenile proceeding.

~~(d)(b) Juvenile sanctions.~~ If a juvenile sentence is ~~For juveniles transferred to adult court but who do not qualify for~~

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378 ~~such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b),~~  
379 ~~the court may impose juvenile sanctions under this paragraph. If~~  
380 ~~juvenile sentences are imposed, the court shall, under this~~  
381 ~~paragraph, adjudge the child to have committed a delinquent act.~~  
382 ~~Adjudication of delinquency shall not be deemed a conviction,~~  
383 ~~nor shall it operate to impose any of the civil disabilities~~  
384 ~~ordinarily resulting from a conviction. The court shall impose~~  
385 ~~an adult sanction or a juvenile sanction and may not sentence~~  
386 ~~the child to a combination of adult and juvenile punishments. An~~  
387 ~~adult sanction or a juvenile sanction may include enforcement of~~  
388 ~~an order of restitution or probation previously ordered in any~~  
389 ~~juvenile proceeding. However, if the court imposes a juvenile~~  
390 ~~sanction and the department determines that the sanction is~~  
391 ~~unsuitable for the child, the department shall return custody of~~  
392 ~~the child to the sentencing court for further proceedings,~~  
393 ~~including the imposition of adult sanctions. Upon adjudicating a~~  
394 ~~child delinquent under subsection (1), the court may:~~

395 1. Place the child in a probation program under the  
396 supervision of the department for an indeterminate period of  
397 time until the child reaches the age of 19 years or sooner if  
398 discharged by order of the court.

399 2. Commit the child to the department for treatment in an  
400 appropriate program for children for an indeterminate period of  
401 time until the child is 21 or sooner if discharged by the  
402 department. The department shall notify the court of its intent  
403 to discharge no later than 14 days prior to discharge. Failure  
404 of the court to timely respond to the department's notice shall  
405 be considered approval for discharge.

406 3. Order disposition under ss. 985.435, 985.437, 985.439,

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985.441, 985.45, and 985.455 as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

(e)~~(e)~~ *Adult sanctions upon failure of juvenile sanctions.*—

If a child proves not to be suitable to a commitment program, juvenile probation program, or treatment program under paragraph (d) ~~(b)~~, the department shall provide the sentencing court with a written report outlining the basis for its objections to the juvenile sanction and shall simultaneously provide a copy of the report to the state attorney and the defense counsel. The department shall schedule a hearing within 30 days. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any sentence which it may lawfully impose, giving credit for all time spent by the child in the department. The court may also classify the child as a youthful offender under s. 958.04, if appropriate. For purposes of this paragraph, a child may be found not suitable to a commitment program, community control program, or treatment program under paragraph (d) ~~(b)~~ if the child commits a new violation of law while under juvenile sanctions, if the child commits any other violation of the conditions of juvenile sanctions, or if the child's actions are otherwise determined by the court to demonstrate a failure of juvenile sanctions.

(f)~~(d)~~ *Further proceedings heard in adult court.*—When a child is sentenced to juvenile sanctions, further proceedings involving those sanctions shall continue to be heard in the adult court.

(g)~~(e)~~ *School attendance.*—If the child is attending or is eligible to attend public school and the court finds that the

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436 victim or a sibling of the victim in the case is attending or  
437 may attend the same school as the child, the court placement  
438 order shall include a finding pursuant to the proceeding  
439 described in s. 985.455(2), regardless of whether adjudication  
440 is withheld.

441  
442 It is the intent of the Legislature that the criteria and  
443 guidelines in this subsection are mandatory and that a  
444 determination of disposition under this subsection is subject to  
445 the right of the child to appellate review under s. 985.534.

446 Section 4. Subsection (1) of section 985.556, Florida  
447 Statutes, is amended to read:

448 985.556 Waiver of juvenile court jurisdiction; hearing.—

449 (1) VOLUNTARY WAIVER.—The court shall transfer and certify  
450 a child's criminal case for trial as an adult if the child is  
451 alleged to have committed a violation of law and, before ~~prior~~  
452 ~~to~~ the commencement of an adjudicatory hearing, the child,  
453 joined by a parent or, in the absence of a parent, by the  
454 guardian or guardian ad litem, demands in writing to be tried as  
455 an adult. Once a child has been transferred for criminal  
456 prosecution pursuant to a voluntary waiver hearing and has been  
457 found to have committed the presenting offense or a lesser  
458 included offense, the child shall be handled thereafter in every  
459 respect as an adult for any subsequent violation of state law,  
460 unless the court imposes juvenile sanctions under s.  
461 985.565(4)(d) ~~s. 985.565(4)(b)~~.

462 Section 5. Subsection (2) of section 985.04, Florida  
463 Statutes, is amended to read:

464 985.04 Oaths; records; confidential information.—

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465 (2) Notwithstanding any other provisions of this chapter,  
466 the name, photograph, address, and crime or arrest report of a  
467 child:

468 (a) Taken into custody if the child has been taken into  
469 custody by a law enforcement officer for a violation of law  
470 which, if committed by an adult, would be a felony;

471 (b) Found by a court to have committed three or more  
472 violations of law which, if committed by an adult, would be  
473 misdemeanors;

474 (c) Transferred to the adult system under s. 985.557,  
475 indicted under s. 985.56, or waived under s. 985.556; or

476 ~~(d) Taken into custody by a law enforcement officer for a~~  
477 ~~violation of law subject to s. 985.557(2)(b) or (d); or~~

478 (d) ~~(e)~~ Transferred to the adult system but sentenced to the  
479 juvenile system under s. 985.565

480  
481 shall not be considered confidential and exempt from s.  
482 119.07(1) solely because of the child's age.

483 Section 6. For the purpose of incorporating the amendment  
484 made by this act to section 985.557, Florida Statutes, in a  
485 reference thereto, subsection (1) of section 985.15, Florida  
486 Statutes, is reenacted to read:

487 985.15 Filing decisions.—

488 (1) The state attorney may in all cases take action  
489 independent of the action or lack of action of the juvenile  
490 probation officer and shall determine the action that is in the  
491 best interest of the public and the child. If the child meets  
492 the criteria requiring prosecution as an adult under s. 985.556,  
493 the state attorney shall request the court to transfer and

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494 certify the child for prosecution as an adult or shall provide  
495 written reasons to the court for not making such a request. In  
496 all other cases, the state attorney may:

- 497 (a) File a petition for dependency;
- 498 (b) File a petition under chapter 984;
- 499 (c) File a petition for delinquency;
- 500 (d) File a petition for delinquency with a motion to  
501 transfer and certify the child for prosecution as an adult;
- 502 (e) File an information under s. 985.557;
- 503 (f) Refer the case to a grand jury;
- 504 (g) Refer the child to a diversionary, pretrial  
505 intervention, arbitration, or mediation program, or to some  
506 other treatment or care program if such program commitment is  
507 voluntarily accepted by the child or the child's parents or  
508 legal guardian; or
- 509 (h) Decline to file.

510 Section 7. For the purpose of incorporating the amendment  
511 made by this act to section 985.557, Florida Statutes, in a  
512 reference thereto, subsection (5) of section 985.265, Florida  
513 Statutes, is reenacted to read:

514 985.265 Detention transfer and release; education; adult  
515 jails.-

516 (5) The court shall order the delivery of a child to a jail  
517 or other facility intended or used for the detention of adults:

518 (a) When the child has been transferred or indicted for  
519 criminal prosecution as an adult under part X, except that the  
520 court may not order or allow a child alleged to have committed a  
521 misdemeanor who is being transferred for criminal prosecution  
522 pursuant to either s. 985.556 or s. 985.557 to be detained or

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523 held in a jail or other facility intended or used for the  
524 detention of adults; however, such child may be held temporarily  
525 in a detention facility; or

526 (b) When a child taken into custody in this state is wanted  
527 by another jurisdiction for prosecution as an adult.

528  
529 The child shall be housed separately from adult inmates to  
530 prohibit a child from having regular contact with incarcerated  
531 adults, including trustees. "Regular contact" means sight and  
532 sound contact. Separation of children from adults shall permit  
533 no more than haphazard or accidental contact. The receiving jail  
534 or other facility shall contain a separate section for children  
535 and shall have an adequate staff to supervise and monitor the  
536 child's activities at all times. Supervision and monitoring of  
537 children includes physical observation and documented checks by  
538 jail or receiving facility supervisory personnel at intervals  
539 not to exceed 10 minutes. This subsection does not prohibit  
540 placing two or more children in the same cell. Under no  
541 circumstances shall a child be placed in the same cell with an  
542 adult.

543 Section 8. For the purpose of incorporating the amendment  
544 made by this act to section 985.557, Florida Statutes, in a  
545 reference thereto, subsection (3) of section 985.556, Florida  
546 Statutes, is reenacted to read:

547 985.556 Waiver of juvenile court jurisdiction; hearing.-

548 (3) INVOLUNTARY MANDATORY WAIVER.-

549 (a) If the child was 14 years of age or older, and if the  
550 child has been previously adjudicated delinquent for an act  
551 classified as a felony, which adjudication was for the



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552 commission of, attempt to commit, or conspiracy to commit  
553 murder, sexual battery, armed or strong-armed robbery,  
554 carjacking, home-invasion robbery, aggravated battery,  
555 aggravated assault, or burglary with an assault or battery, and  
556 the child is currently charged with a second or subsequent  
557 violent crime against a person; or

558 (b) If the child was 14 years of age or older at the time  
559 of commission of a fourth or subsequent alleged felony offense  
560 and the child was previously adjudicated delinquent or had  
561 adjudication withheld for or was found to have committed, or to  
562 have attempted or conspired to commit, three offenses that are  
563 felony offenses if committed by an adult, and one or more of  
564 such felony offenses involved the use or possession of a firearm  
565 or violence against a person;

566  
567 the state attorney shall request the court to transfer and  
568 certify the child for prosecution as an adult or shall provide  
569 written reasons to the court for not making such request, or  
570 proceed under s. 985.557(1). Upon the state attorney's request,  
571 the court shall either enter an order transferring the case and  
572 certifying the case for trial as if the child were an adult or  
573 provide written reasons for not issuing such an order.

574 Section 9. For the purpose of incorporating the amendment  
575 made by this act to section 985.565, Florida Statutes, in a  
576 reference thereto, subsection (3) of section 985.514, Florida  
577 Statutes, is reenacted to read:

578 985.514 Responsibility for cost of care; fees.-

579 (3) When the court under s. 985.565 orders any child  
580 prosecuted as an adult to be supervised by or committed to the

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581 department for treatment in any of the department's programs for  
582 children, the court shall order the child's parents to pay fees  
583 as provided in s. 985.039.

584 Section 10. For the purpose of incorporating the amendment  
585 made by this act to section 985.565, Florida Statutes, in a  
586 reference thereto, paragraph (a) of subsection (5) of section  
587 985.556, Florida Statutes, is reenacted to read:

588 985.556 Waiver of juvenile court jurisdiction; hearing.-

589 (5) EFFECT OF ORDER WAIVING JURISDICTION.-

590 (a) Once a child has been transferred for criminal  
591 prosecution pursuant to an involuntary waiver hearing and has  
592 been found to have committed the presenting offense or a lesser  
593 included offense, the child shall thereafter be handled in every  
594 respect as an adult for any subsequent violation of state law,  
595 unless the court imposes juvenile sanctions under s. 985.565.

596 Section 11. This act shall take effect July 1, 2016.

Opinion / Viewpoints

# Justice should be age-appropriate

By Katie Edwards

MAR 11, 2015, 9:43 AM

**A**t 16, Oliver was prosecuted in adult court for stealing two laptops from a high school classroom. At 17, Matthew was prosecuted in adult court for stealing a printer from the back porch of a house. Before they even graduated from high school, Oliver and Matthew became convicted felons — a designation that will affect the rest of their lives — impacting their ability to get jobs, find housing, vote or get student loans.

Many people know that children in Florida can be tried as adults for serious crimes. But youth who are convicted of murder represent a tiny minority of children who are tried as adults. More than 60 percent of youth transferred to adult court are charged with nonviolent felonies.

Almost all, 98 percent, of youth tried in adult court end up there because of our state's "direct file" statute. It's a process that gives prosecutors the sole discretion to decide whether a youth should be in the adult system, with no involvement by a judge. This broad discretion results in vast disparities between the judicial circuits, meaning that youths who commit the same crime, with the same facts, in St. Petersburg and Jacksonville face far different odds they will end up in adult court.

One thing we can agree on is justice should be consistent. For young offenders in Florida, it's anything but.

One offender may go to the juvenile justice system, where the focus is on rehabilitation and getting needed help to become a productive member of society. The other may end up in the Department of Corrections, without access to services, learning how to be a better criminal from the seasoned adult prisoners there.

The societal costs for youth in the adult system are massive. Multiple studies have shown that recidivism among teens thrown into adult court by the direct file process is more than 30 percent.

Our state can do better. That is why I filed HB 783.

The legislation does not abolish direct file, nor does it prevent a prosecutor from charging as an adult a youth who commits a heinous crime. Instead, it reforms the system, making sure that prosecutors cannot use the threat of adult sanctions to force a youth to plead to a lesser charge — a frequent tactic in many judicial circuits.

Before filing HB 783, I talked to experts on the issue, including defense attorneys, prosecutors and law enforcement, and addressed their concerns in the legislation. The result is a bill that allows a prosecutor the option to direct file a 17-year-old defendant who has committed multiple armed robberies, but also makes sure that the 15-year-old who steals her neighbor's bicycle gets the help she needs.

All of us have stories about the stupid things we did while we were teenagers. Looking back, we shake our heads and say "I have no idea why I did that."

This doesn't mean that we shouldn't hold teenagers accountable for breaking the law, just that we should do it in an age-appropriate way, without lifetime consequences

Our society already recognizes that youth are different; we say those under 18 cannot vote, cannot enter into binding contracts and cannot serve our country in the military. We say that those under 21 are too immature to handle the effects of alcohol. We should not have a different standard in our criminal justice system.

Justice should be consistent. Justice should be effective. Justice should have the capacity for compassion when it's appropriate. Let's make these aims the law in Florida and make needed changes to the state's direct file system.

*State Rep. Katie Edwards, D-Plantation, represents District 98 in the Florida House.*

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**This article is related to:** Crime, Juvenile Delinquency, Theft, Florida Legislature

## Jeffrey Butts: Prosecutorial power unrelated to drop in crime

By Jeffrey Butts

Special to The Sun

Published: Tuesday, January 19, 2016 at 6:01 a.m.

The state of Florida continues to send more juvenile offenders to adult prison than any other state in the nation. It is one of only 14 states that allow prosecutors alone to decide which children are tried as adults, and one of only three states that does not allow a judge to review the decision.

State Attorney offices in Leon County and Alachua County recently claimed that prosecutorial discretion to decide which children are tried as adults has led to Florida enjoying "the lowest crime rate we have had in 44 years." The Leon County state attorney suggested that the prior practice of requiring prosecutors to petition a judge to transfer a child to the adult system was somehow connected to Florida having had "the highest crime rate in the nation" at that time.

These assertions are not supported by relevant data. Despite a sustained effort to study these policies over the last two decades, researchers have not found that increasing prosecutorial power reduces crime, and the practice of putting young people in the adult criminal justice system is not only ineffective, it has many negative side effects.

Moreover, Florida is not the only state where crime plummeted in recent years. The steep decline in crime is a national — even international — trend.

According to recent statistics from the U.S. Department of Justice, rates of youth violence across the country are half what they were in the mid-1990s. Crime rates fluctuate from year to year, but violence is still generally lower than at any time since the 1970s.

Importantly, the size of the violent crime drop was about the same in states where prosecutors do not enjoy the unchecked power to send children to adult court.

The Research and Evaluation Center at John Jay College of Criminal Justice in New York City studied the uses of criminal-court transfer and the scale of declining crime in Florida and in all other states where detailed data allowed fair comparisons — Arizona, California, Ohio, Oregon and Washington.

The results failed to support the arguments of Florida's prosecutors.

While juvenile violence dropped 57 percent in Florida between 1995 and 2010, it fell in the other states too. Compared with other states, in fact, Florida's crime drop was about average.

The largest drop was in Ohio, where violent juvenile crime plunged 74 percent after 1995, followed by Arizona (down 65 percent) and Oregon (63 percent lower). California and Washington saw juvenile violence drop nearly as much as in Florida (50 percent and 54 percent, respectively).

If Florida prosecutors were correct, these variations in the falling rate of juvenile

violence would follow a pattern. Namely, we would see the largest crime declines in the states that transferred the most juveniles to criminal court.

Florida's use of transfer (approximately 165 transfers per 100,000 youth population in one recent year) was nearly double that of its closest competitors. Oregon and Arizona (96 and 84 per 100,000, respectively). Yet, both of those states beat Florida in the crime drop.

In fact, the state with the lowest use of transfer was Ohio at 20 per 100,000, but Ohio's crime decline of 74 percent was the steepest of all six states.

Many researchers looked for the causes of the violent crime decline. Possible explanations range from broad changes in social attitudes and economic conditions, to the effects of technology on the idle time of teens, and varying patterns of illegal drug use.

One thing no credible study ever did was to locate the source of the crime drop in the power of prosecutors to send youth to adult courts and adult prisons. There is just no compelling evidence to suggest that prosecutors may rightfully claim the credit for falling rates of violent youth crime. Not even in Florida.

*— Jeffrey Butts is the director of the Research and Evaluation Center at John Jay College of Criminal Justice in New York City. This piece was submitted in response to the Jan. 8 column from State Attorney William P. Cervone.*

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**Editorial: Keep most juvenile defenders out of adult court**

Posted 12:00 a.m. Saturday, Jan. 9, 2016



Florida is infamous for charging juvenile offenders as adults. So it's good to see there's finally some legislative debate about limiting that "direct file" practice by prosecutors.

It's also inconceivable that lawmakers would not support changes. They should consider Human Rights Watch's findings that Florida transfers more juveniles to adult courts than any other state, and that between 2009 and 2014, more than 60 percent of the 12,000 juveniles transferred to Florida's adult courts had been charged with non-violent crimes.

With bipartisan bills moving in both the House and Senate for the session beginning Jan. 12, the best proposed changes go to the root of the problem: currently too much discretion lies in the hands of prosecutors. Obviously, there are prosecutors who make good, balanced decisions. As the data show, there also are others.

"The arguments (for direct file) are really based on sort of this belief that our judges can't make as good a decisions as our prosecutors," Carey Haughwout, Palm Beach County public defender, told The Post's Editorial Board.

"What I think is so valuable with having some other mechanism for making these decisions is that now those decisions are made with no input from the defense," she said. "So they don't know anything about special needs the child may have, special mitigation that might be present."

There are two types of direct file: mandatory and discretionary. It is the latter, which allows the prosecutor to file charges for certain crimes against a child 14 years or older in adult court, that needs to be changed.

Prosecutors' argument that they direct-file "only for dangerous people" and public safety is a sign of how lazy the system has become.

In contrast, "The thing that is so important is individualizing this more," Haughwout said. "Right now, all the state attorney policies are based on the nature of the charge and the age of the child, in terms of whether they're going to direct file or not. There's very little consideration of individual circumstances.

"An intellectually disabled child can be treated the same as sort of the normally functioning child," she said. "Those kinds of things are so important when we're looking at a decision that will follow the kid forever."

Yet too many Florida prosecutors, as the data show, relish direct-file's forever power. "It gives us the ability to have jurisdiction over that person for a much, much longer period of time," said Tallahassee-based State Attorney Willie Meggs. "If we direct-file on them, and get them into the adult system, then they're treated as adults, and you can have them on probation for the rest of their life — if it is necessary."

What wasn't necessary was the more than decade-long proliferation of direct-filed cases — particularly involving young black males — for drug offenses, nonviolent burglaries, stealing cars; youths who have done bad things, but are not violent offenders.

Moreover, as Haughwout notes, "the courts still have the discretion to do all of that. It's not the prosecutor that keeps them on probation. That's a sentencing decision."

That helps explain SB 314, filed by Senate Judiciary Chairman Miguel Diaz de la Portilla, R-Miami, which would require judicial sign-off on juvenile-to-adult court transfers. The Florida Prosecuting Attorneys Association backs HB 129, sponsored by Rep. Bobby Powell, D-Riviera Beach, and others, which creates a two-tiered system, based on age and severity of offense, letting prosecutors choose to transfer juveniles to adult court with no judicial review.

In a telling comment, House Judiciary Chairman Charles McBurney, R-Jacksonville, a former prosecutor, noted, "You should not be able to direct-file on a misdemeanor." The proposed legislation shows how blurred the roles currently are, with prosecutors essentially making both charging and sentencing decisions.

That should stop.

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# Don't try so many kids as adults

By Sun Sentinel Editorial Board

JANUARY 11, 2018, 10:04 PM

**"P**unishment is the last and the least effective instrument in the hands of the legislator for the prevention of crime."

So declared John Ruskin, the influential British social thinker.

Evidently, the Florida Legislature is no fan of Ruskin because our state leads the nation in shifting young suspects to the adult court system and locking them up in adult hellholes.

Hopefully, that trend is about to change.

Bills are moving forward in the Florida House and Senate that would limit the ability of prosecutors to charge juvenile offenders as adults.

SB 314, filed by Senate Judiciary Chairman Miguel Diaz de la Portilla, R-Miami, would require judges to sign off on juvenile-to-adult court transfers. The House version — HB 129, filed by Rep. Katie Edwards, D-Plantation; Rep. Kathleen Peters, R-Treasure Island, and Rep. Bobby Powell, D-Riviera Beach — puts some limits on prosecutors, but doesn't require a review by judges.

Similar measures gained traction in subcommittees last year, but none crossed the finish line because of the Legislature's unceremonious end. Lawmakers can't allow a repeat performance this year. It's an injustice to forever brand youngsters as felons, given the system's capricious nature.

Extreme punishments for juveniles often don't make sense — for the kids, taxpayers or public safety. Blame Florida's misguided record on what's called "direct file," which gives prosecutors unbridled discretion to transfer 16- and 17-year-olds charged with felonies to adult court. They also can charge as adults 14- and 15-year-olds who commit certain felonies.

These aren't ax murderers we're talking about. More than 60 percent of the 12,000-plus juvenile suspects tried as adults in the past five years were charged with nonviolent felonies. Only 2.7 percent faced murder indictments.

"Due process is the hallmark of our justice system, and I think there has to be checks and balances," said Wansley Walters, a former secretary of Florida's Department of Juvenile Justice, "I absolutely believe that our society has to have that with children."

Yet prosecutors armed with unfettered power largely bypass "judicial waiver" — a hearing where a judge settles the question of whether a juvenile should be tried as an adult. Not only does "direct file" bypass an impartial arbiter, it plunges youngsters into a system that favors punishment over rehabilitation.

"Florida should reverse course and adopt an approach grounded more firmly in fact and reason," noted a 2014 Human Rights Watch report on direct file.

A bipartisan coalition that ranges from the Southern Poverty Law Center to the James Madison Institute, a Tallahassee-based free-market think tank, is advocating to do just that.

The report suggests Florida dump direct file and allow judges to rule on juvenile-to-adult transfers "with a strong presumption that all children 17 and under should remain in the juvenile system."

Regrettably, the tide changed in 1994 with the debut of Florida's direct file law, spurred by social scientists who warned of violent, uncontrollable youth, dubbed "superpredators."

Nostradamus the scientists we're not. Direct file belongs in the '90s dustbin with that epic failure of a prophecy.

As it stands, Florida is among only 14 states and the District of Columbia that sanction direct file, and one of four that ban judicial review of such cases. Not that Florida should bask in its exclusivity.

Under direct file, children are often pressured to take plea deals and wind up in adult prisons where they're robbed of age-appropriate programs and vulnerable to sexual abuse and inmate-on-inmate violence. When they get out, they are 34 percent more likely to wind up back in jail.

Bad enough. Worse, is the lack of consistency. Transfer rates vary widely from county to county. Juvenile suspects' lives can hang on the whims of prosecutors or the prevailing political winds.

Or skin color. Though 27.2 percent of children busted for crime are black, 51.4 percent of youths transferred to adult court are black.

It's time to return more youthful offenders to the confines of juvenile court — where almost all of them belong.

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**This article is related to:** Florida Legislature, Human Rights Watch, Miguel Diaz de la Portilla



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## Editorial: Keep most juvenile defenders out of adult court

Posted: 12:00 a.m. Saturday, Jan. 9, 2016

Florida is infamous for charging juvenile offenders as adults. So it's good to see there's finally some legislative debate about limiting that "direct file" practice by prosecutors.

It's also inconceivable that lawmakers would not support changes. They should consider [Human Rights Watch's findings](#) that Florida transfers more juveniles to adult courts than any other state, and that between 2009 and 2014, more than 60 percent of the 12,000 juveniles transferred to Florida's adult courts had been charged with non-violent crimes.

With bipartisan bills moving in both the House and Senate for the session beginning Jan. 12, the best proposed changes go to the root of the problem: currently too much discretion lies in the hands of prosecutors. Obviously, there are prosecutors who make good, balanced decisions. As the data show, there also are others.

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"What I think is so valuable with having some other mechanism for making these decisions is that now those decisions are made with no input from the defense," she said. "So they don't know anything about special needs the child may have, special mitigation that might be present."

There are two types of direct file: mandatory and discretionary. It is the latter, which allows the prosecutor to file charges for certain crimes against a child 14 years or older in adult court, that needs to be changed.

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In contrast, "The thing that is so important is individualizing this more," Haughwout said. "Right now, all the state attorney policies are based on the nature of the charge and the age of the child, in terms of whether they're going to direct file or not. There's very little consideration of individual circumstances.

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Yet too many Florida prosecutors, as the data show, relish direct-file's forever power. "It gives us the ability to have jurisdiction over that person for a much, much longer period of time," said Tallahassee-based State Attorney Willie Meggs. "If we direct-file on them, and get them into the adult system, then they're treated as adults, and you can have them on probation for the rest of their life — if it is necessary."

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EDITORIALS OCTOBER 26, 2015

# Direct file wrong for juvenile offenders

## HIGHLIGHTS

Too many young offenders sent to adult-court system

An overreaction for suspects in nonviolent crimes

Lawmakers should insert a judge into the process



As a state, one would think we would nourish, protect and value the lives of young people — especially when they run into trouble with the law and must be led back to the straight and narrow.

Granted, not all troubled teens can be saved. But for the great majority of them, we must do better.

One nefarious practice in Florida continues to help ruin the lives of thousands of young offenders, and it must stop.

We implore state lawmakers to correct this wrong during the upcoming legislative session.

At issue is a legal practice called “direct file.” It allows state prosecutors to serve as judge and jury in the lives of teens. And therein lies a conflict.

In 1994, as teen violence exploded, direct filing let prosecutors send arrested juveniles to adult court, usually as part of a plea deal in which a teen agrees to incarceration in a juvenile facility to resolve their case.

This usually takes place without a court hearing or an airing of the evidence. The process gives prosecutors — instead of impartial juvenile judges — unbridled discretion to automatically charge 16- and 17-year-olds with felonies as adults.

Prosecutors armed with that unfettered power largely bypass “judicial waivers,” hearings where a judge settles the juvenile- or adult-court question. Not only does direct file omit a disinterested arbiter for the child’s best interests, it plunges youngsters — and increasingly those charged with nonviolent crimes — into the much more punitive adult system.

And that’s simply unacceptable, especially at a time when juvenile crime is down in the state and across the nation.

Florida leads the nation in shifting juveniles to the adult court system and in locking up kids in adult hellholes.

Over 60 percent of the more than 12,000 juvenile suspects moved to the Florida adult-court system in the past five years were charged with nonviolent felonies.

A 2014 Human Rights Watch report on direct file suggests Florida dump the practice and embrace the fairer alternative of judges ruling on juvenile-to-adult transfers.

A coalition made up of the Southern Poverty Law Center, a legal advocacy organization, and the James Madison Institute, a Tallahassee-based think tank, and others, are working with local players ranging from Miami-Dade Public Defender Carlos J. Martinez, who sees young offenders saddled with lifelong criminal records out of prosecutorial expediency, to local artist Xavier Cortada, who, through art programs, helps these trapped teens find “a voice.”

“What we are doing is helping create better criminals,” Tania Galloni, with Southern Poverty Law Center, told the Editorial Board.

Miami-Dade State Attorney Katherine Fernandez Rundle has expressed support for direct filing — as have most prosecutors in the state. They say that they need flexibility to direct file to keep the community safe. To her credit, Ms. Fernandez Rundle, according to Mr. Martinez, is much more judicious in deciding who gets direct filed. But that’s hardly the case in too many other counties.

Proponents of changing the law and some lawmakers say that only juvenile judges should wield such authority, and there should be accompanying hearings where each side, and the evidence, can be heard.

The issue was raised in the Legislature last year, but died in the smoke of the Medicaid battle. There again is a bipartisan effort to reduce the number of kids tried as adults. House Bill 129 is sponsored by Rep. Katie Edwards, D-Sunrise, Kathleen Peters, R-Pinellas, and Bobby Powell, D-Palm Beach. A companion bill, Senate Bill 314, has been filed by Sen. Miguel Diaz de la Portilla, R-Miami. These legislators should be praised for stepping forward to right a wrong.



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HOME/OPINION

# Florida must change its backward-thinking approach on kids in prison

By Times Union Editorial



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## Children are not adults.

It doesn't make sense then that they're treated as adults.

Yet the state of Florida insists on handling too many of its children as adults with its antiquated "get-tough-on-crime" laws that were based upon the notion that more severe sentences reduce crime. Since those kinds of sentences are associated with the adult criminal justice system, these laws make it easy to change a juvenile's status to adult.

All it takes is one decision. Currently those decisions are placed exclusively in the laps of Florida prosecutors, who hold nearly unfettered power to decide when to label children as adults once they enter the court system.

The status quo has resulted in thousands of Florida children sentenced as adults and sent to adult jails, all too often for nonviolent crimes. In fact, Florida leads the nation in the number of children adjudicated as adults.

The state's stance regarding prosecuting children as adults is a failed policy.

The law doesn't make sense.

## LEGISLATION PLANNED

But now legislation has been introduced into the state Legislature to address the problems associated with how the state treats children accused of crimes.

This bill (HB 129) would limit the use of what's termed "direct file" to shuffle children into the adult system. As opposed to the unilateral power prosecutors now have to charge many children as adults, these laws set out the types of crimes for which children can be sentenced as adults, limiting them to the more major violent offenses.

And that makes sense.

Why should Florida's state attorneys be given the sole power to decide which child to charge as an adult and which child to charge as a juvenile regardless of the violence of the crime? Upon what basis do they make these decisions?

State Attorney Angela Corey has said her team in Duval, Clay and Nassau counties bases its decision on whether it deems a child is capable of rehabilitation. That's a quality difficult to ascertain for even the most highly trained psychologist, let alone for those with limited expertise in predictive analytics.

And while that might be the manner in which Corey's team decides, it's not necessarily the

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same way other state attorneys decide in Florida, resulting in vast differences in the ways children charged with identical crimes are handled across jurisdictional lines.

The proposed legislation would limit the types of crimes for which children can be adjudicated as adults although prosecutors would still be given some discretion. Judges could also be brought into the decision-making process if needed, offering yet more protections for the children involved.

This bill makes sense.

## PROBLEMS EVERYWHERE

As opposed to the proposed legislation, what the state has now is nonsensical.

Not only can the law as it stands be abused by overzealous prosecutors, its basic premise that serving up adult prison sentences to juveniles can reduce the crime on the streets is just plain wrong.

Instead children committed to the adult system are 34 percent more likely to be re-arrested for felonies than youngsters retained in the juvenile justice system.

## KIDS DON'T BELONG IN ADULT JAILS

Basic common sense should tell us that. When a young person is placed with adult criminals who teach them the "tricks of the trade," it is short-sighted to believe the juveniles' criminal activity will be reduced.

It doesn't make sense psychologically.

Research has shown unequivocally that children behave differently than adults and have less capacity to make complex decisions.

Their brains don't function as adult brains do; they lack the breadth of experiences adults use to make decisions and weigh risks; they don't have the knowledge of society and government that adults have acquired over the years.

Research shows that these same juvenile characteristics can also be a boon, making it much easier to change the behaviors of children than the behaviors of adults.

In more general terms, the younger the juvenile, the more likely they are to be rehabilitated.

Instead of penalizing them for poorly made decisions, especially regarding nonviolent crimes, the state should be in the business of supporting their maturation and change through education, rehabilitation and treatment — services not always available in adult prisons.

That makes perfect sense economically.

Rehabilitated juveniles are less likely to re-commit and therefore less likely to exert further financial burdens on both the public and the state.

So what is the state of Florida thinking?

Maintaining the status quo simply does not make any sense.

Indeed, here's what common sense should clearly tell us:

Florida should have scrapped this backward-thinking approach years ago.

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# Keep most youthful suspects in juvenile not adult court: Editorial

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Juvenile delinquents mostly belong in juvenile court: Editorial

OCTOBER 4, 2015

**"P**unishment is the last and the least effective instrument in the hands of the legislator for the prevention of crime."

So declared John Ruskin.

Evidently, the Florida Legislature is no fan of the influential British social thinker. This shows particularly in the way Florida prefers to punish offenders who can't catch an R-rated flick without an accompanying adult.

Specifically, Florida leads the nation in shifting young suspects to the adult court system and in locking up kids in adult hellholes.

ARTICLE CONTAINS SPOILER

And that doesn't make sense -- for the kids, for taxpayers, or for public safety.

Blame Florida's misguided record on what's called "direct file." It affords prosecutors unbridled discretion to transfer 16- and 17-year-olds charged with felonies to adult court. They also can charge as adults 14- and 15-year-olds who commit certain felonies.

Not that prosecutors are herding a stampede of ax murderers into the adult roundup. Better than 60 percent of the more than 12,000 juvenile suspects moved to the Florida adult court system in the past five years allegedly committed nonviolent felonies. Only 2.7 percent faced murder indictments.

Yet, prosecutors armed with that unfettered power largely bypass "judicial waiver" — a hearing where a judge settles the juvenile or adult court question. Not only does direct file bypass an impartial arbiter for the child's best interests, it plunges youngsters into an adult system that unlike the juvenile court favors punishment over rehabilitation.

"Florida should reverse course and adopt an approach grounded more firmly in fact and reason," noted a 2014 Human Rights Watch report on direct file.

A left-right coalition that ranges from the Southern Poverty Law Center to the James Madison Institute, a Tallahassee-based free-market think tank, is advocating to do just that.

The report suggests Florida dump direct file and embrace the fairer alternative of judges ruling on juvenile-to-adult transfers "with a strong presumption that all children 17 and under should remain in the juvenile system."

Regrettably, the tide changed in 1994 with the debut of Florida's direct file law, born in the early '90s hysteria fomented by social scientists who warned of violent, uncontrollable youth dubbed "superpredators" who would ravage the land. Nostradamus the scientists were not. Direct file belongs in the '90s dustbin with that epic fail of a prophecy.

As it stands, Florida is among only 14 states and the District of Columbia that sanction direct file, and one of a quartet that ban judicial review of prosecutorial direct file cases. Not that Florida should bask in its exclusivity.

Under direct file, children are often pressured to take plea deals and wind up in adult incarceration where they're robbed of age-appropriate programs and vulnerable to sexual abuse and inmate-on-inmate violence. And when they get out, they are 34 percent more likely to wind up back in jail.

Bad enough. Worse, is the lack of consistency. Transfer rates vary widely from county to county. Juvenile suspects' lives can hang on the whims of prosecutors or the prevailing political winds.

Or skin color. Though 27.2 percent of children busted for crime are black, 51.4 percent of young transferred to adult court are black.

Bills recently filed by Rep. Katie Edwards, a Broward Democrat, and Rep. Kathleen Peters, a Pinellas Republican, and a Senate companion filed by Sen. Miguel Díaz de la Portilla, a Miami-Dade Republican, would reduce the number of children tried as adults.

Similar measures gained traction this past session with overwhelming votes in House and Senate subcommittees, but none crossed the finish line. Lawmakers can't allow a repeat performance in the upcoming legislative session. It's a blatant injustice for youngsters to be branded for life as felons by such a capricious system that ignores the inherent emotional differences between children and adults.

It's time to return more youthful offenders to the confines of juvenile court -- where almost all of

them belong.

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A Times Editorial

## Editorial: Limit discretion on filing adult charges against juveniles

Wednesday, November 25, 2015 2:08pm

Prosecutors in Florida are charging juveniles as adults far more often than they should. Embracing a practice called direct filing, prosecutors can file adult criminal charges on children as young as 14 without the consent of a judge. This gives prosecutors too much leeway and exposes youths to the adult criminal justice system before they are fully able to navigate it. The Legislature should reset the standards for prosecutorial discretion in this area and establish a middle ground that both adequately punishes juveniles and seeks to rehabilitate them.

The *Tampa Bay Times*' Anna Phillips reported this week that the number of juveniles facing adult-level charges in Hillsborough County rose from 101 in 2013-14 to 124 the next fiscal year. The total number in Hillsborough is higher than in more heavily populated areas in Florida such as Miami-Dade and Broward counties. Criminal justice experts in Hillsborough say a spate of gun violence is likely responsible for the uptick.

Supporters of a movement to ensure that juveniles are not introduced into the adult criminal justice system too soon say that the spike in juveniles facing adult charges is due in part to prosecutors' ability to bypass judges and directly file adult charges against young offenders. State law allows juveniles 14 and older to be charged as an adult through direct filing by prosecutors, an indictment by a grand jury or a judicial waiver. Critics of direct filing correctly assert that abusing the practice can lead to overcharging or be used as a threat to make juvenile offenders accept plea deals. Both situations could be avoided if juveniles had access to a judge before they were charged.

A bill sponsored by Rep. Kathleen Peters, R-South Pasadena, HB 129, and a similar bill in the Senate would restrict prosecutors' ability to directly charge juveniles as adults. The bill would replace the current system with a two-tiered approach based on a juvenile's age and offense. In the first tier, for example, the state attorney could direct file a juvenile who is 16 to 17 years old and accused of committing one of 17 specific offenses, including murder, manslaughter and armed robbery. Youths between 14 and 15 could be direct filed only if they stood accused of a shorter list of offenses.

Predictably, prosecutors do not want to cede any ground on their direct filing authority. While most of them likely use at least some discretion before charging juveniles as adults, there are exceptions, demonstrating the need for judicial involvement in the earliest stages of a criminal case. At risk is the potential to saddle juveniles with adult charges that, even if they are found not guilty, create an adult arrest record that could impact their ability to obtain employment, housing, loans and more.

Without question, some criminal charges against juveniles should be heard in adult court. But even in the face of the most egregious charges, juveniles are not adults. Their cognitive and emotional development puts them at a disadvantage in the adult criminal justice system. Judges can help to bridge the divide.

The direct file bill before the Legislature presents a reasonable compromise that would neither handcuff prosecutors nor leave judges powerless to intervene. The purpose of imposing juvenile sanctions is to effectively punish young offenders while giving them an opportunity for rehabilitation. Direct filing adult charges — even employed by careful prosecutors — too often robs juveniles of a second chance.



SCOTT REELER/TAMPA BAY TIMES

Embracing a practice called direct filing, prosecutors can file adult criminal charges on children as young as 14 without the consent of a judge. This gives prosecutors too much leeway and exposes youths to the adult criminal justice system before they are fully able to navigate it.

# Editorial: It's good to see changes in our policy on incarceration

Pensacola News Journal Editorial Board 11:57 a.m. CDT October 13, 2013



(Photo: Christine R. Smith)

The way we jail and imprison law breakers took center stage last week, giving us hope that positive change is on the horizon.

On Tuesday, we were visited by an impressive group pushing to reduce the number of juveniles who are tried as adults. Our guests included the Southern Poverty Law Center, the Florida Institute of Government at Florida State University and The James Madison Institute, a Tallahassee-based think tank. They brought with them an armful of data that convinces us we need to rethink the practice of trying juveniles as adults. They pointed out Florida sends more children, especially minorities, to adult court than any other state. Equally troubling was the revelation that state attorneys have broad power in making the call to transfer the case in adult court.

"Prosecutors have sole discretion on which children go to adult court," a portion of their reads. "96% of the more than 10,000 children tried in Florida's adult courts in the last 5 years were transferred there WITHOUT the benefit of a hearing before a judge."

Tonia Galloni, managing attorney for the Southern Poverty Law Center in Miami, said prosecutors in Escambia County are especially inclined to try juveniles as adults. "In 2013-14, Escambia County prosecutors transferred 70 children to adult court," she said. "This is the same number of children that were 'direct filed' in Orange County, with a youth population almost five times the size." While the statewide trend to do so is declining, the opposite is happening in Escambia, she pointed out.

Sal Nuzzo with the conservative-minded James Madison Institute said those numbers prove the state's inconsistent with how it handles young defendants. He called it "justice by geography." We believe there should be a statewide standard that allows judges into the decision rather than the luck of the draw based on where the crime is committed.

The groups are seeking a bill in the state Legislature to "restore the role of judges to decide whether a child should be tried as an adult."

A similar bill passed committees this year, but were not considered by the House and Senate before the session ended early because of a spat between the chambers. We hope there is support by the Northwest Florida delegation in 2014. It's unfair that the same people who prosecute a case get to decide where it's adjudicated.

Also on Tuesday, we published a story by Santa Rosa County reporter Kaycee Legarde that announced Sheriff Wendell Hall could open a work-release center in East Milton. Relax, folks. It's for low-risk inmates who could continue to work days as they serve their sentence at night. On Thursday, commissioners gave the OK to proceed. By proposing the center, Hall is taking a common-sense approach to law breakers by allowing them to support themselves and their families.

"If you incarcerate them, you lock them up, then they lose their job," Hall said. "They can't work, they can't contribute to the problem that's causing them to be there in the first place, a lot of times, which is not paying child support — because they have no income."

Not only will it help keep families together, the estimated two dozen inmates that could be housed in the center will ease overcrowding at the county jail.

But, there is more prison-related news that gives us hope.

California Gov. Jerry Brown signed into law a bill that will give thousands of young adult offenders the chance to earn parole.

"California's new law acknowledges that young adults who have done wrong are still developing in ways that makes a real turnaround possible," Elizabeth Calvin, senior children's rights advocate at Human Rights Watch, said in a news release in reaction to Brown's decision to sign the bill. "This law gives imprisoned young offenders hope and the motivation to work hard toward parole."

Conservatives should embrace these examples of reasonable options to handle lawbreakers — yes, even the one is from the Left Coast — rather than continuing to spend billions on prisons and continuing to ruin lives and break up families.

**Want to know more?**

For more information on juvenile justice, visit [noplacforachild.com](http://noplacforachild.com).

## Editorial: Keep children out of adult prisons

Published: Sunday, December 27, 2015 at 6:01 a.m.

Breaking the school-to-prison pipeline is much harder when state attorneys effectively have unchecked power to prosecute children as adults.

More than 98 percent of juvenile cases transferred to adult courts in Florida are “direct filed” at a prosecutor’s sole discretion, without a judge’s oversight or input, according to a 2014 report by Human Rights Watch.



Danielle K. Leach/Ocala Star-Banner  
The fence at the Marion Correctional Institution in Marion County.

More than 10,000 children have been tried as adults in the state over the past five years, according to Florida Department of Juvenile Justice statistics. Human Rights Watch found most of these cases involved non-violent offenses.

A 1978 state law lets children as young as 14 receive adult sentences without judicial approval or review. Florida is one of just 14 states with a direct file system, and one of just three that don’t allow a judge to review a prosecutor’s decision to file a juvenile case in adult court.

There are good reasons to not try most juveniles as adults, including longer sentences, harsher treatment and a lack of educational services when children are sent to adult prisons. But perhaps the most compelling reason is that doing so is counterproductive.

Juveniles sent to the adult criminal justice system are 34 percent more likely to be arrested again for felonies than youth kept in the juvenile justice system, Human Rights Watch found. Youth that don’t commit crimes again must face the barriers to jobs and schooling put in the path of people with a felony of their records.

A diverse coalition that includes the James Madison Institute, the Project on Accountable Justice at Florida State University and the Southern Poverty Law Center is calling for reforms. The state Senate Criminal Justice subcommittee — which includes Sen. Rob Bradley, a Fleming Island Republican whose district includes Alachua County — unanimously passed a measure last month to limit direct file to the most serious, violent offenses.

The common-sense legislation, SB 314, would allow a judge to review a prosecutor’s decision to direct file, require a hearing and court order before a case is transferred, and abolish mandatory adult sentences for children. But a House version, HB 129, was altered to leave prosecutorial discretion unchecked.

The Senate legislation is needed to address geographic and racial disparities in the current system. DOJ-J statistics show black youth are more than two times as likely to be charged as adults as their white counterparts.

Putting the power to transfer cases solely in prosecutors’ hands has meant justice varies among Florida’s 20 state attorneys. Eighth Judicial Circuit State Attorney Bill

Cervone appears to have used the direct file power with greater discretion than some of his counterparts. Alachua County has a 3 percent rate of adult transfer for felony charges as compared to a statewide average of 6.6 percent.

The eighth circuit has also defied the statewide trend in racial disparities, transferring a smaller proportion of black children to adult court as compared to the number arrested. But in a more worrisome statistic, 89 percent of the children tried as adults last year in Alachua County were charged with nonviolent offenses.

Eighth Circuit Public Defender Stacy Scott said her review of those cases found many involved defendants close to 18 years old and factors such as firearms being stolen. Yet as Scott notes, the election of another prosecutor could lead to a less sensible approach to juvenile cases.

Florida's direct-file system is a relic in need of reform. Prosecuting children as adults for mainly non-violent offenses only hurts public safety by making it more likely they grow up to be hardened criminals.

If Florida wants to break the school-to-prison pipeline, fixing the direct file system is an important step in that effort.

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# Eve Samples: One way Florida can save money and become a safer state

*Posted: Dec. 04, 2015*

Florida has a problem.

It's a money problem. It's a safety problem.

There's a way to fix it: Stop treating so many children as adult criminals.

Florida is one of 14 states that gives prosecutors broad discretion to move juvenile cases to adult court. Worse, Florida is one of four states that don't permit judges to review those decisions.

As a result, more young people serve time in adult prisons or jails. Over the past five years, more than 10,000 children in Florida have been sent to adult court, most for nonviolent offenses.

We, the taxpayers, pay more in the long run.

Youth who are sentenced as adults are 34 percent more likely to end up back in the system than those sentenced for similar crimes in juvenile court.

"If we're looking at rehabilitating a kid --- versus simply housing them and teaching them how to be a better criminal --- we say the economics make sense to rehabilitate them and make them a more productive citizen," said Sal Nuzzo, vice president of policy at The James Madison Institute.

The James Madison Institute advocates for limited government and constitutional protections. On this issue, it has found unlikely allies: the Southern Poverty Law Center and the Project on Accountable Justice at Florida State University.

Because prosecutors are given such sweeping authority, the rates at which juveniles are treated as adults varies by geography. Statewide, 6.6 percent of youth accused of felony charges are transferred to adult court. The rate is 7.3 percent in the 19th Judicial Circuit, which covers Indian River, St. Lucie, Martin and Okeechobee counties, and 11.9 percent in Palm Beach County.

"A 15- or 16-year-old kid is alleged to commit a crime, and where that kid lives determines whether that child is charged as an adult or charged as a juvenile," Nuzzo explained.

Last year, Sen. Thad Altman, R-Rockledge, unsuccessfully pushed a bill that would have limited prosecutors' authority to move juvenile cases to adult court. This year, James Madison Institute, Southern Poverty Law Center and others are trying again. Their reforms would limit prosecutors' authority in many cases (not murder or manslaughter) and would allow judges more input.

This isn't about letting youth offenders off the hook. It's a matter of punishing — and rehabilitating — in an age-appropriate manner, said Deb Brodsky, director of FSU's Project on Accountable Justice.

"It's a question of what we want as a result, as a society," Brodsky said. "Do we want somebody worse to come back into our neighborhood, or do we want someone better?"

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# Our opinion: Let a judge decide

10:42 pm EDT December 12, 2013



(Photo: Getty Images/iStockphoto)

When disparate voices agree on something, it's probably worth giving the idea a good hearing.

That's the case with Florida's "direct file" system for transferring juvenile offenders to adult courts for trials. It's not a glamorous law-and-order issue, not going to get anybody re-elected or defeated, but it is probably one of the most important things our legislators will consider when they convene next month.

An unusual coalition is behind the effort to get judges involved in deciding which juveniles deserve to be treated like grown-up criminals. The Southern Poverty Law Center, a liberal advocacy group, and the James Madison Institute, a conservative Tallahassee policy-study organization, have joined with public defenders across the state and some other advocacy groups to change a system that now puts a heavy prosecutorial thumb on the scales of justice.

There are three general ways juveniles get charged as adults — judicial waiver, indictment and "direct file" of charges by a state attorney. The latter method was born of a horrifying 1994 eruption of juvenile crime, and it lets prosecutors put teenage offenders before circuit judges, usually with plea deals that can still result in assignment to the juvenile or youthful-offender system.

We're not talking about murder or other major felonies here, like the 1993 murder of British tourist Gary Cooley at a Jefferson County highway rest stop. Those cases will always wind up in adult court. But burglaries, drug offenses and some teen-sex cases could benefit from having a judge — not a prosecution-minded state attorney — decide which young offenders need to be kept in the minor league of the judicial system.

Direct file usually doesn't involve a court hearing, presentation of evidence or legal arguments. Prosecutors have discretion to charge 16- and 17-year-olds with adult felonies.

In a meeting with the Democrat editorial board, Second Circuit Public Defender Nancy Daniels said this poses a tough choice for her over-worked staff. They haven't had depositions or discovery yet, maybe they haven't questioned witnesses or co-defendants, but they have to tell juveniles and their families what they're up against: Plead out and get sentenced as a juvenile, or take your chances in adult court and maybe wind up at Florida State Prison.

Florida leads the nation in moving juvenile cases to circuit court, and our circuit is well ahead of the statewide average for such transfers. Again, we're not talking about armed robbery and murder here — more than 60 percent of juveniles whose cases were moved to adult court over the last five years were charged with non-violent crimes.

This isn't good for anybody. The Department of Corrections doesn't really correct adult offenders, but at least they have to be there. Prison will only assure that young offenders come out worse, much worse, than they went in. That's why conservatives like the JMI analysts are on board with proposals to require hearings before a judge, rather than letting state attorneys use direct file as a cudgel to force plea bargains.

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And like so many other factors in the court system, direct file works against minority and poor defendants. A kid who can afford private counsel can probably work out a deal early in the proceedings.

State Reps. Katie Edwards, D-Sunrise, Kathleen Peters, R-Pinellas, and Bobby Powell, D-Palm Beach, have a bill (HB 129) to get judges involved in these decisions. Sen. Miguel Diaz de la Portilla, R-Miami, has a companion measure (SB 314) in the Senate.

Suffice to say, these are not wild-eyed, soft-on-crime liberals. The bills have cleared the House and Senate criminal justice committees, in differing forms.

Still, prospects for passage are uncertain at best. House Judiciary Committee Chairman Charles McBurney, R-Jacksonville, is a former prosecutor and sides with the state attorneys in wanting to keep their direct-file authority. After the criminal-justice and justice appropriations committees, the bills have to get through the big judiciary committees, where McBurney presides.

Second Circuit State Attorney Willie Meggs makes a strong argument for the status quo. First, he said, innocent defendants are not pleading guilty and taking a juvenile sentence; second, he said judges shouldn't be making prosecutorial decisions — any more than they should be advising the public defender.

"The thing about it is, they want to give the judges the authority and ability to make that determination on what the state files," Meggs said in an interview. "Think about that for a second. Who is it, among the state attorney, the police and the judge, who knows the least about the case? It would be the judge — if the judge knows anything about the case, he couldn't be the judge in the case."

Meggs' experience notwithstanding, we think judges can be involved in the direct-file decision, without showing bias to either side. In cases deserving aggressive, full-bore prosecution, they could still pass defendants on to the adult system; but when justice should be tempered with mercy, a disinterested jurist would be a better arbiter than a state attorney who — by definition — comes at every case from the punishment side of the legal ledger.

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## The Worst State for Kids Up Against the Law

**It's Florida, hands down.**

By Eli Hager. Posted on Tuesday, March 24, 2015 at 2:21 p.m.

Last week, the Florida Supreme Court ruled in *Falcon v. State* that juveniles not convicted of murder may not be sentenced to life in prison, and that even those convicted of murder may not be sentenced to life without parole, citing a U.S. Supreme Court precedent that children are inherently less culpable and more amenable to rehabilitation.

This week, in the wake of that decision, approximately 200 inmates in Florida's prisons – those who are serving life in prison for crimes they committed as juveniles – may begin applying to have their sentences retroactively reduced.

"It's a major landmark, what we're seeing with *Falcon*," says Tania Galloni of the Southern Poverty Law Center's branch in Florida. "This is a huge deal for juveniles in the state of Florida."

But for Florida juveniles accused of lesser crimes – in other words, crimes that were never punishable by a sentence of life in prison – the outlook in the Sunshine State remains exceedingly dark. In fact, by most available metrics, Florida remains the worst state in the country to be a child in the justice system.

"It has been and, I think, continues to be the worst state for young people accused of crimes," says Mishi Faruquee, an expert on juvenile justice for the ACLU. "North Carolina and New York are unique for the lowest maximum age of juvenile jurisdiction. But otherwise, Florida is absolutely the unique state."

Below, a rundown of the most critical ways in which Florida is decidedly *not* the state where children want to find themselves on the wrong side of the law.

Florida is "the clear outlier" in terms of how many children it transfers to adult court, even among states with similar reporting practices, according to the most recent available data from the federal Office of Juvenile Justice and Delinquency Prevention. The state transfers juveniles at eight times the rate of California, a state with similar transfer laws and reporting.

Florida transferred an average of 164.7 juveniles per 100,000; the next highest rate was Oregon's, which transferred an average of 95.6.

And most of these youngsters diverted to adult courts are charged with nonviolent crimes. Florida transfers children for drug and property offenses at an abnormally high rate. Over the last five years, over 12,000 juveniles in the state have been transferred to face adult charges, 60 percent for nonviolent crimes and only 2.7 percent for murder.

These extraordinary numbers are mainly the result of the nation's most expansive law allowing prosecutors the discretion to "direct file" juvenile cases in adult court. Prosecutors in Florida may "direct file" the cases of all 16 and 17-year-olds, as well as those of any 14 and 15-year-olds charged with a range of offenses against persons or property – and even some misdemeanors.

And the choice to transfer these children to adult court is entirely the prosecutor's. There is no hearing, no burden on the prosecutor to explain his or her reasoning, no opportunity for the defendant's lawyer to make counter-arguments. Neither the judge in juvenile court nor the judge in adult court may dispute the

What's even scarier for children in this situation is that prosecutors in Florida truly *use* this power, frequently as a source of leverage to coerce pleas and keep cases from going to trial, according to a 2014 report by Human Rights Watch that analyzed juvenile cases around the state.

Because the threat of adult court and, with it, adult jailing is so real, many juveniles plead guilty before they have the chance to assert their right to see the evidence against them.

Finally, once in adult court, the consequences for children are severe. They face much longer sentences (though not life without parole, as a result of *Falcon*). Their rehabilitation is not an explicit intention of the proceedings, as it would have been in juvenile court; nor does the judge have any obligation to make the proceedings more comprehensible to a child, as a judge in juvenile court would. And they are saddled with a lifelong criminal record, precluding them from taking out student loans – before ever applying for college – and disabling them from voting – before they ever got to

But extensive transfer to adult court is not the full extent of Florida's abnormal treatment of juveniles. The state also houses more juveniles in adult facilities than 28 other states combined, according to the most recent reported data from 2009.

The reason? In Florida, by statute, all juveniles charged as adults in adult court are held pretrial in adult facilities.

In these adult facilities, juveniles are often farther from their families; they are not offered age-appropriate educational programming; and they are at greater risk of experiencing – or, also traumatic, witnessing – violence, sexual abuse, or suicide. (To wit, in the past few months, we have learned that prison officials at a Florida prison regularly "gassed" inmates with chemicals as punishment for filing grievances, and that a record 346 deaths occurred in the state's prisons in 2014.)

For children charged as adults in Florida, serving time in dangerous Florida prisons is adult punishment indeed.

Florida also takes an unusual approach to how it imprisons juveniles who *aren't* transferred to adult facilities. Namely, all of the state's juvenile correctional facilities are privately-operated. Not a single one is publicly-run, subject to full oversight by public officials.

Twenty-eight of these juvenile facilities are operated by G-18, a multinational security and risk-management corporation. Nine of the facilities are operated by Youth Services International (YSI), a company with such a history of sexual abuse scandals that only Florida has signed contracts for youth facilities with them in recent years.

But all is not hopeless for juveniles in Florida's justice system, according to many advocates. Under the leadership of two consecutive secretaries – first Wansley Waters and now Christina Daly – the state's Department of Juvenile Justice

has shifted toward a more rehabilitative approach, says Deb Brodsky of the Project on Accountable Justice, a Florida-based organization that collects data on criminal justice.

"Over the last five years," she says, "DJJ has tried to divert a lot of these kids out of the system, by reducing the number of beds instead of charging so many of them."

Five different bills that would eliminate or greatly limit prosecutors' discretion to "direct file" have made significant headway in the Florida legislature. One bill moved out of a House committee in early March – by a 12 to 1 vote. Another bill, the subject of a hearing this week in the Senate, would put the decision to transfer juveniles to adult court in the hands of a judge, not prosecutors, and would prohibit the holding of juveniles in adult facilities.

These bills enjoy the support of an increasingly broad coalition, says Galloni, one that has emerged as the citizens of Florida learn more and more about their state's unique treatment of juveniles.

"At one of the hearings," she says, "everyone from the James Madison Institute [a conservative think tank] to Human Rights Watch to the PTA was in attendance. And that's because the story has gotten out about Florida's frankly embarrassing status as the worst of the worst in some of these categories related to juveniles."

As Brodsky puts it, "Sunlight is a powerful disinfectant."

#### **The Marshall Project**

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There was a lively discussion on the issue. Representative Kate Edwards, who filed the comparable direct file house bill, presented the bill to the entire committee and answered a number of questions. Major stakeholders in the bill, including Finance and Appropriations, Justice, Tax, Health, Labor, Education, and Family, and the House Budget, were also asked for comments on the bill.

Heidi Jacob, author of *The Night My Number Was Called*, was the only person to really respond to my e-mail. Her response was so encouraging that I decided to follow her advice and make a post on the subject. I called it "Panic" and, within an hour, I had over 100 comments, including one from a woman who said, "I'm a single mom and my kids are in the hospital. I'm scared and I don't know what to do."

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November 15, 2010

News 11/15/10

## Are too many kids prosecuted as adults?

### *Legal Needs of Children Committee looks at direct-filings*

By Jan Pudlow

Senior Editor

As director of juvenile court for the Fourth Circuit Public Defenders Office, Bob Mason has noticed an upswing in the number of children prosecuted in adult court.

He's troubled by what he calls "direct pleas" and gives this example:

A child is given two choices: plead guilty, serve nine to 18 months in juvenile detention, and keep it on the juvenile record or be prosecuted as an adult, face a life sentence, sit in jail unable to make a high bond, and wait 18 months to go to trial anyway.

"It looks good even if the child is not guilty," Mason said.

Witnessing such direct pleas prompted Mason to volunteer to chair the Direct Filing Subcommittee of the Bar's Legal Needs of Children Committee.

Five members of the subcommittee have had their first telephone conference, and now the goal is reaching out to others, especially prosecutors and judges, to get a range of perspectives.

Mason said the subcommittee wants to explore these recommendations from the predecessor Legal Needs of Children Commission in its 2002 final report:

- Allow judges to make all transfer decisions, instead of the current practice of giving discretion to state attorneys.
- Repeat mandatory direct filing of juveniles charged with certain crimes.
- Eliminate 10-year minimum mandatory sentences for juveniles convicted as adults for the first time, and allow judicial discretion to waive other minimum mandatory sentences for juveniles in adult court.
- Give judges alternative sentencing options, including allowing secure detention as a condition of juvenile probation, and allowing blended sentencing that mixes juvenile and adult sanctions.

"Hard filing of children does not work. It is more likely they will commit crimes sooner, with higher recidivism. It just plain doesn't work," Mason said, backed by findings of a June 2010 report released by the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention.

Mason distributed copies of a story in *Fort Weekly*, in which Mason is quoted: "You're up there in adult court, and it's like the State

Attorney's Office and the judges have a magic wand and they say, 'Poof! You're an adult now.' Yet the child next to me is still 15 years old.

"I wish I had that magic wand at sentencing, because I would say, 'Poof! Now you're a 75-year-old once-investment banker charged with embezzlement — now we're ready for sentencing.'"

In Florida, youth as young as 14 can be tried as adults, and youth of any age who have been charged with violation of a state law punishable by death or life imprisonment can be charged as an adult.

"Florida is at the top of the national chart when it comes to the number of youth transferred to adult court each year," according to a special project report from the Lyndon B. Johnson School of Public Affairs at The University of Texas at Austin called "From Teen Out to Hard Core: Young Children in the Adult Criminal Justice System."

From 2001 to 2006, Florida tried between 2,500 and 3,000 youth as adults. Beyond the high number of transfers, Florida is one of 22 states that has not created a statutory minimum age for transfer to adult court in murder cases, which means that theoretically a 7-year-old accused of murder could stand trial in the adult criminal system in the state. Indeed, there are examples of children as young as 11 being tried as adults in Florida," the report says.

"The confluence of mandatory transfer laws and extremely harsh, mandatory adult sentences, even for pre-adolescent children, make Florida a prime focus for reform in this arena."

When the Legal Needs of Children Committee met at the Bar's Midyear Meeting, Mason said: "We are hoping to come up with an official position that the committee can endorse. . . . It'd be great to get The Florida Bar to take it as their position. It made a huge difference with the shackling issue," Mason said, referring to victory in the Florida Supreme Court, when on December 17, 2009, a majority of justices called the indiscriminate shackling of children in Florida's courtrooms "repugnant, degrading, humiliating, and contrary to the stated primary purpose of the juvenile justice system," and said restraints may be used only when determined necessary on a case-by-case basis.

"This Committee was able to help the Board of Governors take a position, and it made things much easier getting that rule passed."

Eleventh Circuit Public Defender Carlos Martinez offered advice to in-state prosecutors in the discussion. He sat on the Department of Juvenile Justice Blueprint Commission, where he said direct filing was "hotly debated" and consensus was not reached.

Direct filing is listed under "unresolved issues" in the Blueprint Commission's January 2008 report, "Sorting Smart about Juvenile Justice in Florida," that said: "In Florida in the last five years, the trend to charge juveniles as adults has increased. Though the total number of youth referred to (DJJ) declined more than 6 percent from 2003-07, the number of youth referred to adult court increased 23 percent."

In the Legislature, prosecutors carry more sway than anyone else on this issue," Martinez said. "You can show them all the research on recidivism. It doesn't matter until there's a discussion with them to get some compromise. Shackling shocks the conscience. But direct-filing, to a lot of people, does not shock the conscience."

"It is quite shocking to the conscience when you see who is being direct-filed," added Joyce Cohen, assistant regional counsel in District 4 in West Palm Beach and a member of the Juvenile Court Rules Committee.

She said her "stomach still gets in knots" when she thinks about her 15-year-old client who, along with some others, knifed someone off their bike and stole \$72. Even though it was her client's first offense, the state attorney decided to direct file her client to adult court, because anything that falls under a robbery charge can be direct filed at the prosecutor's discretion.

Though Cohen is careful not to criticize the state attorney or any state agency, she said she wants transparency in how prosecutors make decisions to direct file:

"They could be in a back room flipping a coin for all we know," she said.

And the legislative intent of the direct filing statute, Cohen points out, says it is to be applied to juveniles who cannot be rehabilitated through the juvenile justice system or are dangers to society.

"How can we possibly know if a child can't be rehabilitated when it's his first offense?" she asks.

The problem with adult sanctions, she said, is that the children "get no services. Now they have an adult arrest on their record, which will follow them the rest of their lives. They don't get the opportunity to be put on the right track."



## Bills Reforming Way Juveniles Can Be Charged As Adults Moving In Fla. Legislature

By MICHAEL COOPER, KATHLEEN L. SAWYER, COMBOSI • MAR 21, 2015

<http://news.wfsu.org/post/bills-reforming-way-juveniles-can-be-charged-adults-moving-fla-legislature>



A bill reforming the way state prosecutors can charge juveniles as adults is starting to move in both chambers of the Florida Legislature.

[http://media2.publif Broadcasting.net/p/wfsu/files/styles/x\\_large/public/201503/Juvenile%20and%20Adult%200325\\_0.jpg](http://media2.publif Broadcasting.net/p/wfsu/files/styles/x_large/public/201503/Juvenile%20and%20Adult%200325_0.jpg)

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Silvana Marino has three kids.

"My oldest son was a Marine for eight years, and he's now in Medical school," said Marino. "My youngest son is now 11. And, my middle son, Miguel, was direct filed at age 16, and he's currently in prison."

Direct file is just one of the ways a juvenile can be transferred to adult court for prosecution. In her case, Marino says her son, Miguel, was arrested as a teenager.

"At age 16 with no prior record, Miguel was arrested for breaking into an occupied residence for several months with some friends who had stolen some video games and other electronics from the house," she added. "Without any input from me or a hearing in front of a judge, the prosecutor just chose to direct file my son."

And, she says as a result he was sent to the Port Richey Detention Center.

"At that jail, he was exposed to adult inmates," Marino continued. "He was beaten, sexually harassed, threatened with rape, forced to drink urine, and forced to lick the inside of the toilets with his tongue."

Miguel was later sentenced to House arrest to be followed by four years of adult probation, but Marino says it was later revoked after he violated it.

"He violated his house arrest by not making curfew once on time because he was at work," said Marino. "And, another time, he went to CVS right behind our house to buy a gallon of milk. His probation was revoked, and he's now serving four years in adult prison for the offense he committed at 16. My son committed a serious mistake, and I know he should be punished for it, but he should have been handled by the juvenile justice system."

And, during a recent hearing in the House, another parent—Jack Jones—spoke of his foster son who was a repeat juvenile offender and was direct filed because of his latest crime.



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## Charging Juveniles As Adults Sparks Legislative Debate

December 30, 2015 9:39 AM

Read Under Florida File, Juveniles Charged As Adults, Katie Fernandez, Miguel Diaz de la Portilla, Politics, Attorney Walters, Willa Wright

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TALLAHASSEE (CBSMiami/NSF) – Bills are moving in the House and Senate that would limit the ability of Florida prosecutors to charge juvenile offenders as adults, a legal practice known as "direct file."

Each measure has passed one committee, and they could be on a collision course — turning on the question of how much discretion prosecutors should have in such cases.

Opponents of direct file point to a 2014 report by Human Rights Watch that found Florida transfers more juveniles to adult courts than any other state. The report also found that between 2009 and 2014, more than 60 percent of the roughly 12,000 juveniles who were transferred to Florida's adult courts had been charged with non-violent crimes.

A coalition of opponents is pushing a measure — SB 314 by Senate Judiciary Chairman Miguel Diaz de la Portilla, R-Miami — that would require judges to sign off on juvenile-to-adult court transfers. The bills are filed for the 2016 legislative session, which starts January 12th.

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"Due process is the hallmark of our justice system, and I think that there has to be checks and balances," said Wansley Walters, a former secretary of the state Department of Juvenile Justice and a backer of the Senate bill. "And I absolutely believe that our society has to have that with children."

But supporters of direct file say it works and that it is necessary for public safety. They point to the state's crime rate, which is at a 44-year low. Juvenile arrests statewide dropped 4 percent for fiscal year 2014-2015 — for a total decline of 32 percent over the past five years.

"We don't direct-file on anybody but dangerous people," said Tallahassee-based State Attorney Willie Meggs, whose office prosecutes cases in six counties. "It gives us the ability to have jurisdiction over that person for a much, much longer period of time. ... If we direct-file on them, and get them into the adult system, then they're treated as adults, and you can have them on probation for the rest of their life — if it is necessary."



About 9 percent of the state's juvenile offenders are described as "serious, violent, chronic offenders," according to the Department of Juvenile Justice.

The Florida Prosecuting Attorneys Association supports the House version of the bill — HB 129, filed by Rep. Katie Edwards, D-Plantation. Rep. Kathleen Peters, R-Treasure Island, and Rep. Bobby Powell, D-Riviera Beach — which puts some limits on prosecutors but doesn't include review by judges.

Edwards also proposed a bill for the 2015 session that would have restrained the use of direct file, but it faced opposition from prosecutors and died. The House bill filed for the 2016 session initially called for allowing judicial review. But the House Criminal Justice Subcommittee changed the bill this month, removing the judicial review — despite the sponsors' objections — and then passed it unanimously.

As it stands, the House bill would eliminate the current practice of what is known as "mandatory" direct file, which requires prosecutors to send



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juveniles to adult court under certain circumstances. For instance, a prosecutor faced with a 16- or 17-year-old who has been found guilty of committing a violent crime in the past and is charged with another violent offense must transfer the youth to adult court. Under the House bill, that would be discretionary.

The House bill also would modify current discretionary use of direct file, creating a two-tiered system, based on age and severity of offense, in which prosecutors could choose to transfer juveniles to adult court.

"Direct filing should be a serious matter, of a serious nature," said House Judiciary Chairman Charles McBurney, R-Jacksonville. "You should not be able to direct-file on a misdemeanor."

As a prosecutor in the 1980s, McBurney said, he used direct file to transfer juveniles to adult courts in Northeast Florida, but only for habitual violent offenders.

The House bill is a work in progress, McBurney said. He would not speculate on which chamber's version would prevail.

But Sen. Rob Bradley, R-Fleming Island, said the Senate bill — which contains both the tiered system and the right to judicial review — is more "balanced" than the House version.

"Under the Senate bill, you can still be treated as an adult under our criminal justice system," Bradley said. "That doesn't change. All the Senate bill does is ensure that there is an extra layer of review, and that review is in the hands of a judge. ... We have judges to look at both sides, both the defense and the prosecution, and then make a reasoned judgment after hearing all the evidence."

Both sides agree that the use of direct file has declined. "Now we direct-file sparingly," said Buddy Jacobs, general counsel for the Florida Prosecuting Attorneys Association, who also said the practice had been used "very judiciously" by the prosecutors. From fiscal year 2008-09 to fiscal year 2013-2014, Jacobs said the number of direct files decreased by 53 percent.

The News Service of Florida's Margie Menzel contributed to this report.

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January 1, 2016

22 23 Hours: 11:30

## A hard look at prosecuting juveniles in adult court

By Jan Fudlow

Senior Editor

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They described it as "justice by geography" — when children in certain circuits are more likely to be prosecuted as adults, because of the discretionary power of elected state attorneys calling the shots without judicial review.

They threatened using "direct file" as a threat to get juveniles to plead guilty, to avoid being punished with harsher adult sanctions.



They spoke out against sending juveniles to the troubled Department of Corrections, looking out on Department of Juvenile Justice programs and therapy that help them change their lives. Adult prison time, they argue, only teaches children how to be better criminals, committing more offenses once they are freed.

At the House Criminal Justice Subcommittee on December 3, the list went on, as many urged Florida to change its direct-file law.

Florida leads the nation in the number of children prosecuted as adults. According to a 2014 Human Rights Watch report, in the last five years, more than 12,000 juvenile suspects in Florida were transferred to the adult court system, even though more than 60 percent were for nonviolent felonies. Only 2.7 percent were prosecuted for murder.

Even though the proposed committee substitute for HB 129 — drafted to get the support of prosecutors — is "far from perfect," Rep. Katie Edwards, D-Sunrise, urged its passage as "a starting point for taking the issue forward this session."

The proposed committee substitute for HB 129 passed unanimously, with pledges from legislators to keep working on the bill.

The bill would, in part, eliminate the mandatory direct-file system and create a two-tier discretionary direct-file system, and would eliminate requirements that the court impose adult sanctions in specified situations.

But the crux of what advocates had hoped for — that judges have oversight in direct-file cases — was removed from the proposed committee substitute to appease prosecutors who want to keep their discretion. The bill is now in the Justice Appropriations Subcommittee, its second of three committee stops.

"What I hear is 'I am not prepared to say, 'I do,' but let's have one more date and see how it goes.' I would ask you to do just that, not to marry this, but to recognize that this long commitment to a concept needs to be something that we work towards," Edwards said in closing on her bill, cosponsored by Rep. Kathleen Peters, R-St. Petersburg, and Rep. Bobby Powell, D-West Palm Beach.

"And we do say, 'I do,' this session, because I am tired of doing this bill year after year, and I'm sure you are tired of hearing it, too. So let's make 2016 the year that we finally, finally put this issue to rest and have meaningful, long-standing direct-file reform," Edwards said.

Instead of testifying against changing the law, as he did last year, Buddy Jacobs, representing the Florida Prosecuting Attorneys Association, "swayed in support."

Rep. Ray Pilon, R-Sarasota, who co-sponsored last session's bill opposed by prosecutors, said, "There's no way that the Katie Edwards I know put pen to paper on this proposed committee substitute. Having said that, even if this was a shell bill with no language, I would encourage everybody on this committee to vote favorably, so we can move this thing forward and get it settled this session."

Edwards argued that changing Florida's direct file law will enhance public safety.

"I want to dispel the perception at the onset that we are going to allow a 17-year-old, who commits the most heinous, violent act, to be slapped on the wrist. That is nonsense. This bill does not do that. . . . I want to put that fear to rest," Edwards said.

While she said she appreciates the support on the proposed committee substitute, Edwards added: "But let's be realistic. Our prosecutors are elected officials who run on conviction rates. . . . Our investments in the Department of Juvenile Justice and those types of programs are paying off. To celebrate that, we should embrace it, reward it, and do more of it. But to simply say the conviction rates alone make or break someone's political career as a prosecutor, and I should promote that type of fear mongering, is unacceptable. And I would ask you not to fall prey to that."

Sam Huzzo, vice president of policy for The James Madison Institute, explained why a conservative think tank "strongly supports the policy of reforming direct file."

"We send children into adult institutions, where they become more than likely better criminals, thus increasing the long-term economic cost due to incarceration, social services, and lower employability," Huzzo testified.

"Secondly, the nature of the process itself has resulted in a dangerous constitutional due process issue. The decision on whether or not to charge a child as an adult rests not on the crime committed, necessarily, as much as it rests on what ZIP code a child commits the alleged offense in. We feel that justice by geography is not a constitutionally viable principle."

The right policy, Huzzo said, is to bring balance and transparency back into the process.

"And the best way to do this, in our opinion, is to let judges serve as the objective arbiter in most cases, of whether the circumstances and situation warrant charging a specific child as an adult," Huzzo said. "Unfortunately, I would like to point out that this proposed committee substitute does erode that ability. IMI is concerned that this proposed committee substitute is not in the spirit of the original bill, and it does not embody the conservative solution as we see it to this issue."

"It does keep the power in the hands of the prosecutor and leaves no room for judicial discretion."

Rob Mason, director of the Juvenile Division of the Fourth Circuit Public Defenders Office, testified that the Florida Public Defender Association "supports direct-file reform, and we will continue to engage in meaningful collaboration with various stakeholders in the process."

"Direct file is like an elephant in the room that everybody is aware of, and it puts pressure on children, because of this amazing power that the prosecutors have," Mason testified. "I am in a jurisdiction where the commitment rate is twice the state average, and the commitment rate for high- and maximum-risk commitments is more than triple the state average. That's in Duval County."

"Again, it's because of the fact that judges aren't in the process of making these decisions. So it is not a transparent process, which is what it would be if you had judges making the decisions."

But there are elements of the proposed committee substitute that the public defenders support, Mason said.

"We like seeing that the mandatory direct-file is eliminated. The mandatory adult penalties for certain crimes, they are also eliminated. We like the two-tiered system based on ages 16 and 17; 14 and 15. We believe that is proper. We like the consideration of competency, whether a child is competent or not in whether a case can move forward to be transferred [to adult court]."

Yania Gallano, managing attorney in Florida for the Southern Poverty Law Center, said, "What brings us to this issue is children are among the most vulnerable members of society, even when they break the law."

She, too, said she is concerned about the "expansive list of offenses that are direct-file eligible, meaning the judge has no power to review. There is no oversight by the judge on those decisions, which is pretty much the status quo. Without judges, we are concerned that there is no fairness, no transparency, and there is no consistency across jurisdictions. That is the fundamental problem with direct-file. . . ."

"Prosecutorial discretion was created by this Legislature," Gelloni said. "The Legislature is the only one that can rein it in."

(Comparable SB 334 is in the Criminal and Civil Justice Appropriations Subcommittee, the second of three committee stops.)

Revised: 01-20-2016

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**New Times**

# REP. KATIE EDWARDS FILES BILL TO REFORM HOW FLORIDA PROSECUTES JUVENILES AS ADULTS

BY RAY DOWNS

MONDAY, FEBRUARY 23, 2015 | 11 MONTHS AGO



Some say Florida's juvenile laws are too strict.

*via Facebook*

Florida leads the nation in charging juveniles as adults -- a result of the state's controversial Direct File law, which gives prosecutors the power to charge juveniles as adults whenever they choose. Experts say this unchecked power causes myriad problems, ranging from extreme sentences to forced pleas -- and Rep. Katie Edwards, a Plantation Democrat, wants to change that.

"The only ones that are hesitant to join in this reform effort are the prosecutors because, quite frankly, they're the ones who hold all the cards and don't want to give up that power," Edwards tells *New Times*.

The Sunshine State has long been criticized for having an archaic system when it comes to dealing with juvenile offenders. Several organizations, including Human Rights Watch, which issued a 110-page report on Florida's Direct File practice, have singled out Florida for treating kids in the criminal justice system as adults. In fact, the HRW report is what inspired Edwards to file HB 783.

"After I read that report, I began talking with public defenders and other interest groups and found there was a great deal of interest in changing the law," Edwards says.

"The mantra of the older, hardened attorney is to punish, punish, punish," Edwards says. "They're not used to thinking outside the box and look for ways to rehabilitate a first-time offender and break the cycle of lawlessness, poverty, lack of education, whatever it may be that led that individual to have that brush with law enforcement."

The Human Rights Watch report, titled "Branded for Life," explained how children around the state were prosecuted as adults through the Direct File system for crimes ranging from stealing items from school to more serious crimes like assault.

The way Direct File works is simple: Prosecutors can charge kids as adults whenever they want. And when they do so, they are able to hide all evidence against a child suspect until he or she agrees to be charged as an adult or pleads guilty. According to a Miami-Dade public defender who spoke to *New Times*, this often results in a forced plea from kids who want to avoid having to spend time in adult prison. But those kids who still want to exercise their right to plead not guilty must subject themselves to the adult criminal justice system, which could result in prison time as well as a criminal record.

While Edwards is blunt about reforming the system in a way that would enforce a more thoughtful approach to charging juveniles as kids, she's not completely against charging kids as adults. In some cases, like violent crimes, she says it might be necessary -- and her bill proposal cites only "certain conditions."

Here's Edwards' bill:

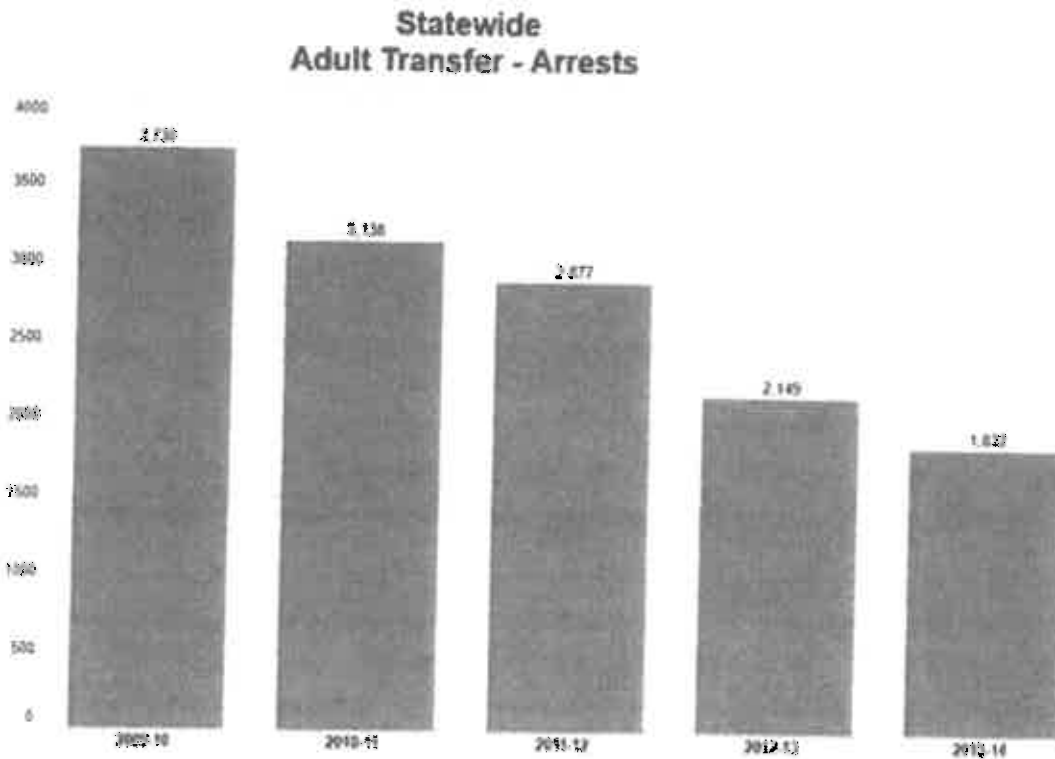
### **HB 783: Charging Youths as Adults in Criminal Proceedings**

Charging Youths as Adults in Criminal Proceedings; Specifies offenses that allow state attorney to file information for specified juvenile offenders; prohibits filing informations for juveniles with certain conditions; specifies effects of direct file; prohibits certain juvenile offenders from being transferred to adult court; requires DJJ to collect specified data & make report; specifies minimum age for indictment of juvenile for certain offenses; prohibits certain juvenile offenders from being transferred to adult court; deletes provisions relating to sentencing of juveniles as adults for certain offenses; revises provisions relating to transfer of other pending felony charges when child has been indicted; revises factors to be considered in determining whether to impose juvenile or adult sanctions for violations of law by juvenile; requires court to consider specified reports in hearing on such sentencing; revises provisions relating to sentencing alternatives.

Edwards says she doesn't expect a lot of pushback from politicians who ride the "tough on crime" wave that has been in style since the early '90s, when charging juveniles as adults became fashionable.

"A lot of folks have interest in this and recognize that we need to make reform to the Direct File system," Edwards says, adding that several organizations, including the Catholic Congress, are for reform.

Florida, which has no minimum age for the practice, has officially prosecuted juveniles as adults 14,000 times since 2009, according to Department of Juvenile Justice statistics. However, the number of children charged as adults has dropped significantly since 2009 -- at a rate of about 51 percent.



A large percentage of these charges are burglary -- with 544 juveniles charged as adults for this crime in 2013-14.

Edwards says alternative programs should be used in more counties across the state, and her bill would force prosecutors to look for such methods.



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Society



Kenneth Young, a prisoner at Lake Correctional Institution in Florida, sits in the visitors room. He received four life sentences for armed robberies as a minor in 2000. *Cira Moro/Laif/Redux*

## Report: Florida leads the nation on charging kids as adults

04/11/14 04:21 PM

By Meredith Clark

Florida's criminal justice system has received a lot of attention in recent years – and for good reason.

According to a new report, the state is on the wrong side of international human rights law. A Human Rights Watch review of Florida's policies for juveniles charged with crimes found more than 12,000 children have been moved from the juvenile to adult court system in the past five years – more than half of whom were charged with non-violent crimes.

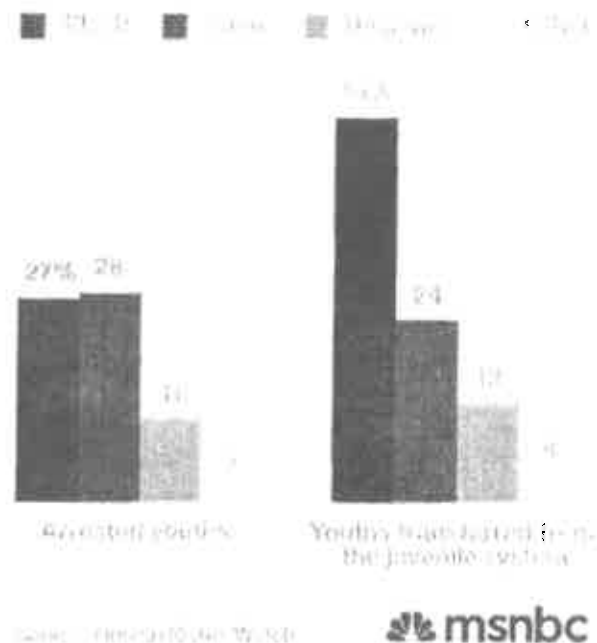


The report, released Thursday, found that 98% of all the children who end up in the adult court system do so as a result of Florida's "direct file" statute, which allows prosecutors the discretion to move a case from juvenile to adult court without a hearing or any input from a judge. Between 2003 and 2008, Florida transferred juveniles into the adult court system nearly two times as often as the state with the second highest transfer rate, and five times as often as the average rate in 12 other states.

Black youth are also disproportionately affected by the law, according to the report. While black boys make up 27% of those who enter the juvenile justice system, they account for more than half of all transfers to the adult system. White boys actually make up a slightly larger proportion of those who enter the juvenile system – 28% – but they comprise slightly less than a quarter of those who end up in adult court.

Heather DiGiacomo, communications director for the Florida Department of Juvenile Justice, said that the department had not had the opportunity to fully review the report and couldn't comment on it.

Racial disparities among male youths, 2008-13



The report also found that black boys are more likely than white boys to be charged as adults for drug felonies and for violent crimes that are not murder.

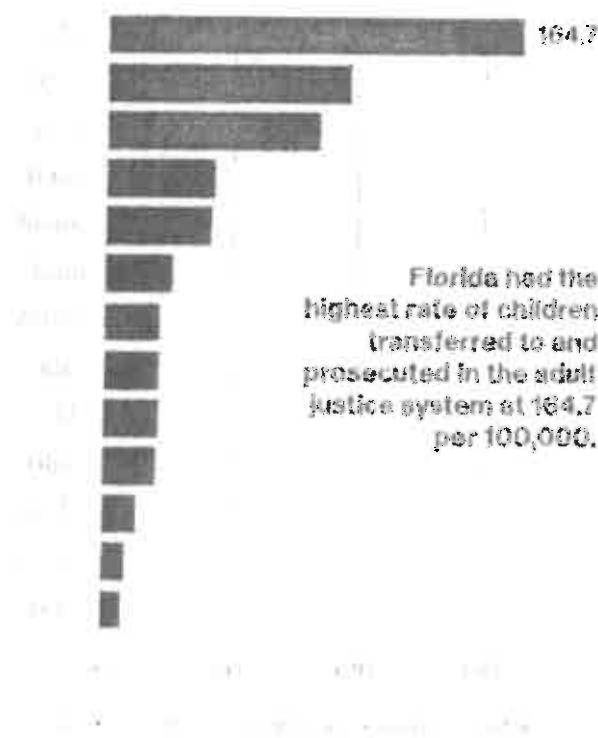
The report also alleged that some prosecutors may be using the threat of adult charges to get defendants to plead guilty in juvenile cases. This would not be a new phenomenon; an HRW report released in December claimed that federal prosecutors use the threat of harsh mandatory minimum sentences to extract guilty pleas from drug defendants. Ninety-seven percent of federal drug defendants plead guilty.



Florida is not just out of step with much of the United States when it comes to prosecuting children, the report said. International law requires children be treated differently in criminal cases, something HRW alleges Florida does not do. "To comply with international standards, any criminal process that a child is subjected to must take into account the fact that children are uniquely capable of rehabilitation," the report read.

Even within Florida, the chances a young teenager will end up charged as an adult varies between jurisdictions, something the report's authors want to see changed.

**Average annual transfer rate, 2003-08**  
Number of children transferred to the adult criminal justice system per 100,000 juveniles



"The same child, accused of the same offense, may receive vastly different treatment based on nothing more than which prosecutor is in charge of their case," Alba Morales, a researcher and author of the study, said in a statement. "These decisions should be handled by Florida's juvenile judges, who can ensure fair treatment, not by prosecutors who have a vested interest in getting defendants to plead guilty or in punitive outcomes."

In recent years, there have been numerous scientific studies that have shown that since children are still developing mentally and emotionally, they are both less able to consider possible consequences of their actions and are more susceptible to rehabilitation than adults. The U.S. judicial system has already taken note. In 2012, the Supreme Court banned mandatory

life without parole for children convicted of murder, but Florida still routinely hands out harsh sentences to juveniles that are essentially life in prison.

## No Place for A Child: Direct File of Juveniles Comes at a High Cost; Time to Fix Statutes

Deborah Brodsky, Director & Cyrus O'Brien, Researcher  
*The Florida State University Project on Accountable Justice*

Sal Nuzzo, Vice President of Policy  
*The James Madison Institute*

### Introduction

At the turn of the 20th century, advocates of an alternate court process for juveniles highlighted problems that existed with prosecuting court-involved children in adult court where they principally faced punishment and surveillance. As an alternative, these advocates established juvenile courts, which reduced the severity of punishment and combined it with rehabilitative regimes and programs aimed at turning children's lives around. The first Juvenile Court was founded in Chicago and its guiding principles were that childhood should be a protected stage of life, that children were less culpable for their actions than adults, and that children were more receptive to reform and rehabilitation.

Despite the juvenile courts' founding principle that children are fundamentally different from adults, juvenile courts have historically allowed some children to be prosecuted as adults in

adult criminal court. A small minority of children, it was thought, were either not suitable for rehabilitation or were charged with politically-fraught offenses that might destabilize or delegitimize the juvenile court. These rare cases resulted in the occasional prosecution of children in adult court.

Now, more than 10,000 children have been tried as adults in Florida over the last five years<sup>1</sup> — 98 percent of these children are "direct filed" in adult court by prosecutors with no hearing, due process, oversight or input from a judge.<sup>2</sup> This is because

in Florida, prosecutors have virtually unfettered discretion to decide which children to try as adults. Florida currently has the highest number of adult transfers reported of any state.

It would be easy to come to the conclusion that when a child is tried "as an adult," he or she



*Photo via RFSU*

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has committed a heinous crime that requires prison time both as punishment and to protect public safety. What else could justify taking a child out of the juvenile justice system—developed for the very purpose of rehabilitating wayward children—and branding that child for life as a convicted felon?

Yet, we now know that both premises are wrong. Data reported by the Florida Department of Juvenile Justice shows that most children tried as adults in Florida are charged with non-violent felony offenses, primarily property and drug crimes, or misdemeanors. Moreover, more than 70 percent of children convicted in adult court are sentenced to probation, not prison, calling into question whether a more serious, adult court transfer was necessary in the first place. These facts are reason for concern and highlight the need for change in Florida's "direct file" system.

### Juvenile Transfer in Context

The most common way for juvenile courts to waive children into adult court was to hold a "transfer hearing." Outside of Florida, transfer hearings continue to be the most common mechanism for children to be transferred to adult court.<sup>2</sup> At a transfer hearing (which is sometimes called a "waiver hearing"), a judge rules on a prosecutor's motion to transfer the case to adult court.<sup>3</sup> The judge hears evidence about the alleged crime, as well as evidence about the child's amenability to rehabilitation. In most states, the judge must determine, first, that there is probable cause that the child committed the alleged crime, and, second, that the child is not a suitable candidate for rehabilitation programs such as those offered through the juvenile courts.

Despite the fact that Florida leads the nation in transferring youth to adult court, transfer hearings in this state are not the norm. Florida's direct file law, as it is written, grants prosecutors the sole discretion to transfer a child out of the juvenile court and

prosecute him or her as an adult. Direct file enables prosecutors to unilaterally determine whether a child will be sanctioned by a juvenile court or by an adult court. Judges have no authority in this decision. Judges do not hear evidence about the alleged crime, nor do they assess whether the child might be amenable to rehabilitation. When a prosecutor utilizes Florida's direct file law to transfer a child from the juvenile court, the judge reads no briefs, hears no evidence, and signs no order. By the time he or she is aware of a prosecutor's action, it is a *fait accompli*.

Justice by Geography: Prosecutors' unchecked authority to transfer children to adult court distorts the justice system in other ways. Because prosecutors work in distinct jurisdictions and because each prosecutor makes decisions according to his or her own processes, a child's odds of being prosecuted as an adult depend more on where she lives than what she has done. In Palm Beach County, the prosecutor transferred 7 percent of 15-year olds charged with burglary to adult court. Just south in Broward County, the prosecutor did not transfer any 15-year olds for burglary.<sup>4</sup> Similar jurisdictional disparities exist throughout the state. Florida's direct file law is the reason that that state transfers more children to adult court than any other state.

**"When a prosecutor utilizes Florida's direct file law to transfer a child from the juvenile court, the judge reads no briefs, hears no evidence, and signs no order."**

### *Direct File Violates Basic Principles of Justice*

When it comes to our system of Justice, having one's day in court is a fundamental American right. The individuals who wield the authority of the state should be held accountable through systems of checks and balances. In addition, state actions should be fair, unbiased, and measurably effective, focusing on what works in the greatest interest of public safety.

Direct file flies in the face of each of these principles. By cutting the judge out of key decisions it denies children their day in court. By concentrating legal authority in a single state actor it eradicates checks and balances and inhibits accountability. And reams of social scientific studies show that

not only is direct file racially and geographically biased, but it actually increases crime and reduces public safety; youth transferred to adult court are more likely to recidivate than youth retained in the juvenile justice system.<sup>6</sup>

Direct file is especially vulnerable to ideological rhetoric and factual distortion because there is little known about its use. No centralized mechanism exists to track children as they cross over from juvenile courts to the adult criminal justice system. Adult and juvenile court records are maintained separately, and a child's records are divorced when he or she is transferred. The Florida Department of Juvenile Justice reports basic facts about the children who were transferred out of its system, but this is where solid information ceases; data that track what happens to children once they arrive in adult court are not systematically collected or reported.<sup>7</sup>

This policy brief is an analysis, both anecdotal and when possible, quantifiable, of direct file from multiple data sources. Statistical figures are derived from data provided to the Project on Accountable Justice by the Florida Department of Corrections and from publicly available data from the Florida Department of Juvenile Justice. Researchers at the

Project on Accountable Justice also reviewed the court files of more than 250 children prosecuted as adults; these public records are available from the clerks of court in each of Florida's counties.

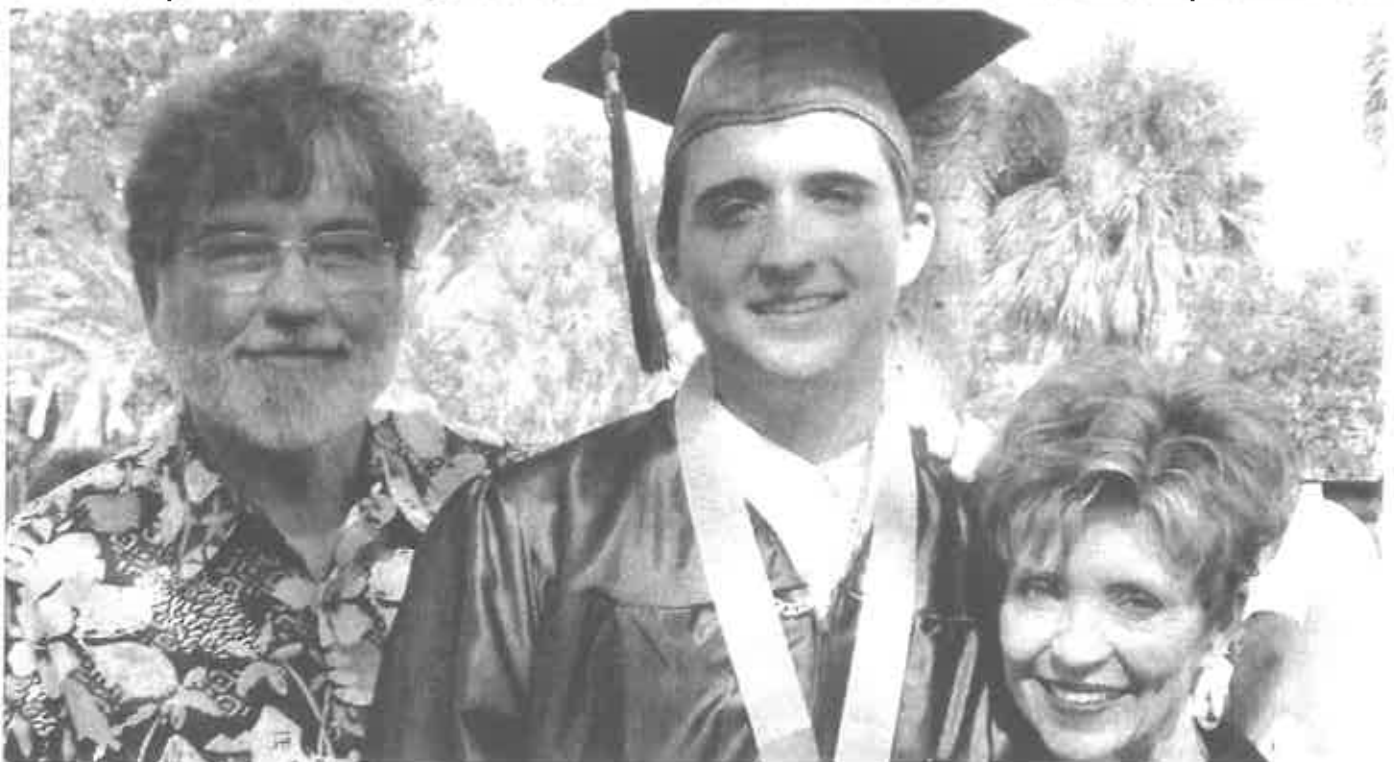
The facts of direct file indicate that it is a short term choice with high, long term economic costs; a constitutional travesty of justice; and a foolish, irrational public policy that endangers public safety and leaves Floridians more vulnerable.

## The Surprising Details of Direct File:

### Two Myths

Two myths pervade debates about the practice of prosecuting children in adult court: 1) that children prosecuted as adults are charged with "heinous" offenses, and 2) that most of the children prosecuted as adults are sentenced to adult prison. This first myth is easily disproved: publicly available data indicate that the majority of children prosecuted as adults were charged with non-violent crimes. In addition, a 2014 report from Human Rights Watch revealed that many children are not at high-risk to reoffend, based on individualized assessments conducted and publicly

At 16 years old, Patrick Mellan was the driver in a tragic automobile accident. In his four years on pre-trial release, he graduated high school with honors and became a college student and employee. If he had been convicted as a youthful offender, his maximum sentence would have been six years. As an adult offender, he won't complete his sentence until he is 40. Read more about Patrick's first-hand account of the process, aftermath, and injustice of a youth who has been tried and convicted as an adult at [www.noplaceforachild.com](http://www.noplaceforachild.com).



## Direct File Reform Would Save \$50 Million Over 10 Years

The reform of Florida's direct file statute would result in fewer youth in the adult criminal justice system and more youth in the juvenile justice system, with a long-term impact of reduced recidivism and lower incarceration costs over time. How much of an economic impact would result is largely dependent on several factors. In order to provide a context for the long-term fiscal impact, researchers constructed a 10-year economic model that examined just the incarceration costs associated with a policy reform. The projection considers both the savings incurred by having fewer youth in the adult system and the increased costs associated with more youth in the juvenile justice system. It does not address any indirect impacts on lower social service consumption, greater employability, etc. As the projection shows, reforming Florida's direct file policy could save Florida taxpayers approximately \$50 million over the next 10 years.

### New Costs Incurred by DJJ

To estimate the new costs incurred by the Florida Department of Juvenile Justice (DJJ), The James Madison Institute (JMI) and the Project on Accountable Justice (PAJ) used recent data to estimate how children who were transferred to adult court in FY2015 would have been disposed had they remained in the juvenile justice system. The DJJ uses a standardized Dispositional Matrix to help juvenile courts craft appropriate sentences. The Dispositional Matrix takes into account a child's risk score, prior interaction with the justice system, and offense. Based on these variables, the DJJ will recommend a range of disposition options, including diversion programs, probation, redirection, and placement in residential programs.<sup>8</sup>

PAJ and JMI used DJJ data to identify the likely dispositions of the 871 youth who would no longer be eligible for direct file according to the bill pending in the Florida Senate. We found that the majority of transferred youth (57 percent) would not have been recommended for a residential program had they been retained in the juvenile justice system. Instead, most youth would have been sentenced to probation or other less restrictive sanctions. This finding corroborates data from the Florida Department of Corrections (FDC) that indicates that most children transferred to adult court are not considered threats to public safety. Rather than being incarcerated, most transferred youth would remain in their homes and communities.

### How Would Transferred Youth Have Been Treated Had They Been Retained in the Juvenile Justice System?

	Number of Youth by Forecast Juvenile Disposition	Percent of Youth by Forecast Juvenile Disposition
Diversion	122	14%
Probation	203	23%
Redirection	169	19%
Non-Secure	252	29%
Secure	110	13%
No Data	15	2%
Total	871	100%

PAJ and JMI used the data from the Dispositional Matrix, combined with publicly available data indicating the cost per day and the average length of stay for each type of disposition, to estimate the new costs incurred by DJJ. Supervising 871 additional youth would cost the DJJ \$24.7 million in the first fiscal year.<sup>9</sup> The estimates for subsequent years assume that the number of children retained in the juvenile system as a result of the reform of direct file will decline 10 percent each year.<sup>10</sup> By FY2026, the annual cost of direct file reform to DJJ will fall below \$10 million.



Year	New Costs for DJJ	Savings for FDC	Total Savings in Each Fiscal Year
FY2016-17	\$24,659,699	\$12,540,321	-\$12,119,378
FY2017-18	\$22,569,731	\$21,601,751	-\$964,980
FY2018-19	\$20,312,758	\$27,503,221	\$7,190,463
FY2019-20	\$18,281,482	\$30,847,319	\$12,565,837
FY2020-21	\$16,453,334	\$31,522,173	\$15,068,839
FY2021-22	\$14,808,000	\$23,085,775	\$8,277,774
FY2022-23	\$13,327,200	\$19,554,454	\$6,227,254
FY2023-24	\$11,994,480	\$14,367,247	\$2,372,767
FY2024-25	\$10,795,032	\$15,539,643	\$4,744,611
FY2025-26	\$9,715,529	\$16,985,992	\$7,270,463
<b>Total Savings Over Ten Years</b>			<b>\$50,633,650</b>

### Cost Savings from FDC

The Florida Department of Corrections (FDC) will incur significant cost-savings if direct file is reformed. This is the result of fewer youth incarcerated in adult correctional institutions.

Although incarceration in juvenile facilities is more expensive on a per diem basis as rehabilitative and educational programming provided in the juvenile system has a cost, the use of the juvenile justice system saves money in the long run. This is not only because it is more effective at rehabilitating youth, but also because the lengths of incarceration in the adult system are significantly longer.

PAJ and JMI estimated the cost savings potentially incurred by FDC by using sentencing data on children transferred for an offense committed in FY2009 and FY2010 to build a survival table indicating the percentage of youth who would have remained in prison on a given date. As a result, the cost estimate for each fiscal year reflects not only the number of youth who would be committed to FDC that year, but also the number of youth who would have been committed in a prior year, but still remained in prison. Again, these estimates assume that the number of children retained in the juvenile system as a result of the reform of direct file will decline 10 percent each year, and take into account Florida's 85 percent rule.<sup>11</sup>

The cost savings incurred by FDC are slower to accrue, but exceed \$30 million annually by FY2020.

### Conclusion

The juvenile justice system is more effective at promoting rehabilitation than the adult criminal justice system. Transferring youth to adult court has not been proved to deter crime, and in fact, makes the young offender more violent. Youth sent to the adult criminal justice system were 34 percent more likely to be rearrested for felonies than youth who had been retained in the juvenile justice system.<sup>12</sup>

In the first year of implementation, the reform of direct file and handling more youths in the juvenile justice system will require a \$12 million investment and cost-realignment to expand and pay for rehabilitation and education programs within the Florida Department of Juvenile Justice. This investment will pay for itself in the first four years. Most importantly, reforming direct file will save Florida taxpayers more than \$50 million over 10 years and will improve public safety by treating juveniles in DJJ through sanctions uniquely designed to rehabilitate and decrease the likelihood of their reoffending.

At 16 years old, Kenny Ray was prosecuted as an adult for an accidental shooting that nearly killed his friend, Michelle Stephens. Kenny's mother, said her son accepted a plea deal for sentencing to 15 years in prison.

But since Stephens' son has become entangled in Florida's justice system, she has learned of teens serving even more time in adult prisons. She wonders what good comes out of throwing away a young life, especially when the child doesn't have a strong support system of family, friends, and community. Read more about

Kenny's experience at [www.noplaceforachild.com](http://www.noplaceforachild.com).



reported by the Department of Juvenile Justice.

A review of data from the Florida Department of Corrections revealed that 794 children who committed an offense in FY2010 were not sentenced to prison upon arriving in adult court. Comparing this to publicly available data from the Florida Department of Juvenile Justice reveals that approximately 72 percent of children prosecuted as adults are not initially sentenced to prison.<sup>13</sup> (Researchers focused on data from FY2010 for reasons that will become clear later in this study. Briefly stated, direct file is a decision with long-term consequences. In order to understand the impacts of direct file, it is necessary to track youths' cases for significant periods of time.)

This figure – that 72 percent of children prosecuted as adults are not initially sentenced to prison – illustrates that system administrators determined that the vast majority of children prosecuted did not belong in prison.

One possible explanation as to why many children were not initially sentenced to prison was that judges were intervening and playing a corrective role. It would be reasonable to hypothesize that prosecutorial authority was eventually checked by judicial power serving as independent arbiter. A prosecutor may unilaterally transfer a child out of juvenile court with no oversight. But, once a child gets his or her day in (adult) court, a judge weighs in and, more often than not, makes a determination that a child should not be sent to prison.

This reasoning would make sense, considering most children were charged with non-violent offenses and many were low-risk to reoffend.

However, analysis of the specific court records of youth who appeared in the Department of Corrections data, shows that – like most criminal defendants – children in adult court most often accepted plea bargains. Judges in these cases were not operating as checks or balances. Judges review plea agreements, but only after a prosecutor and defendant reach an agreement. Instead of judicial intervention forcing a change in outcomes, it appears that prosecutors themselves were making the decision to offer a plea to probation.

This begs an important public safety question: Why would a prosecutor use direct file to transfer a child to the adult criminal justice system – ostensibly because of the serious nature of his or her offense, or because she was a threat to public safety – and then offer him or her a plea deal that allowed her to go home minimally supervised?

#### *A Slow Plea to Prison*

To analyze this trend, researchers examined the cases of children who were transferred to adult court and sentenced to probation.<sup>14</sup> A total of 1,044 children who committed an offense in FY2010 were initially sentenced to adult probation after being transferred. Nearly all of these sentences were the result of plea agreements.<sup>15</sup>

Of those, 557 children (53 percent) initially placed on probation were eventually sentenced to adult prison.<sup>16</sup> So, even though a large number of children were initially placed on probation, most ended up in prison eventually. The details of how these children came to be ultimately incarcerated serves as a strong indictment of the use of Florida's direct file statutes.

Most of the youth who were eventually sentenced to prison were sentenced for a new offense. A total of 590 (70 percent of the youth initially sentenced to probation who eventually went to prison) committed another felony offense and were sentenced to prison. The other 50 percent (167) who eventually went to prison were sentenced to prison for a technical violation of probation. Technical violations of probation often include things such as violating curfew, failing to report to one's probation officer, or otherwise violating the rules of supervision. Despite failing to comply with the terms of their supervision, these youth did not commit a new felony offense. Most of these youth were sentenced to prison long after they had been placed on probation: 65 percent were sentenced to prison more than a year afterward; 36 percent were sentenced to prison more than two years afterward; and 18 percent were only sentenced to prison after more than three years on probation.

It is important to note that many children prosecuted as adults eventually go to prison because the adult system sets children up to fail, not because they were originally more likely to reoffend. When they left the juvenile justice system, the children whom prosecutors unilaterally transferred to adult court were, as a group, had lower risk scores than children committed to juvenile residential facilities.<sup>17</sup> The high rate of failure on probation are less likely to be an indication of the dangerousness of youth who were direct filed than they are of challenges youth face on adult probation, which is not designed to account

for the unique needs and vulnerabilities of children. Probation supervision and an adult felony conviction result in relatively high supervision fees, increased difficulty finding employment, limitations regarding where children and their parents can live or attend school, as well as increased social stigma. These new challenges make youth who were moderately likely to reoffend at first more likely to reoffend after being prosecuted as adults.<sup>18</sup>

In effect, a plea agreement resulting in probation for a child prosecuted as an adult functions as a slow plea to prison. Odds are, the youth will eventually be sent to prison, either for committing a new offense or for violating probation. A prosecutor who uses direct file to unilaterally transfer a child to adult court and then offers him or her a plea agreement to probation can be reasonably confident that he or she will eventually secure a prison sentence.

Despite the increased risks to public safety, a slow plea to prison might be a reasonable option for a prosecutor because it expedites their work. Direct file is an action that can be taken unilaterally, with no opposition or oversight. Once in adult court, plea agreements to probation are handled as a matter of course in most jurisdictions and can be resolved quickly without the need for a trial. Later, when the youth violates probation, the task of securing a prison sentence is easier. Instead of a trial, a hearing is all that is required for the court

to revoke probation and send a youth to prison. Within probation revocation hearings, the burden of proof is significantly lower than for a new offense. And, in cases where a youth commits a new offense, the process of securing a plea agreement that results in a prison term is significantly easier if the individual is already on probation.<sup>19</sup>

These data indicate that, when it comes to the use of direct file, prosecutors are exchanging public safety for expediency.

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## What Will Happen When Florida Amends Direct File?

The most obvious outcome of reforming Florida's direct file statutes will be that prosecutors will no longer be able to unilaterally transfer children out of juvenile court. As is the process in nearly every other state, the decision about whether to prosecute a child as an adult will ultimately rest with a judge.

Based on the data discussed above, it is reasonable to assume that the abolition or reform of the direct file law in Florida will significantly diminish the number of children prosecuted as adults. Of course, it is possible that prosecutors may pursue transfer hearings as often as they currently use direct file, but this does not seem likely given that the vast majority (72 percent) of children prosecuted as adults are not initially sentenced to prison. Would prosecutors initiate, prepare for, and litigate a transfer hearing, only to offer a plea bargain to adult probation after transfer? Perhaps, but it wouldn't be the most expedient path.

Research indicates that the number of children prosecuted as adults would drop by a significant number. Instead of being transferred to adult court, more children would be retained in the juvenile justice system, where they would be supervised and rehabilitated by the Department of Juvenile Justice.

### *A Boon to Public Safety*

The retention of more children in the juvenile justice system would be a benefit to public safety. Numerous studies that have examined the effects of transfer to adult court in Florida have concluded that prosecuting children as adults makes them *more* likely to commit future crimes than retaining them in the juvenile justice system.<sup>30</sup> These conclusions are consistent with findings that more than half of children placed on adult probation for an offense committed in FY2016 were eventually sentenced to prison, and that most committed new felony offenses. Clearly, prosecuting children as adults is not the answer to making our communities safer.

An explanation of the differences between the adult and juvenile justice systems will make clear why, in most cases, transfer to adult court makes little sense from a public policy and public safety perspective. As explained previously, approximately 72 percent of children prosecuted as adults are not sentenced to prison, but are instead placed on adult probation or sentenced to other less restrictive punishments. This does little to protect public safety because adult probation in Florida has few rehabilitative elements, and offenders are usually only loosely supervised. Adult probation is not designed to account for the unique needs and challenges facing children.

In addition, the case loads of probation officers are too large to enable close monitoring, mentoring,

or other forms of personal contact that are more appropriate to handling youth successfully. People on adult probation are typically required to report regularly to their supervising officer, adhere to a curfew, and comply with drug testing requirements. These enforcement techniques are an important part of ensuring accountability for offenders, but are insufficient if the societal goals are to ensure appropriate sanctions *and* provide an opportunity for reforming behaviors. They are also required to pay fees on a monthly basis; this is difficult for many probationers, but places special burdens on youth. Given the constraints of high caseloads and relatively modest contact

requirements, youth on adult probation are not generally in daily contact with their probation officers.

Moreover, because adult probation does not typically administer rehabilitative programs, children on adult probation are not subject to sanctions that have the rehabilitative components that are an integral part of the juvenile justice system, such as mandatory Cognitive Behavior Therapy, Multi-Systemic Therapy, and educational interventions that have proved to be effective tools to reduce offending. Under the supervision of the Department of Corrections, youth on probation go minimally monitored and negligibly rehabilitated. With no rehabilitative intervention and the increased challenges youth on adult probation face,

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it should be no surprise that more than half of these youth are eventually sentenced to prison – most for a new felony crime.<sup>21</sup>

The juvenile justice system, on the other hand, requires more intensive supervision and more individualized rehabilitative sanctions. Children who pose significant risks to public safety are not left unmonitored and untreated as they are when placed on adult probation. The Department of Juvenile Justice uses a number of tools – including the Positive Achievement Change Tool Assessment (PACT) and the Dispositional Matrix – to determine what levels of supervision and what types of rehabilitative programs to impose on children. In general, this means that the more likely a youth is to commit an offense, the more closely he or she is supervised and the more intensely he or she is rehabilitated. The efforts of the Department of Juvenile Justice to appropriately sanction and treat delinquent children have proven to be relatively effective: when a child is appropriately supervised, he or she is less likely to recidivate.<sup>22</sup> The individualized aspects of the juvenile justice system are by no means perfect, but they are by far more effective than the one-size-fits-all approach of the adult criminal justice system that by-and-large sets children up to fail.

### Fix Direct File for Justice and Our Safety

It is not always easy to find the right balance between principles of justice and concerns for public safety. Often, policy makers are forced to choose between justice and public safety. They make difficult compromises and do their best to ensure that all citizens are safe and treated justly.

Direct file reform is one of the rare cases that requires no such compromises because the interests of justice and public safety align. The amendment of Florida's direct file statutes will serve justice: it will ensure that Florida children have their day in court, and it will restore checks and balances to court processing by making prosecutors more accountable to judges. Amending Florida's direct file statutes will also serve public safety: by helping to ensure that children are handled according to their individual needs and monitored appropriately it will reduce crime. It is true that prosecutors' jobs may become marginally more burdensome, but rarely does expedience serve justice or public safety.

Today, in the middle of the second decade of the

21st century, policymakers are beginning to reconsider the policies that resulted in mass incarceration, an experiment heretofore untested and unaccountable – and the results of which hobbled state governments with enormous tabs for prison expenditures. Many of these reforms are complicated and politically fraught. Amending Florida's direct file statute is one of the few reforms that is unambiguously positive. This reform will ensure that Florida's children are treated fairly as they are held accountable for crime and delinquency – and it will make Florida safer.

### Endnotes

1. Patrick Griffin, Sean Adelle, Benjamin Adams, and Katie Firestone, "Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting," *Juvenile Offenders and Victims National Report Series* (September 2011), available at <https://www.ojrs.gov/pdffiles1/ojdhp/222131.pdf>; Florida Department of Juvenile Justice, The 2014-2015 *Delinquency Profile*, available at <http://www.djj.state.fl.us/research/delinquency-data/delinquency-profile>; and Human Rights Watch, *Branded for Life: Florida's Prosecution of Children as Adults under its "Direct File" Statute* (2011), available at <http://www.hrw.org/sites/default/files/reports/us0411/FullUpload/2012.pdf>.
2. Human Rights Watch, *Branded for Life*; see also Florida Statutes § 985.557.
3. Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims 2006 National Report* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2006), 111, available at <http://www.ojdhp.gov/ojstatish/tw2006/downloads/NJR2006.pdf>.
4. In some states a motion to transfer jurisdiction to the criminal court can be filed by the child defendant. Some states, including Florida, have punishment schemes called "blended sentencing" that allow adult courts to sentence a child to both juvenile and adult sanctions. The limited data available about blended sentencing in Florida suggests that its use is rare.
5. Florida Department of Juvenile Justice, The 2014-2015 *Delinquency Profile*, available at <http://www.djj.state.fl.us/research/delinquency-data/delinquency-profile>.
6. See, for example, Robert Hahn et al., Department of Health and Human Services, Centers for Disease Control and Prevention, "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services," (November 2007), <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5601a1.htm>; Neelima Arora, Campaign For Youth Justice, *State Trends: Legislative Changes From 2005 To 2010 Removing Youth From The Adult Criminal Justice System* (2011), available at [http://www.campaignforyouthjustice.org/documents/CFYJ\\_State\\_Trends\\_Report.pdf](http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf); Richard Redding, Office of Juvenile Justice and Delinquency Prevention, U.S. Department

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7. The Florida Department of Juvenile Justice has recently implemented a data gathering effort to track the adult system outcomes of children transferred out of its jurisdiction.
8. Michael Baglivio and Mark Russell, *The Florida Department of Juvenile Justice Disposition Matrix: A Validation Study* (February 2014), available at <http://www.djj.state.fl.us/docs/research/the-djj-disposition-matrix-validation-study.pdf>.
9. PAJ and JMI relied on per diem rates and average lengths of stay as reflected in the DJJ's 2014 Comprehensive Accountability Report. Because no aggregate data are available for diversion programs, this analysis uses the figures for PACE, which is the most expensive diversion program in the state. See Florida Department of Juvenile Justice, 2014 *Comprehensive Accountability Report*, available at <http://www.djj.state.fl.us/research/reports/research-reports/car>.
10. Over the past five fiscal years, the number of children transferred to adult court has dropped approximately 16% from one year to the next. This analysis assumed a more conservative figure of 10% annual declines. If rates of annual decline continue at 10%, the state would save \$54 million over ten years. If numbers from FY2013 remained constant, the state of Florida would save \$33 million over ten years.
11. Based on data presented elsewhere in this report, PAJ and JMI assumed that 53% of transferred youth would be incarcerated in adult prison facilities. This analysis assumed that transferred youth would be housed in a youthful offender facility for the first five years of their incarceration, and thereafter in the FDC general population. The per diem figures for these facilities are \$74.60 and \$49.49, respectively. Florida Department of Corrections, FY2013-2014 *Annual Report*, available at <http://www.dc.state.fl.us/pub/annual/1314/budget.html>.
12. Centers for Disease Control and Prevention, Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services. MMWR 2007; 56 (No. RR-9); Richard E. Redding, Juvenile transfer laws: An effective deterrent to delinquency? (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (June 2010).
13. This comparison is not exactly one-to-one for the following reasons. FDC data capture the date of offense, but not the date of transfer. DJJ data are based on the date of transfer. As a result, this is a comparison of marginally different populations. The DOC data capture children who committed an offense in FY2010 and were sentenced to felony probation or prison whereas the DJJ data capture children who were transferred to adult court in FY2010, regardless of when the offense actually took place. If the rates of offending and transfer were constant, this would have no impact on these calculations. Declining rates of both offending and transfer suggest that a true one-to-one comparison would yield a slightly different but largely similar result. If the actual number of youth transferred to adult court for offenses committed in FY2010 were 8% smaller than the number of youth transferred to adult court in FY2010, the percent of children not initially sentenced to prison would be 70% instead of 72%.
14. Between 850 and 950 (or 50-55%) individuals transferred to adult court for offenses they committed as children in FY2010 are absent from statewide datasets. This absence indicates that they were not placed in the custody or under the supervision of the Florida Department of Corrections for their FY2010 juvenile offense. Instead, many were probably acquitted, saw their charges were reduced, sentenced to misdemeanor probation, placed in a pretrial diversion program, or sentenced to time in adult jail. An unknown number of them were eventually sentenced to for an offense committed after their 18th birthday or subsequent to FY2010. Because there is no centralized system that tracks the outcomes of children prosecuted as adults, no exact figures exist.
15. None of the 257 court records examined by Project on Accountable Justice researchers indicated that probation was ordered following a jury trial.
16. The Project on Accountable Justice used data from the Florida Department of Corrections to track youth through July 1, 2015. As is described in this paper, the consequences of Direct File emerge slowly. Many youth who were initially sentenced to probation were subsequently sentenced to prison years after their initial offense.
17. Florida Department of Juvenile Justice, Past Profile FY2013-2014, available at <http://www.djj.state.fl.us/research/delinquency-data/past-profile/past-profile-fy2013-14>.
18. For a discussion of the increased challenges youth prosecuted as adults face (so-called collateral consequences) see Richard Redding, "The Effects of Adjudicating and Sentencing Juveniles as Adults: Research and Policy Implications," *Youth Violence and Juvenile Justice* 1 (April 2005), 128-133.
19. *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).
20. For studies specific to Florida, see Donna Bishop, "Juvenile Offenders in the Adult Criminal Justice System," in Michael Tonry, ed., *Crime and Justice: A Review of Research, Volume 27* (Chicago: University of Chicago Press, 2000), Donna Bishop and Charles Frazier, "Consequences of Transfer," in J. Fagan and F.E. Zimring, eds., *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* (Chicago: University of Chicago Press, 2000), 227-50; Donna Bishop, Charles Frazier, Lonn Lanza-Kaduce, and Lawrence Winner, "The Transfer Of Juveniles To Criminal Court: Does It Make A Difference?" *Crime and Delinquency* 40 (1999), 171-91; Craig Mason et al., "Impacting Re-Arrest Rates Among Youth Sentenced in Adult Court: An Epidemiological Examination of the Juvenile Sentencing Advocacy Project," *Journal of Clinical Child and Adolescent Psychology* 32:2 (2003), 200-214; Lawrence Winner, Lonn Lanza-Kaduce, Donna Bishop, and Charles Frazier, "The Transfer of Juveniles to Criminal Court: Reexamining Recidivism over the Long Term," *Crime and Delinquency* 43 (1997), 548-63; Lonn Lanza-Kaduce, Charles Frazier, and Donna Bishop, "Juvenile



# No Place for a Child: Children in the Adult Criminal Justice System

by Deborah Brodsky

More than 100 years ago our U.S. juvenile justice system was established, with the first court created in Chicago, precisely because it was recognized that *kids are fundamentally different* than adults, and therefore were afforded distinct legal status. Because of the perceived differences, rehabilitation became the intended central focus and approach to children interacting with the justice system. More recently, advancements in neuroscience and developmental psychology have continued to underscore the differences between children and adults in terms of brain development.<sup>1</sup>

However, throughout the years, the nation shifted decidedly toward punitive approaches in an overzealous quest to stem crime. Among the

harshest—and most counterproductive—of these approaches has been states' adoption of legislation that allows children to be prosecuted and tried as adults. Once in adult court, children are subject to the same sanctions as adults, including adult prison, adult probation and adult jail. Moreover, they are commonly excluded from the rehabilitative programs that are available to youth in the juvenile justice system.

Florida prosecutes more children as adults than any other state in the nation. Prosecuting children as adults has failed as an effective public policy. Instead of reducing crime, prosecuting a child as an adult produces crime by making youth more likely to commit crimes in the future. Laws that enable chil-

dren to be prosecuted and punished as adults harm thousands of youth and their families each year, create economic burdens on the State, and make our communities less safe and less secure.

### **The Myth of the Juvenile Superpredator**

In the 1990s, a couple of well-placed social scientists actively promoted the myth that the United States would soon face a growing, imaginary army of youth described as “superpredators.”<sup>67</sup> This flawed theory about juvenile crime emerged based upon erroneous projections of the growth in the juvenile population and its potential impact on crime.<sup>68</sup> This “new breed” of youth criminals was expected to be so violent and so remorseless that they would wreak unspeakable havoc upon society.

Although these predictions unleashed a groundswell of media promotion and public panic they, thankfully, never came true. In fact, the very criminologists responsible for these faulty assertions have since recanted their predictions.<sup>69</sup>

However, before this myth could be thoroughly debunked, the damage had been inflicted. In a matter of years, the nation funneled its unfounded panic deep into public policies and practices based upon fear and not upon what works. Policy makers across the country either dug in their heels or turned increasingly to harsher, more punitive sanctions. In particular, almost every state passed laws that made it easier to try juveniles in adult criminal courts

through juvenile transfer laws.<sup>70</sup>

And like a snowball rolling downhill, these policies have been propelled by inertia and gravity, dragging thousands of youth unnecessarily more deeply into the adult criminal justice system when all the while a more effective alternative has existed: the juvenile justice system. Florida was no exception.

### **Florida's Juvenile Transfer Laws**

Even in a national context of increasingly punitive sanctions toward court-involved youth, Florida stands out as an exceptional case. Florida was a “dug in its heels” state, having responded earlier than many states by putting in place a statute in 1978 that has effectively allowed prosecutors the sole discretion to send children directly into the adult court system. Florida’s “direct file” statute allows youth as young as 14<sup>67</sup> to be sentenced to adult sanctions, including probation, jail and prisons with no judicial review or approval.<sup>68</sup>

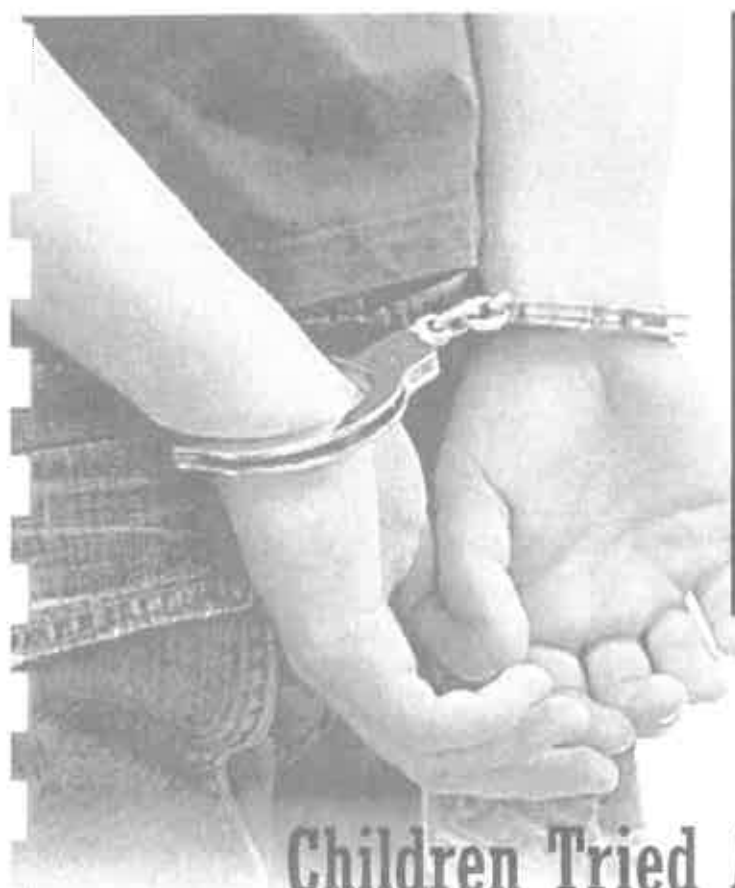
Florida also leads the nation in transferring youth to adult court.<sup>69</sup> Over the past five years, more than 10,000 youth have been tried as adults in Florida, 98 percent of whom have been sent into the adult system via direct file.<sup>70</sup>

On its face, deploying such punitive approaches *might* be defended as an effective public safety strategy; that is, if it worked. But it doesn’t work.

### **The Ineffectiveness of Youth Transfer**

Transferring youth to adult court has not been proved to deter crime,





# Issue Commentary



February 2015

## Children Tried As Adults in Florida

### A COMMON SENSE APPROACH TO ENSURE FAIRNESS AND ACCOUNTABILITY

#### OVERVIEW

Florida prosecutors have virtually unfettered discretion to decide which children to try as adults. While Florida law authorizes "judicial waiver" (a court hearing to determine whether a child should be tried as an adult),<sup>1</sup> more than 98 percent of children tried as adults are "direct filed" in adult court by prosecutors—with no hearing, due process, oversight or input from a judge.<sup>2</sup>

Sole discretion results in wide disparities in how a child's case is handled, depending on where he or she lives. Last year, a child charged with a felony offense was almost twice as likely to be tried as an adult in Duval or Hillsborough County, three times as likely in Palm Beach County, and four times as likely in Escambia County as compared to a child in Miami-Dade.<sup>3</sup>

#### FLORIDA HAS THE HIGHEST NUMBER OF ADULT TRANSFERS REPORTED BY ANY STATE

Over the last five years, more than 10,000 children have been tried as adults in Florida.<sup>4</sup> While the number of youth in the adult system has been on the decline, this largely tracks the overall reduction in juvenile arrests.<sup>5</sup> Still, in 2013-2014 more than 1,300 children were transferred to adult court in Florida, the highest number of adult transfers reported by any state.<sup>6</sup> Countless other children are pressured to accept guilty pleas just to avoid the danger of adult transfer.<sup>7</sup>

Children tried as adults are "branded for life." A child convicted in the adult system becomes a "felon" for life, severely limiting educational and employment opportunities forever. A child loses the right to vote before even acquiring

it. Children should not be placed in jeopardy of such serious consequences without a fair process.

#### CHILDREN RECEIVE MOST EFFECTIVE TREATMENT IN THE JUVENILE JUSTICE SYSTEM

Youth who commit serious crimes should be held accountable in the juvenile justice system. Children in adult facilities do not receive the education, rehabilitative services and treatment they need to ensure they do not re-offend as adults. Prosecuting children in the adult system therefore leads to more crimes, not less.<sup>8</sup> The cost to society is tangible: increased recidivism and incarceration, and decreased employment opportunities and economic self-reliance. Given recent reforms, Florida's Department of Juvenile Justice is uniquely equipped to provide the interventions and controls necessary to hold young offenders accountable and reduce the risk to re-offend.

- **Let a Judge Decide.** Restore judicial waiver to allow a judge to decide whether a particular child should be tried as an adult.
- **Recognize Children are Different.** Given the unique needs and vulnerabilities of children, ensure fair criteria before a child can be tried as an adult, and house children only in juvenile facilities.
- **Do What Works.** Hold children accountable, protect public safety and use taxpayer funds effectively, by treating children in the juvenile justice system, where better outcomes for the individual and community are the most likely.

<sup>1</sup> Although Florida law provides a mechanism for judges to decide which cases should go to adult court (judicial waiver), prosecutors are able to bypass that system by “direct filing” eligible cases in adult court with no judicial review or oversight. See Fla. Stat. §§. 985.556, 985.557.

<sup>2</sup> Human Rights Watch, *Branded for Life: Florida’s Prosecution of Children as Adults* under its “Direct File” Statute (April 2014) (available at <http://pastthrough.hrw.org/doc/16389S/downloader.html>).

<sup>3</sup> Florida Department of Juvenile Justice Delinquency Profile, *supra* at 4. According to DJJ’s data, in Miami-Dade County approximately 4.3% of youth charged with felonies were transferred to adult court (79 of 1,899). That rate was 7% in Hillsborough (99 of 1,436), 7.4% in Duval (70 of 950), 1.2% in Palm Beach (133 of 1,118) and 16% in Escambia (70 of 438).

<sup>4</sup> Florida Department of Juvenile Justice Delinquency Profile, *Adult Transfers Statewide 2009-2010 to 2013-2014* (available at <http://www.djj.state.fl.us/research/delinquency-data/delinquency-profile/delinquency-profile-dashboard>).

<sup>5</sup> *Id.* Over the past five years, juvenile arrests in Florida have declined by 40% and the number of children transferred to adult court has declined by over 60%.

<sup>6</sup> *Id.* See also *Jurisdictional Boundaries: Transfer Trends, Juvenile Justice Geography, Policy, Practice and Statistics* (available at <http://www.jjgpa.org/jurisdictional-boundaries>).

<sup>7</sup> See, e.g., Sanders, Tophet, *Times-Union Investigation: Juvenile Justice: The Florida Times Union* (available at <http://jacksonville.com/files/interactives/juvenilejustice/>) (more than 1,500 children in Duval County have taken “direct commitments” to juvenile facilities to avoid transfer to adult court).

<sup>8</sup> Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, *MMWR* 2007; 56 (No. RR-9); Richard E. Redding, *Juvenile transfer laws: An effective deterrent to delinquency?* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (June 2010).

In conjunction with:



and in fact, makes the young offender more violent.<sup>11</sup> Youth sent to the adult criminal justice system were 34 percent more likely to be rearrested for felonies than youth who had been retained in the juvenile justice system.<sup>12</sup> Juvenile offenders, because of immaturity and developmental differences, are already less likely than adults to think about the consequences of their actions—and almost certainly do not consider the details of Florida law.

Of those youth who do not reoffend, they still face a difficult road, including lifetime barriers to employment, education, housing and even driving privileges. Adult convictions carry the same collateral consequences that they would for someone over the age of 18.<sup>13</sup> Once convicted as an adult felon, a youth may find it difficult to find a job, and may be barred from educational financial aid for postsecondary education.<sup>14</sup> With rare exception, the vast majority of youth will return to our communities. It is in the public interest to ensure all justice-involved youth are engaged in rehabilitative strategies proven to reduce the real human and economic costs of future crime.

### **The Worst of the Worst?**

Proponents of policies that allow

children to be prosecuted as adults insist, despite the facts, that children transferred to the adult court system are the “worst of the worst.” In fact, because the decision to prosecute a child as an adult, in 98 percent of cases, is made unilaterally by a state attorney who works within a

single judicial circuit, where a child lives has much more to do with the outcome than what he or she has done to determine whether he or she will be tried as an adult. A child prosecuted as an adult might have been treated very differently had he or she lived on the other side of a county line.

Moreover, in each of the past five years, the majority of the children transferred to adult court were charged with

non-violent offenses. Between 2008 and 2013, burglary accounted for the single largest number of cases of youth transferred to adult court, making up almost a third of all cases.<sup>15</sup> Property felonies in general made up almost 40 percent of all cases transferred.<sup>16</sup>

In a 2014 report titled, “Branded for Life, Florida’s Prosecution of Children As Adults Under Its ‘Direct File’ Statute,” Human Rights Watch documented such cases like Oliver, who was 16 when he stole two laptops, a BlackBerry, a PalmPilot and \$8 in cash from an empty office at his high school; or Matthew,

***“Over the past five years, more than 10,000 youth have been tried as adults in Florida, 98 percent of whom have been sent into the adult system via direct file.”***



17, who removed a printer from a screen porch and then left it by the side of the house.<sup>17</sup> Both of these youth experienced the confusing and arbitrary nature of the process of direct file adult court jurisdiction. They have also received adult felony convictions, and perhaps other detrimental scars from their exposure to the adult criminal courts, including adult jail time. On any given day, one can imagine youth accused of similar offenses are instead handled in the juvenile justice system.

Analysis from Human Rights Watch also reveals that direct file is not reserved for those who are deemed to be the highest risk for reoffending according to the Florida Department of Juvenile Justice's risk assessment tool.<sup>18</sup> In the five years of data that Human Rights Watch examined, nearly two of every five youths directly charged in adult court were categorized as low- or moderate-risk to reoffend.<sup>19</sup> In fact, in some judicial circuits, low-risk youth were transferred at a higher rate than high risk offenders.<sup>20</sup>

### **Unchecked Government Discretion Results in Disparities and Erodes Adversarial Process**

Each of Florida's 20 state attorneys' offices, representing Florida's 20 judicial circuits, are free to determine their own criteria and practices for making direct file determinations, and the practices vary widely.<sup>21</sup> In fact, research by Human Rights Watch found that no two circuits were the same.<sup>22</sup> This means that

two youth accused of the same crime could have vastly different outcomes merely based on the circuit in which they were prosecuted.

Defense attorneys have compared the process to a "football game with no referee."<sup>23</sup> Because Florida's Direct File statute gives the prosecutor the sole discretion to decide whether to try the case in adult court,<sup>24</sup> the odds are often stacked against the juvenile defendant from the start.

Assigned this unfettered authority, prosecutorial sole discretion can also result in an erosion of the important checks and balances in the adversarial criminal justice process. Though the pressure to plea is present for both adults and children in the U.S. criminal justice system,<sup>25</sup> the threat of adult sanctions, which can involve mandatory minimum sentencing schemes, often forces youth to take an unfavorable plea deal, even if the evidence against them is not solid. Much of what we assume occurs across this disjointed framework comes from observations and limited trend data.

### **The Deficiencies of the Adult System for Youth**

A child charged as an adult in Florida is treated as an adult for all purposes—including detention in adult jails while awaiting trial.<sup>26</sup> This means that even if the youth is later acquitted of the charge, they have been exposed to the dangers of the adult criminal justice environment and denied access to developmentally appropriate features of the juvenile

justice system like education.<sup>27</sup>

There is voluminous evidence of effective specialized strategies for reducing youth recidivism including individual counseling, interpersonal skills training, and mental health treatment, as well as family therapy. These types of programs are a key part of the juvenile justice system, but are missing from the adult criminal justice system.

### What Florida Can Do

As an ongoing challenge, it is a public safety imperative to increase public awareness on the evidence of what works for handling youth. While the number of juvenile transfers to the adult system has decreased 50 percent over the past five years, the overall juvenile crime rate has declined as well.<sup>28</sup> In FY 2013-2014, Florida still sent more than 1,300 youth into the adult criminal court system. To encourage continuing declines, there are also important policy changes to consider going forward:

- ▶ Delete s. 985.557, Florida Statutes, (the direct file statute) and instead rely on the existing judicial waiver statute, s. 985.556, which still ensures the authority of a judge, after an adversarial hearing, to make the decision regarding whether to try a youth in adult court.
- ▶ Stop pretrial confinement of youth in adult jails and allow all youth awaiting trial, even if charged as an adult, to remain in the custody of the Department of Juvenile Justice.
- ▶ Review the offenses that would make a youth eligible for transfer

to adult court. Limit qualifying offenses to those who are violent, or for repeat offenders.

- ▶ Prohibit mandatory minimums from applying to youth who have been charged as adults.
- ▶ Capture, measure and review all data related to sending youth to the adult criminal court. In the current framework, very little is actually known about precisely who, how and why children are transferred to the adult system. A deliberate effort to collect more standardized data across Florida's 20 Judicial Circuits at this key decision making point would be a step toward better policymaking.

Florida must continue, as much as possible, to structure policies and practices that recognize the fundamental developmental challenges—and opportunities—of youth involved in crime and delinquency. From a purely pragmatic perspective, we know what works to rehabilitate court-involved youth. Few of the effective interventions that characterize the juvenile justice system are available for children in the adult criminal justice system. Public safety is not enhanced, but is only compromised when we put a child in a system that increases his or her likelihood of reoffending. ❧

*Deborah Brodsky is Director of The Florida State University Project on Accountable Justice.*

### ENDNOTES

<sup>27</sup> For a more thorough discussion, see the MacArthur Foundation Research Network on Adolescent

Development and Juvenile Justice, at [www.djj.org/content/about\\_us.php](http://www.djj.org/content/about_us.php).

<sup>16</sup>See Haberman, Clyde, "When Youth Violence Spurred Superpredator Fear," *New York Times*, April 2011, accessed at [www.nytimes.com/2011/04/09/us/politics/billing-on-but-recalls-superpredator-threat-of-90s.html?\\_r=0](http://www.nytimes.com/2011/04/09/us/politics/billing-on-but-recalls-superpredator-threat-of-90s.html?_r=0) on February 23, 2015.

<sup>17</sup>Office of Juvenile Justice and Delinquency Prevention, National Center for Juvenile Justice, "Juvenile Arrest Rates by Offense, Sex, and Race (1990-2010)", accessed at [www.ojjdp.gov/ojstatbk/crime/carex/jar\\_2010.xls](http://www.ojjdp.gov/ojstatbk/crime/carex/jar_2010.xls) on February 23, 2015.

<sup>18</sup>See Becker, Elizabeth, "As Ex-Theorist on Young 'Superpredators,' Bush Aide Has Regrets," *New York Times*, February 9, 2001, accessed at [www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html](http://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html), on February 23, 2015.

<sup>19</sup>Redding, Richard, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?" Office of Juvenile Justice and Delinquency Prevention, (2010), accessed at [www.ojjdp.gov/pdf/files1/ojjdp\\_220595.pdf](http://www.ojjdp.gov/pdf/files1/ojjdp_220595.pdf).

<sup>20</sup>14-year-olds in Florida can be charged as adults for arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary and related offenses; aggravated battery; any level or lascivious offense committed upon or in the presence of a person less than 16 years of age; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft; possessing or discharging any weapon or firearm on school property; home invasion robbery; carjacking; and grand theft of a motor vehicle, see s. 985.557, Florida Statutes.

<sup>21</sup>Youth of any age can be indicted for a capital felony under Florida law, see s.985.59, Florida Statutes.

<sup>22</sup>Florida law already provides a mechanism for judges to decide which cases go to adult court, however, direct file circumvents judicial review or oversight of the process, see ss. 985.556 and 985.557, Florida Statutes.

<sup>23</sup>In a number of states, someone is considered an "adult" for criminal purposes at age 17. When these states are not considered, Florida transfers more youth than any other state.

<sup>24</sup>Human Rights Watch, "Branded for Life: Florida's Prosecution of Children As Adults Under Its 'Direct File' Statute," April 2014, accessed at [www.hrw.org/sites/default/files/report/us0414\\_FoUUpload0302.pdf](http://www.hrw.org/sites/default/files/report/us0414_FoUUpload0302.pdf) on February 23, 2015.

<sup>25</sup>See: Centers for Disease Control, "Effects on

Violence of Laws and Policies Facilitating the Transfer of Youth From the Juvenile to the Adult Criminal Justice System" 2009, accessed at [www.cdc.gov/mmwr/PDF/rr/r15600.pdf](http://www.cdc.gov/mmwr/PDF/rr/r15600.pdf) and Redding, Richard, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?", 2010, accessed at [www.ojjdp.gov/pdf/files1/ojjdp\\_220595.pdf](http://www.ojjdp.gov/pdf/files1/ojjdp_220595.pdf).

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

<sup>27</sup>See Legal Action Center, "After Prison: Roadblocks to Reentry: A Report On State Legal Barriers Facing People With Criminal Records," 2004.

<sup>28</sup>Patricia Allard and Melcom Young, Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners, 2002.

<sup>29</sup>Human Rights Watch "Branded for Life: Florida's Prosecution of Children As Adults Under Its 'Direct File' Statute," April 2014, accessed at [www.hrw.org/sites/default/files/report/us0414\\_FoUUpload0302.pdf](http://www.hrw.org/sites/default/files/report/us0414_FoUUpload0302.pdf).

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

<sup>31</sup>*Id.*

<sup>32</sup>*Id.* See Also The Florida Department of Juvenile Justice "Positive Achievement Tool," [www.djj.state.fl.us/djps/partners-providers-staff/court-practice-screen-assessment.pdf](http://www.djj.state.fl.us/djps/partners-providers-staff/court-practice-screen-assessment.pdf) (version 10) (accessed January 20, 2015).

<sup>33</sup>*Id.*

<sup>34</sup>The 1st, 3rd, 4th, 15th, 17th, and 18th circuits all transferred more low-risk youth than high risk youth via direct file between 2008 and 2013. See Human Rights Watch "Branded for Life: Florida's Prosecution of Children as Adults Under Its 'Direct File' Statute," at p 26, Figure 3.

<sup>35</sup>Human Rights Watch "Branded for Life: Florida's Prosecution of Children As Adults Under Its 'Direct File' Statute," April 2014, accessed at [www.hrw.org/sites/default/files/report/us0414\\_FoUUpload0302.pdf](http://www.hrw.org/sites/default/files/report/us0414_FoUUpload0302.pdf).

<sup>36</sup>*Id.*

<sup>37</sup>*Id.*

<sup>38</sup>s.985.557, Florida Statutes.

<sup>39</sup>Human Rights Watch, "An Offer You Can't Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty," December 5, 2013.

<sup>40</sup>s.985.557, Florida Statutes.

<sup>41</sup>Human Rights Watch, "Branded for Life," April 2014.

<sup>42</sup>In Florida, juvenile crime has decreased 40 percent, while transfers to adult court have decreased 50 percent. Still, in 2013-14, 1,093 youth were sent to the adult court system—the highest number by any state in the nation. See 2013-14 Florida Department of Juvenile Justice Delinquency Profile at [www.djj.state.fl.us/research/delinquency-data/delinquency-profile-dashboard](http://www.djj.state.fl.us/research/delinquency-data/delinquency-profile-dashboard) and "Jurisdictional Boundaries: Transfer Trends," Juvenile Justice Geography, Policy, Practice, and Statistics, at [www.jjgpa.org/jurisdictional-boundaries](http://www.jjgpa.org/jurisdictional-boundaries).

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**Florida's Children First**

**Florida Council of Churches**

**Florida Institutional Legal Services**

**Florida Juvenile Justice Association**

**Florida Legal Services**

**Florida Parent Teachers Association**

**Jacksonville Juvenile Justice Coalition**

**James Madison Institute**

**Latino Justice**

**League of United Latin American Citizens**

**National Council of Black Women**

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## **Florida: Unprecedented Media Support for Bills Restricting the "Direct-File" system**

Posted in *Across the Country Campaigns* | *Voices* | *Wednesday, 13 January 2014* | <http://bit.ly/1PfcIHu>  
By Anne-Lise Vray, Juvenile Justice Intern

In Florida, a wave of endorsements for reforming "direct-file" is rising. Local media in the sunshine state are increasingly vocalizing their support for SB 314 and HB 129, two bills that aim to reduce the scope and the impact of direct-filing on youth.

The current "direct-file" system allows prosecutors discretion to unilaterally decide that minors as young as 14 should be tried in adult court. As pointed out by the Miami Herald, this "nefarious practice in Florida continues to help ruin the lives of thousands of young offenders, and it must stop." According to Human Rights Watch, Florida transfers more children into adult court than any other state. Yet, the Ocala Star Banner reminds us that only about 9 percent of the state's juvenile offenders are described as "serious, violent, chronic offenders," while the Pensacola News Journal highlights that "98% of the more than 10,000 children tried in Florida's adult courts in the last 5 years were transferred there WITHOUT the benefit of a hearing before a judge."

The bipartisan bill introduced in the Florida Senate (SB 314) would restrict the practice of direct-filing by requiring judicial sign-off on such juvenile-to-adult court transfers. The companion House bill (HB 129) has been amended to eliminate this central reform, but there are two months during the Florida legislative session (which begins this week) for it to be reconciled with the stronger Senate bill.

This legislation has received great support from Florida media, maybe following the lead of Pensacola Mayor Ashton Hayward, who proclaimed last October Youth Justice Awareness Month. The Times Union in Jacksonville and the Orlando Sentinel agree that direct-file "does not make sense," for kids, taxpayers or public safety, while the Gainesville Sun notes that fixing the direct-file system is a crucial step in the effort to break the school-to-prison pipeline in Florida.

Here is a complete list of recent editorials and articles that were published in Florida-based media to support SB 314 and HB 129 and/or oppose the direct-file practice:

- [Palm Beach Post](#)
- [Miami Herald](#)
- [Ocala Star Banner](#)
- [Times Union \(Jacksonville\)](#)
- [Orlando Sentinel](#)
- [Tampa Bay Times](#)
- [Pensacola News Journal](#)
- [The Gainesville Sun](#)
- [Treasure Coast Palm](#)
- [Tallahassee Democrat](#)
- [Sun Sentinel](#)

The bills have each already passed out of one committee and are awaiting further review. For more information on Florida's efforts to end this practice, go to [www.noplaceloforachild.com](http://www.noplaceloforachild.com).

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: PCS/CS/SB 436 (418634)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee and Senator Simpson

SUBJECT: Terroristic Threats

DATE: February 15, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 436 amends ss. 790.163 and 790.164, F.S., which prohibit making false reports concerning planting a bomb, explosive, or weapon of mass destruction, to also prohibit making a false report concerning use of a firearm in a violent manner. Commission of either of these offenses is a second degree felony, punishable by up to 15 years imprisonment and a \$10,000 fine.

The bill also creates s. 836.12, F.S., which includes a provision requiring a person who is convicted of violating s. 790.163, F.S., or s. 790.164, F.S., to pay restitution for all costs and damages caused by an evacuation that results from the violation if it:

- Caused the occupants of the building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations; or
- Involved a threat against a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official; or a family member of one of the identified persons.

Newly created s. 836.12, F.S., also makes it unlawful for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing, terror or the evacuation of a building, place of assembly, or facility of public transportation. The offense does not have a specified penalty.



The Criminal Justice Impact Conference has not reviewed the bill in its current form. However, it appears that the bill likely will result in an indeterminate increase in the prison population.

The bill has an effective date of July 1, 2016.

## **II. Present Situation:**

### **Threat to Throw, Project, Place or Discharge any Destructive Device**

Section 790.162, F.S., makes it a second degree felony<sup>1</sup> if a person threatens to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person.

### **False reports concerning planting bomb, explosive, or weapon of mass destruction**

Section 790.163, F.S., makes it a second degree felony if a person makes a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or other deadly explosive, or weapon of mass destruction.<sup>2</sup> Persons who are convicted of commission of this offense that resulted in the mobilization or action of any law enforcement officer or any state or local agency, may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

### **False reports concerning planting a bomb, explosive, or weapon of mass destruction in, or committing arson against, state-owned property**

Section 790.164, F.S., includes the same elements and has the same penalties as s. 790.163, F.S., but adds the additional element that the threat must relate to property owned by the state or any political subdivision. Additionally, this section prohibits threats concerning any act of arson or other violence to property owned by the state or a political subdivision. This section includes the same provision for restitution that is in s. 790.163, F.S.

### **Planting of “hoax bomb”**

Section 790.165, F.S., makes it a second degree felony if a person, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use or conspires to use, or makes readily accessible to others, a “hoax bomb.”<sup>3</sup>

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<sup>1</sup> A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. *See*, ss. 775.082 and 775.083, F.S.

<sup>2</sup> “Weapon of mass destruction” is defined in s. 790.166(1)(a), F.S., to mean any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; any device or object involving a biological agent or that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life or any biological agent, toxin, vector, or delivery system.

<sup>3</sup> “Hoax bomb” is defined in s. 790.165(1), F.S., to mean any device or object that by its design, construction, content, or characteristics appears to be, or to contain, or is represented to be or to contain a destructive device or explosive but is in fact inoperable.

**Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction**

Section 790.166, F.S., makes it a first degree felony<sup>4</sup> if a person, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use or conspires to use, or makes readily accessible to others, a weapon of mass destruction.<sup>5</sup> The offense is a second degree felony if the device is a hoax weapon of mass destruction.<sup>6</sup>

**False reports of commission of crimes**

Section 817.49, F.S., provides that it is a first degree misdemeanor<sup>7</sup> to willfully impart, convey or cause to be imparted or conveyed to any law enforcement officer false information or reports concerning the alleged commission of any crime under Florida law, knowing the information to be false in that no such crime had actually been committed.

**Threats; extortion**

Section 836.05, F.S., provides that it is a second degree felony to maliciously, by verbal, written, or printed communication, to injure the person or property of another with intent to compel the threatened person, or any other person, to do any act or refrain from doing any act against his or her will.

**Written Threats to Kill or Do Bodily Injury**

Section 836.10, F.S., provides that it is a second degree felony to write or compose and send, or procure the sending of, any written communication containing a threat to kill or do bodily injury to the person to whom the letter is sent or a threat to kill or do bodily injury to the family of the person to whom such letter or communication is sent.

**False reports to law enforcement authorities**

Section 837.05, F.S., provides that it is a first degree misdemeanor to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime. The penalty may be enhanced to a third degree felony under certain circumstances.

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<sup>4</sup> A first degree felony is punishable by up to 30 years in state prison and a fine of up to \$10,000. *See* ss. 775.082 and 775.083, F.S.

<sup>5</sup> For purposes of this section, the term “weapon of mass destruction” does not include self defense devices that are lawfully possessed or used for self protection.

<sup>6</sup> “Hoax weapon of mass destruction” is defined in s. 790.166(1)(b), F.S., to mean any device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be, constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction which does not meet the definition of a weapon of mass destruction or which does not actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system prohibited by this section.

<sup>7</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. *See*, ss. 775.082, and 775.083, F.S.

### **Corruption by threat against public servants**

Section 838.021, F.S., makes it a felony to unlawfully harm or threaten to harm any public servant,<sup>8</sup> his or her immediate family, or any other person whose welfare the public servant is interested with the intent or purpose of:

- Influencing the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation or performance of a public duty<sup>9</sup>;
- Causing or inducing the public servant to use or exert, or procure the use of exertion of any influence upon or with any other public servant regarding any act or omission which the defendant believes to be or the public servant represents as being, within the official discretion of the public servant, in violation or performance of a public duty.<sup>10</sup>

Prosecution under this section does not require allegation or proof that:

- The public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way;
- That the public servant had assumed office;
- That the matter was properly pending before him or her or might by law properly be brought before him or her;
- That the public servant possessed jurisdiction over the matter; or
- That his or her official action was necessary to achieve the person's purpose.<sup>11</sup>

It is a second degree felony if the defendant actually does harm or a third degree felony<sup>12</sup> if the defendant threatens harm.

### **Breach of the peace; disorderly conduct**

Section 877.03, F.S., provides that it is a second degree misdemeanor<sup>13</sup> to "... engage in such conduct as to constitute a breach of the peace or disorderly conduct." The Florida Supreme Court has narrowed the scope of the conduct that is prohibited under this section:

In light of these considerations, we now limit the application of Section 877.03 so that it shall hereafter only apply either to words which "by their very utterance ... inflict injury or tend to incite an immediate breach of the peace," or to words, known to be false, reporting some physical hazard in circumstances where such a report creates a clear and present danger of bodily harm to others. We construe the statute so that no words except "fighting words" or words like shouts of "fire" in a crowded theatre fall within its proscription, in order to avoid the constitutional

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<sup>8</sup> Section 838.021, F.S.

<sup>9</sup> Section 838.021(1)(a), F.S.

<sup>10</sup> Section 838.021(1)(b), F.S.

<sup>11</sup> Section 838.021(2), F.S.

<sup>12</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. *See*, ss. 775.082 and 775.083, F.S.

<sup>13</sup> A second degree misdemeanor is punishable by up to sixty days in county jail and a \$500 fine. *See*, ss. 775.082, and 775.083, F.S.

problem of overbreadth, and “the danger that a citizen will be punished as a criminal for exercising his right of free speech.”<sup>14</sup>

### **Disruption of educational institutions or school boards**

Section 877.13, F.S., provides that it is a second degree misdemeanor to knowingly disrupt or interfere with the lawful administration or functions of any educational institution, school board, or activity on school board property; to knowingly interfere with the attendance of any other school pupil or school employee in a school or classroom; or to engage in any school campus or school function disruption or disturbance which interferes with the educational processes or with the orderly conduct of a school campus, school, or school board function or activity on school board property.

The Pasco Sheriff’s Office (Sheriff’s Office) asserts that this bill would address issues that existing statutes do not, including clearly prohibiting threats to do harm by use of firearms. According to the Sheriff’s Office, the bill’s inclusion of all types of threats, application even if a specific victim is not identified in the threat, and inclusion of threats that are made with the intent to cause terror or evacuation of a location, would give law enforcement the necessary tools to bring charges when these types of events take place.

### **III. Effect of Proposed Changes:**

**Sections 1 and 2** of the bill amend ss. 790.163 and 790.164, F.S., which prohibit making false reports concerning planting a bomb, explosive, or weapon of mass destruction, to also prohibit making a false report concerning use of a firearm in a violent manner.<sup>15</sup> Commission of either of these offenses is a second degree felony, punishable by up to 15 years imprisonment and a \$10,000 fine.

**Section 3** of the bill creates s. 836.12, F.S., relating to terroristic threats. Subsection (1) defines “law enforcement officer” to mean the same as the definition of the term in s. 943.10, F.S., and defines “family member” to be “an individual related to the person by blood or marriage; or an individual to whom the person stands in loco parentis.”<sup>16</sup>

Subsection (2) makes it unlawful to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing:

- Terror; or
- Evacuation of a building, place of assembly, or facility of public transportation.

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<sup>14</sup> *State v. Saunders*, 339 So.2d 641, 644 (Fla.1976) (internal citations omitted) (quoting *White v. State*, 330 So.2d 3, 7 (Fla.1976), and *Spears v. State*, 337 So.2d 977, 980 (Fla.1976)).

<sup>15</sup> Section 790.194, F.S., differs from s. 790.193, F.S., by adding an additional element of proof that the threat was made against property owned by the state or a political subdivision. As worded, the amendment to s. 790.194, F.S., does not apply the additional element of proof to false reports concerning use of a firearm in a violent manner. Therefore, there is no difference between the elements of proof for the two offenses with regard to false reports concerning use of a firearm in a violent manner.

<sup>16</sup> “In loco parentis” means “in the place of a parent.” MERRIAM-WEBSTER, *In Loco Parentis*, <http://www.merriam-webster.com/dictionary/in%20loco%20parentis> (last visited February 5, 2016).

The bill does not provide any penalty for this unlawful act.<sup>17</sup>

Subsection (3) creates a new criminal offense that applies to a person who violates s. 790.163, F.S., or s. 790.164, F.S., if the violation:

- Causes occupants of the building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations; or
- Involves a threat against a law enforcement officer, a state attorney or assistant state attorney, a firefighter, a judge, an elected official, or any of their family members.

Like ss. 790.163 and 790.164, F.S., the new offense created in subsection (3) is a second degree felony.<sup>18</sup>

Subsection (4) provides that a person who is convicted of violating subsection (3) must pay restitution for all costs and damages caused by an evacuation resulting from the violation, in addition to any other restitution or penalty provided by law.

**Section 4** of the bill amends s. 921.0022, the Criminal Punishment Code Offense Severity Ranking Chart (Ranking Chart), to add false reports concerning use of a firearm in a violent manner to the description of ss. 790.163 and 790.164, F.S.

**Sections 5 and 6** of the bill republish ss. 1006.07(2)(m) and 1006.13(2)(b), F.S., respectively, to incorporate amendments made to s. 790.163, F.S.

The bill has an effective date of July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

<sup>17</sup> The unlawful act is not a crime because no penalty is specified and the new offense is not designated as a felony or a misdemeanor. If considered a noncriminal violation, the unlawful act is punishable by a fine not exceeding \$500. *See* ss. 775.08 and 775.083, F.S.

<sup>18</sup> Section 921.0022, F.S., the Criminal Punishment Code Offense Severity Ranking Chart (Ranking Chart), ranks criminal offenses from Levels 1 through 10, with Level 1 including the least severe offenses and Level 10 including the most severe offenses. The rankings assign sentencing points that are used to calculate the lowest permissible sentence that may be imposed for an offense. Section 790.163 is ranked in Level 5 of the Ranking Chart and s. 790.164, F.S., is ranked in Level 6. The new offense is not listed in the Ranking Chart, and therefore is ranked in Level 4 by operation of s. 921.0023, F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

PCS/CS/ differs significantly from CS/SB 436. As a result, the Criminal Justice Impact Conference (CJIC) estimate for HB 257, which is similar to CS/SB 436, can no longer be used to estimate the fiscal impact of PCS/CS/SB 436. The new criminal offenses created in ss. 790.163 and 790.164, F.S., by the proposed committee substitute may be chargeable as crimes under current law in many factual situations. However, it is not possible to project how often the new offenses would be charged or, if there is an existing offense, whether charging the criminal activity as a violation of ss. 790.163 or 790.164, F.S., would result in an increase in the penalty. Therefore, it appears that PCS/CS/SB 436 will result in an indeterminate increase in the prison population.

**VI. Technical Deficiencies:**

- As noted in Section III of this Analysis, no penalty is specified for the unlawful activity proscribed in s. 836.12 (2), F.S., created by the bill, and the unlawful activity is not designated as a felony or a misdemeanor. Therefore, the unlawful activity is not a crime but may be a noncriminal violation punishable by a fine not exceeding \$500. *See* ss. 775.08 and 775.083, F.S.
- The unlawful act created in new s. 836.12(2), F.S., does not include definitions of the terms “terror” or “facility of public transportation.” As a result, an offender who is charged with committing the unlawful act may claim that the statute is unconstitutional because of vagueness. *See, e.g., Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).
- Proving a violation of the second degree felony offense created in new s. 836.12(3), F.S., requires proof that the offender violated either s. 790.693 or 790.694, F.S., plus proof of an additional element. However, the new offense would be ranked as a less severe offense on the Ranking Chart.
- Consideration should be given to amending ss. 1006.07(2)(m) and 1006.13(3)(b), F.S., to include a reference to s. 790.164, F.S., which applies to threats involving school property.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 790.163, and creates section 836.12, of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 11, 2016:**

- Amends ss. 790.163 and 790.164, F.S., to prohibit making a false report concerning use of a firearm in a violent manner.
- Creates s. 835.12, F.S., which:
  - Expands the requirement to pay restitution for costs and damages that result from a violation of s. 790.163 or s. 790.164, F.S.; and
  - Makes threatening to commit a crime of violence in specified circumstances an unlawful act.

**CS by Criminal Justice on January 25, 2016:**

- Adds and clarifies definitions.
- Revises the prohibition in the bill to apply to threats to commit a crime of violence with intent to cause, or reckless disregard for causing terror or the evacuation of a public building, place of assembly, or facility of public transportation.
- Clarifies the requirement for persons convicted under the bill to pay restitution.
- The effective date is changed from October 1, 2016 to July 1, 2016.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
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Appropriations Subcommittee on Criminal and Civil Justice  
(Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 790.163, Florida Statutes, is amended to  
read:

790.163 False report concerning ~~about~~ planting a bomb, an  
explosive, or a weapon of mass destruction, or concerning use of  
firearms in a violent manner; penalty.—

(1) It is unlawful for any person to make a false report,





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with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction as defined in s. 790.166, or concerning the use of firearms in a violent manner against a person or persons. A person who violates this subsection; ~~and any person convicted thereof~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Notwithstanding any other law, adjudication of guilt or imposition of sentence for a violation of this section may not be suspended, deferred, or withheld. However, the state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals.

(3) Proof that a person accused of violating this section knowingly made a false report is prima facie evidence of the accused person's intent to deceive, mislead, or otherwise misinform any person.

(4) In addition to any other penalty provided by law with respect to any person who is convicted of a violation of this section that resulted in the mobilization or action of any law enforcement officer or any state or local agency, a person convicted of a violation of this section may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

Section 2. Section 790.164, Florida Statutes, is amended to read:



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790.164 False reports concerning planting a bomb,  
explosive, or weapon of mass destruction in, or committing arson  
against, state-owned property, or concerning use of firearms in  
a violent manner; penalty; reward.—

(1) It is unlawful for any person to make a false report,  
with intent to deceive, mislead, or otherwise misinform any  
person, concerning the placing or planting of any bomb,  
dynamite, other deadly explosive, or weapon of mass destruction  
as defined in s. 790.166, ~~or~~ concerning any act of arson or  
other violence to property owned by the state or any political  
subdivision, or concerning the use of firearms in a violent  
manner against a person or persons. A Any person who violates  
~~violating~~ this subsection commits a felony of the second degree,  
punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Notwithstanding any other law, adjudication of guilt or  
imposition of sentence for a violation of this section may not  
be suspended, deferred, or withheld. However, the state attorney  
may move the sentencing court to reduce or suspend the sentence  
of any person who is convicted of a violation of this section  
and who provides substantial assistance in the identification,  
arrest, or conviction of any of his or her accomplices,  
accessories, coconspirators, or principals.

(3) Proof that a person accused of violating this section  
knowingly made a false report is prima facie evidence of the  
accused person's intent to deceive, mislead, or otherwise  
misinform any person.

(4) (a) There shall be a \$5,000 reward for the giving of  
information to any law enforcement agency in the state, which  
information leads to the arrest and conviction of any person



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violating the provisions of this section. Any person claiming such reward shall apply to the law enforcement agency developing the case and be paid by the Department of Law Enforcement from the deficiency fund.

(b) There shall be only one reward given for each case, regardless of how many persons are arrested and convicted in connection with the case and regardless of how many persons submit claims for the reward.

(c) The Department of Law Enforcement shall establish procedures to be used by all reward applicants, and the circuit judge in whose jurisdiction the action occurs shall review all such applications and make final determination as to those applicants entitled to receive an award.

(d) In addition to any other penalty provided by law with respect to any person who is convicted of a violation of this section that resulted in the mobilization or action of any law enforcement officer or any state or local agency, a person convicted of a violation of this section may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

Section 3. Section 836.12, Florida Statutes, is created to read:

836.12 Terroristic threats.—

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

(a) "Family member of a person" means:

1. An individual related to the person by blood or marriage; or

2. An individual to whom the person stands in loco parentis.



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(b) "Law enforcement officer" means:

1. Law enforcement officer as defined in s. 943.10; or

2. Federal law enforcement officer as defined in s.  
901.1505.

(2) It is unlawful for a person to threaten to commit a  
crime of violence with the intent to cause, or with reckless  
disregard for the risk of causing:

(a) Terror; or

(b) The evacuation of a building, place of assembly, or  
facility of public transportation.

(3) A person who violates s. 790.163 or s. 790.164 commits  
a felony of the second degree, punishable as provided in s.  
775.082, s. 775.083, or s. 775.084, if the violation:

(a) Causes the occupants of a building, place of assembly,  
or facility of public transportation to be diverted from their  
normal or customary operations;

(b) Involves a threat against a law enforcement officer, a  
state attorney or assistant state attorney, a firefighter, a  
judge, or an elected official; or

(c) Involves a threat against a family member of a person  
identified in paragraph (b).

(4) A person convicted of violating subsection (3) shall,  
in addition to any other restitution or penalty provided by law,  
pay restitution for all costs and damages caused by an  
evacuation resulting from the criminal violation.

Section 4. Paragraphs (e) and (f) of subsection (3) of  
section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking  
chart.—



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127 (3) OFFENSE SEVERITY RANKING CHART

128 (e) LEVEL 5

129

Florida

Felony

Statute

Degree

Description

130

316.027 (2) (a)

3rd

Accidents involving  
personal injuries other  
than serious bodily  
injury, failure to stop;  
leaving scene.

131

316.1935 (4) (a)

2nd

Aggravated fleeing or  
eluding.

132

322.34 (6)

3rd

Careless operation of  
motor vehicle with  
suspended license,  
resulting in death or  
serious bodily injury.

133

327.30 (5)

3rd

Vessel accidents  
involving personal  
injury; leaving scene.

134

379.367 (4)

3rd

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



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135

379.3671  
(2) (c) 3.

3rd

Willful molestation,  
possession, or removal  
of a commercial  
harvester's trap  
contents or trap gear by  
another harvester.

136

381.0041 (11) (b)

3rd

Donate blood, plasma, or  
organs knowing HIV  
positive.

137

440.10 (1) (g)

2nd

Failure to obtain  
workers' compensation  
coverage.

138

440.105 (5)

2nd

Unlawful solicitation  
for the purpose of  
making workers'  
compensation claims.

139

440.381 (2)

2nd

Submission of false,  
misleading, or  
incomplete information  
with the purpose of  
avoiding or reducing  
workers' compensation  
premiums.

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624.401 (4) (b) 2. 2nd Transacting insurance  
without a certificate or  
authority; premium  
collected \$20,000 or  
more but less than  
\$100,000.

626.902 (1) (c) 2nd Representing an  
unauthorized insurer;  
repeat offender.

790.01 (2) 3rd Carrying a concealed  
firearm.

790.162 2nd Threat to throw or  
discharge destructive  
device.

790.163 (1) 2nd False report of bomb,  
~~deadly~~ explosive, ~~or~~  
weapon of mass  
destruction, or use of  
firearms in violent  
manner.

790.221 (1) 2nd Possession of short-  
barreled shotgun or  
machine gun.



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147	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
148	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
149	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
150	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
151	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
152	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more





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			specified acts.
153	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
154	812.131 (2) (b)	3rd	Robbery by sudden snatching.
155	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
156	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
157	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
158	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
159			



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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.

817.625 (2) (b) 2nd Second or subsequent  
fraudulent use of  
scanning device or  
reencoder.

825.1025 (4) 3rd Lewd or lascivious  
exhibition in the  
presence of an elderly  
person or disabled  
adult.

827.071 (4) 2nd Possess with intent to  
promote any photographic  
material, motion  
picture, etc., which  
includes sexual conduct  
by a child.



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163	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
164	839.13 (2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
165	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
166	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
167	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
168			



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169	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
170	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
171	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
172	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).
	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.,



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173

893.13(1)(d)1.

1st

(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.

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.

174

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



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specified business site.

175

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.

176

893.13(4)(b)

2nd

Deliver to minor  
cannabis (or other s.  
893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3.,  
(2)(c)5., (2)(c)6.,  
(2)(c)7., (2)(c)8.,  
(2)(c)9., (3), or (4)  
drugs).

177

893.1351(1)

3rd

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

178

179

180

(f) LEVEL 6

181



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	Florida Statute	Felony Degree	Description
182	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
183	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
184	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
185	499.0051(3)	2nd	Knowing forgery of pedigree papers.
186	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
187	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
188	775.0875(1)	3rd	Taking firearm from law enforcement officer.
189	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.



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190	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
191	784.041	3rd	Felony battery; domestic battery by strangulation.
192	784.048 (3)	3rd	Aggravated stalking; credible threat.
193	784.048 (5)	3rd	Aggravated stalking of person under 16.
194	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
195	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
196	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
197	784.081 (2)	2nd	Aggravated assault on specified official or employee.
198	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
199			





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200	784.083 (2)	2nd	Aggravated assault on code inspector.
201	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
202	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
203	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
204	790.164 (1)	2nd	False report <u>concerning bomb, <del>of</del> deadly explosive, weapon of mass destruction, <del>or</del> act of arson or violence to state property, or use of firearms in violent manner.</u>
205	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
206	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
	794.05 (1)	2nd	Unlawful sexual activity with



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specified minor.

207

800.04 (5) (d)                      3rd      Lewd or lascivious molestation;  
victim 12 years of age or older  
but less than 16 years of age;  
offender less than 18 years.

208

800.04 (6) (b)                      2nd      Lewd or lascivious conduct;  
offender 18 years of age or older.

209

806.031 (2)                          2nd      Arson resulting in great bodily  
harm to firefighter or any other  
person.

210

810.02 (3) (c)                      2nd      Burglary of occupied structure;  
unarmed; no assault or battery.

211

810.145 (8) (b)                      2nd      Video voyeurism; certain minor  
victims; 2nd or subsequent  
offense.

212

812.014 (2) (b) 1.                      2nd      Property stolen \$20,000 or more,  
but less than \$100,000, grand  
theft in 2nd degree.

213

812.014 (6)                          2nd      Theft; property stolen \$3,000 or  
more; coordination of others.

214

812.015 (9) (a)                      2nd      Retail theft; property stolen \$300



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or more; second or subsequent  
conviction.

215

812.015 (9) (b)                      2nd      Retail theft; property stolen  
\$3,000 or more; coordination of  
others.

216

812.13 (2) (c)                      2nd      Robbery, no firearm or other  
weapon (strong-arm robbery).

217

817.4821 (5)                      2nd      Possess cloning paraphernalia with  
intent to create cloned cellular  
telephones.

218

825.102 (1)                      3rd      Abuse of an elderly person or  
disabled adult.

219

825.102 (3) (c)                      3rd      Neglect of an elderly person or  
disabled adult.

220

825.1025 (3)                      3rd      Lewd or lascivious molestation of  
an elderly person or disabled  
adult.

221

825.103 (3) (c)                      3rd      Exploiting an elderly person or  
disabled adult and property is  
valued at less than \$10,000.

222

827.03 (2) (c)                      3rd      Abuse of a child.



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223			
	827.03 (2) (d)	3rd	Neglect of a child.
224			
	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
225			
	836.05	2nd	Threats; extortion.
226			
	836.10	2nd	Written threats to kill or do bodily injury.
227			
	843.12	3rd	Aids or assists person to escape.
228			
	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
229			
	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
230			
	847.0135 (2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
231			
	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily



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injury.

944.35(3)(a)2. 3rd Committing malicious battery upon  
or inflicting cruel or inhuman  
treatment on an inmate or offender  
on community supervision,  
resulting in great bodily harm.

944.40 2nd Escapes.

944.46 3rd Harboring, concealing, aiding  
escaped prisoners.

944.47(1)(a)5. 2nd Introduction of contraband  
(firearm, weapon, or explosive)  
into correctional facility.

951.22(1) 3rd Intoxicating drug, firearm, or  
weapon introduced into county  
facility.

Section 5. For the purpose of incorporating the amendment  
made by this act to section 790.163, Florida Statutes, in a  
reference thereto, paragraph (m) of subsection (2) of section  
1006.07, Florida Statutes, is reenacted to read:

1006.07 District school board duties relating to student  
discipline and school safety.—The district school board shall  
provide for the proper accounting for all students, for the



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attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(2) CODE OF STUDENT CONDUCT.—Adopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools and distribute the appropriate code to all teachers, school personnel, students, and parents, at the beginning of every school year. Each code shall be organized and written in language that is understandable to students and parents and shall be discussed at the beginning of every school year in student classes, school advisory council meetings, and parent and teacher association or organization meetings. Each code shall be based on the rules governing student conduct and discipline adopted by the district school board and shall be made available in the student handbook or similar publication. Each code shall include, but is not limited to:

(m) Notice that any student who is determined to have made a threat or false report, as defined by ss. 790.162 and 790.163, respectively, involving school or school personnel's property, school transportation, or a school-sponsored activity will be expelled, with or without continuing educational services, from the student's regular school for a period of not less than 1 full year and referred for criminal prosecution. District school boards may assign the student to a disciplinary program or second chance school for the purpose of continuing educational services during the period of expulsion. District school superintendents may consider the 1-year expulsion requirement on a case-by-case basis and request the district school board to modify the requirement by assigning the student to a



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disciplinary program or second chance school if it is determined to be in the best interest of the student and the school system.

Section 6. For the purpose of incorporating the amendment made by this act to section 790.163, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 1006.13, Florida Statutes, is reenacted to read:

1006.13 Policy of zero tolerance for crime and victimization.—

(3) Zero-tolerance policies must require students found to have committed one of the following offenses to be expelled, with or without continuing educational services, from the student's regular school for a period of not less than 1 full year, and to be referred to the criminal justice or juvenile justice system.

(b) Making a threat or false report, as defined by ss. 790.162 and 790.163, respectively, involving school or school personnel's property, school transportation, or a school-sponsored activity.

District school boards may assign the student to a disciplinary program for the purpose of continuing educational services during the period of expulsion. District school superintendents may consider the 1-year expulsion requirement on a case-by-case basis and request the district school board to modify the requirement by assigning the student to a disciplinary program or second chance school if the request for modification is in writing and it is determined to be in the best interest of the student and the school system. If a student committing any of the offenses in this subsection is a student who has a



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disability, the district school board shall comply with  
applicable State Board of Education rules.

Section 7. This act shall take effect October 1, 2016.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to relating to the crime of making  
threats of terror or violence ; amending ss. 790.163  
and 790.164, F.S.; creating the crime of falsely  
reporting the use of firearms in a violent manner  
against a person or persons; creating s. 836.12, F.S.;  
defining the terms "family member of a person" and  
"law enforcement officer"; providing a criminal  
penalty for a violation of specified provisions under  
certain circumstances; requiring payment of  
restitution; amending s. 921.0022, F.S.; conforming  
provisions to changes made by the act; reenacting ss.  
1006.07(2)(m) and 1006.13(3)(b), F.S., relating to  
district school board duties relating to student  
discipline and school safety and a policy of zero  
tolerance for crime and victimization, respectively,  
to incorporate the amendment made to s. 790.163, F.S.,  
in references thereto; providing an effective date.





881368

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/15/2016	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on Criminal and Civil Justice  
(Bradley) recommended the following:

**Senate Amendment to Amendment (310752) (with title  
amendment)**

Delete lines 89 - 122  
and insert:

Section 3. Section 836.12, Florida Statutes, is created to  
read:

836.12 Threats against law enforcement.—

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

(a) "Family member of a person" means:



881368

11       1. An individual related to the person by blood or  
12 marriage; or

13       2. An individual to whom the person stands in loco  
14 parentis.

15       (b) "Law enforcement officer" means:

16       1. Law enforcement officer as defined in s. 943.10; or

17       2. Federal law enforcement officer as defined in s.  
18 901.1505.

19       (2) Any person who threatens a law enforcement official, or  
20 his or her family, with death or serious bodily harm, commits a  
21 misdemeanor of the first degree.

22  
23 ===== T I T L E   A M E N D M E N T =====

24 And the title is amended as follows:

25       Delete lines 321 - 322

26 and insert:

27       certain circumstances; amending s. 921.0022, F.S.;

28       conforming

By the Committee on Criminal Justice; and Senator Simpson

591-02535-16

2016436c1

A bill to be entitled  
An act relating to terroristic threats; creating s.  
836.12, F.S.; providing definitions; providing that a  
person commits the crime of terroristic threats if he  
or she threatens to commit a crime of violence under  
certain circumstances; providing criminal penalties;  
requiring payment of restitution; providing an  
effective date.

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

Section 1. Section 836.12, Florida Statutes, is created to  
read:

836.12 Terroristic threats.-

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

(a) "Facility of public transportation" means a public conveyance and any area, structure, or device which is used to support, guide, control, permit, or facilitate the movement, starting, stopping, takeoff, landing, or servicing of a public conveyance, or the loading or unloading of passengers, freight, or goods. For purposes of this paragraph, the term "public conveyance" includes a passenger or freight train, airplane, bus, truck, car, boat, tramway, gondola, lift, elevator, escalator, or other device used for the public carriage of persons or property.

(b) "Family member of a person" means:

1. An individual related to the person by blood or marriage;

2. An individual living in the person's household or having the same legal residence as the person;

3. An individual who is engaged to be married to the person, or who holds himself or herself out as, or is generally

591-02535-16

2016436c1

known as, an individual whom the person intends to marry; or

4. An individual to whom the person stands in loco parentis.

(c) "Instructional personnel" has the same meaning as provided in s. 1012.01.

(d) "Law enforcement officer" means a current or former:

1. Law enforcement officer, correctional officer, correctional probation officer, part-time law enforcement officer, part-time correctional officer, part-time correctional probation officer, auxiliary law enforcement officer, auxiliary correctional officer, or auxiliary correctional probation officer, as those terms are respectively defined in s. 943.10, or county probation officer;

2. Employee or agent of the Department of Corrections who supervises or provides services to inmates;

3. Officer of the Florida Commission on Offender Review;

4. Federal law enforcement officer as defined in s. 901.1505; or

5. Law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

(2) It is unlawful for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing:

(a) Terror; or

(b) The evacuation of a building, place of assembly, or facility of public transportation.

(3) Except as provided in subsection (4), a person who violates subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

591-02535-16

2016436c1

62       (4) A person who violates subsection (2) commits a felony  
63 of the second degree, punishable as provided in s. 775.082, s.  
64 775.083, or s. 775.084, if the violation:

65       (a) Causes the occupants of a building, place of assembly,  
66 or facility of public transportation to be diverted from their  
67 normal or customary operations;

68       (b) Involves a threat against instructional personnel, a  
69 law enforcement officer, state attorney or assistant state  
70 attorney, firefighter, judge, or elected official; or

71       (c) Involves a threat against a family member of a person  
72 identified in paragraph (b).

73       (5) A person convicted of violating subsection (2) shall,  
74 in addition to any other restitution or penalty provided by law,  
75 pay restitution for all costs and damages caused by an  
76 evacuation resulting from the criminal conduct.

77       Section 2. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Community Affairs, *Chair*  
Environmental Preservation and Conservation,  
*Vice Chair*  
Appropriations Subcommittee on General Government  
Finance and Tax  
Judiciary  
Transportation

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

### SENATOR WILTON SIMPSON

18th District

January 27, 2016

The Honorable Joe Negron  
Senate Committee Criminal & Civil Justice Appropriations, Chair  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that Senate Bill 436, relating to *Terroristic Threats*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Simpson", with a stylized flourish at the end.

Wilton Simpson, State Senator, 18<sup>th</sup> District

CC: Senate Committee Criminal & Civil Justice Appropriations Staff

#### REPLY TO:

- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- ☐ Post Office Box 938, Brooksville, Florida 34605
- ☐ Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16  
Meeting Date

436  
Bill Number (if applicable)

310752  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Erika Slizewski-Smith

Job Title Surviving spouse of Deputy Christopher Smith

Address \_\_\_\_\_ Phone \_\_\_\_\_

Street

Tallahassee FL 32311  
City State Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

436

*Bill Number (if applicable)*

Topic Terroristic Threats

*Amendment Barcode (if applicable)*

Name Chris Nocco

Job Title Sheriff

Address 8700 Citizens Dr

Phone 727-277-6226

*Street*

New Port Richey

FL

34655

Email cdaniels@pascosheriff.org

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Pasco County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

436

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Spencer Pylant

Job Title Communications + Gov't Relations Liaison

Address 7227 Land O'Lakes Blvd.  
Street

Phone 813-714-2259

Land O'Lakes FL 34638  
City State Zip

Email spylant@pasco.k12.fl.us

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Pasco County Schools

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

FEB. 11, 2016  
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

CS/SB 436  
Bill Number (if applicable)

Topic TERRORIST THREATS

Amendment Barcode (if applicable)

Name BILL GRAHAM

Job Title Executive Director, FLA. ED. NEGOTIATORS

Address 203 SOUTH MONROE ST. Phone 850-414-2578  
Street

TALLAHASSEE FL 32301 Email graham@fsb2.org  
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FLA. SCHOOL BOARDS ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2014

Meeting Date

SB 434

Bill Number (if applicable)

Topic Terroristic Threats

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard St.

Phone \_\_\_\_\_

Street

Tallahassee

FL

32301

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Police Benevolent Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16  
Meeting Date

436  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Enka Slnewski-Smith

Job Title Surviving spouse of Deputy Christopher Smith

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

Tallahassee FL 32311  
City State Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

436

Bill Number (if applicable)

Topic Tert

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise

Phone

Street

Largo

City

Fla.

State

33773

Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Pinellas County Florida Government Corruption

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: CS/SB 636

INTRODUCER: Criminal Justice Committee and Senator Benacquisto

SUBJECT: Evidence Collected in Sexual Offense Investigations

DATE: February 11, 2016

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
2. <u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
3. _____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 636 creates s. 943.326, F.S., which addresses the collection and processing of evidence in sexual offense investigations that may contain DNA evidence.

The bill requires that a sexual offense evidence kit collected in a sexual offense investigation be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is received by a law enforcement agency if a report of the sexual offense is made to the agency, or when the victim or his or her representative requests that the evidence be tested.

Testing of the sexual offense evidence kit must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.

A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency approves the kit's destruction.

The victim, or his or her representative, shall be informed of the purpose of testing and of his or her right to demand testing. The victim shall be informed by either the medical provider conducting the physical forensic examination for purposes of evidence collection for a sexual offense evidence kit or, if no kit is collected, a law enforcement agency that collects *other* DNA evidence associated with the offense.

By January 1, 2017, the Florida Department of Law Enforcement (FDLE) and each lab within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, must adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence obtained in connection with an alleged sexual offense.

The guidelines and procedures must include:

- Standards for packaging evidence for submission to the laboratories for testing;
- What evidence must be submitted for testing, which would include a collected sexual offense evidence kit and possibly other evidence related to the crime scene;
- Timeframes for evidence submission including the 30 day deadline for collected sexual offense evidence kits as set forth in the bill;
- Timeframes for evidence analysis including the bill's requirement that testing of sexual offense evidence kits must be completed no later than 120 days after submission; and
- Timeframes for evidence comparison to DNA databases.

The bill does not have significant state fiscal impact.

The bill becomes effective July 1, 2016.

## **II. Present Situation:**

### **Forensic Evidence Collection in Sexual Assault Cases, Submission for DNA Testing**

A sexual assault kit (SAK), is a medical kit used to collect evidence from the body and clothing of a victim of rape or other sexual offense during a forensic physical examination. The kit contains tools such as swabs, tubes, glass slides, containers, and plastic bags. These items are used to collect and preserve fibers from clothing, hair, and bodily fluids, which can help identify DNA and other forensic evidence left by a perpetrator.<sup>1</sup>

In Florida, a victim of certain sexual offenses may have a forensic physical examination conducted by a healthcare provider for free regardless of whether the victim reports the offense to law enforcement authorities.

Pursuant to s. 960.28(2), F.S., up to \$500 for expenses for a forensic physical examination must be paid for by the Crime Victims' Services Office within the Department of Legal Affairs (DLA) for a victim of sexual battery as defined in ch. 794, F.S., or a lewd or lascivious offense as defined in ch. 800, F.S. Such payment is made regardless of whether the victim is covered by health or disability insurance and whether the victim participates in the criminal justice system or cooperates with law enforcement.<sup>2</sup> Information received or maintained by the DLA which identifies an alleged victim who seeks payment of such medical expenses is confidential and exempt from the provisions of s. 119.07(1), F.S.<sup>3</sup>

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<sup>1</sup> The White House, Office of Communications, *FACT SHEET: INVESTMENTS TO REDUCE THE NATIONAL RAPE KIT BACKLOG AND COMBAT VIOLENCE AGAINST WOMEN*, March 16, 2015, at 1.

<sup>2</sup> Section 960.28(2), F.S.

<sup>3</sup> Section 960.28(4), F.S.

According to protocols developed by the DLA, healthcare providers conducting the forensic physical examination should complete the document entitled “Sexual Assault Kit Form for Healthcare Providers.”<sup>4</sup> This document includes a consent form that requires the victim or his or her legal guardian to indicate that he or she consents to a forensic physical examination for the preservation of evidence of a sexual offense.<sup>5</sup> Additionally, the victim or legal guardian must select one of the following two options:

- For Reporting Victims [i.e., victims who choose to report the sexual offense to law enforcement]: I do authorize this medical facility and the examiner to perform all necessary tests, examinations, photography, and treatment, and to supply copies of all pertinent medical laboratory reports, immediately upon completion to the law enforcement agency and the State Attorney’s Office having jurisdiction.
- For Non-Reporting Victims [i.e., victims who choose to not report the sexual offense to law enforcement]: I do authorize this medical facility and the examiner to perform all necessary tests, examinations, photography, and treatment at this time.<sup>6</sup>

The DLA protocols provide instructions for sealing the SAK upon completion of the exam and indicate that the SAK must stay with the medical examiner or secured in a locked area with limited access and proper chain of custody procedures until transferred to law enforcement. For a SAK of a non-reporting victim, the protocol states that the medical examiner should check the local area for storage procedures and that a law enforcement agency is recommended for long-term storage.<sup>7, 8</sup>

Generally, law enforcement agencies in Florida submit SAKs for DNA analysis to the statewide criminal analysis laboratory system, which consists of six laboratories operated by the FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties.<sup>9</sup>

In some cases, a law enforcement agency may not submit a SAK for DNA analysis and may instead retain the SAK in evidence storage. Reasons for not analyzing a SAK include: (a) the victim did not want to file a police report regarding the assault (non-reporting victim); (b) the victim no longer wants the investigation to proceed; (c) the case is not being pursued by the state attorney; and (d) the suspect has pled guilty or nolo contendere.<sup>10</sup>

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<sup>4</sup> Florida Department of Legal Affairs, Division of Victim Services and Criminal Justice Programs, *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination*, April 2015, at 13.

<sup>5</sup> Florida Department of Law Enforcement, *Sexual Assault Kit Form for Healthcare Providers*, available at <http://www.fdle.state.fl.us/Content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx> (last visited Nov. 28, 2015).

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

<sup>7</sup> Florida Department of Legal Affairs, *supra* note 4, at 21; *see also* Florida Department of Law Enforcement, *Instruction List for Forensic Exam Kit*, available at <http://www.fdle.state.fl.us/Content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx> (last visited Nov. 28, 2015).

<sup>8</sup> Chief Frank Fabrizio, who represents the Florida Police Chiefs Association, testified at a Florida Senate hearing that in Orange and Volusia Counties, SAKs for non-reporting victims are stored by a law enforcement agency, but are not submitted to a crime laboratory for analysis. Hearing of the Florida Senate Appropriations Subcommittee on Criminal and Civil Justice, Nov. 3, 2015, available at [http://www.flsenate.gov/media/videoplayer?EventID=2443575804\\_2015111024](http://www.flsenate.gov/media/videoplayer?EventID=2443575804_2015111024).

<sup>9</sup> Section 943.32, F.S.; *see also* Florida Department of Law Enforcement, *Biology Screening of Sexual Assault Evidence Kits*.

<sup>10</sup> These reasons were provided during testimony by Jennifer Pritt, Assistant Commissioner of the Florida Department of Law Enforcement, and Chief Frank Fabrizio, representing the Florida Police Chiefs Association. Hearing of the Florida Senate



According to information provided by the FDLE, DNA analysis of a SAK requires on average approximately 26.25 hours of crime analyst and supervisor time.<sup>11</sup>

DNA profiles resulting from such analyses are uploaded by the laboratory to its local DNA Index System (DIS), which then uploads the profiles to the state DNA database. From there, DNA profiles are uploaded to the Federal Bureau of Investigation's Combined DIS, referred to as CODIS, which consists of DNA profiles contributed by federal, state, and local participating forensic laboratories. DNA profiles within these local, state, and federal databases are continuously searched against one another to determine whether a match exists.<sup>12</sup>

### **National Backlog of SAKs Not Submitted for DNA Testing**

To better understand the issue of SAKs that have not been submitted for analysis, the National Institute of Justice (NIJ) awarded grants in 2011 to the Houston, Texas Police Department and Wayne County, Michigan Prosecutor's Office.<sup>13</sup> Both entities conducted a census of untested SAKs.<sup>14</sup>

- 6,663 untested SAKs were found in storage at the Houston Police Department.<sup>15</sup> Each of these SAKs were submitted for analysis. As of February 2015, such analyses had resulted in 850 matches identifying the perpetrator and in the prosecutions of 29 offenders.<sup>16</sup>
- 8,707 untested SAKs were found in Detroit.<sup>17</sup> Of these SAKs, approximately 2,000 were analyzed. The analyses resulted in 760 matches identifying the perpetrator, the identification of 188 serial offenders, and 15 convictions.<sup>18</sup>

In July 2015 the USA TODAY newspaper released the results of its own nationwide inventory of untested SAKs. The records of 1,000-plus law enforcement agencies, including some agencies in Florida, showed at least 70,000 untested SAKs.<sup>19</sup> Many police agencies have no idea how many untested SAKs they have in their property rooms.<sup>20</sup>

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Appropriations Subcommittee on Criminal and Civil Justice, Nov. 3, 2015, available at [http://www.flsenate.gov/media/videoplayer?EventID=2443575804\\_2015111024](http://www.flsenate.gov/media/videoplayer?EventID=2443575804_2015111024).

<sup>11</sup> Florida Department of Law Enforcement, *supra* note 9, at 7.

<sup>12</sup> *Id.* at 7-8; see also Federal Bureau of Investigation, *Frequently Asked Questions (FAQs) on the CODIS Program and the National DNA Index System*, <https://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet> (last visited Nov. 28, 2015). Note that a profile developed from a non-reporting victim's SAK is not currently eligible to be loaded into the national database according to FBI standards. *Florida Department of Law Enforcement Sexual Assault Kit Assessment*.

<sup>13</sup> The White House, *supra* note 1, at 2.

<sup>14</sup> National Institute of Justice, Office of Justice Programs, *Untested Evidence in Sexual Assault Cases*, <http://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx#determining> (last visited Nov. 28, 2015).

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

<sup>16</sup> Katherine Driessen, *City done with lab testing of rape kit backlog*, Houston Chronicle (February 23, 2015), <http://www.chron.com/news/politics/houston/article/City-done-with-lab-testing-of-rape-kit-backlog-6096424.php>.

<sup>17</sup> National Institute of Justice, *supra* note 16.

<sup>18</sup> The White House, *supra* note 1, at 2.

<sup>19</sup> The USA TODAY report covers a fraction of the 18,000 police agencies in the country suggesting a potential for untested SAKs in the hundreds of thousands may exist. <http://www.floridatoday.com/longform/news2015/07/16/unttested-rape-kits-evidence-across-usa/299021>.

<sup>20</sup> Samara Martin-Ewing, *#TesttheKits: Thousands of rape kits go untested*, WUSA9 TV, <http://www.wusa9.com/story/news/local/2015/07/16/testthekits-unttested-rape-kits/30230447/>.

Some states have adopted legislation requiring audits to be conducted of the untested SAKs in the possession of law enforcement agencies and reports of such audits to be filed with the state.<sup>21</sup>

In other states, legislation has been adopted which specifies requirements, such as procedures and timeframes, for SAK use, submission, and analysis. For example:

- Colorado enacted legislation effective June 5, 2013, which requires the state's Department of Public Safety to adopt rules that require forensic evidence to be collected when requested by a sexual offense victim, specify standards for what evidence must be submitted to an accredited crime laboratory, and specify time frames for when such evidence must be submitted, analyzed, and compared in DNA databases. The law also directed the department to adopt a plan for prioritizing the analysis of its backlog of SAKs and to include a requirement in its rules after the backlog is resolved that evidence be submitted for analysis within 21 days after receipt by a law enforcement agency.<sup>22</sup>
- Illinois enacted legislation effective September 1, 2010, which requires law enforcement agencies to submit sexual offense evidence collected in connection with an investigation within 10 business days after receipt to an approved crime laboratory and requires crime laboratories to analyze such evidence within six months.<sup>23</sup>
- Ohio adopted legislation effective March 23, 2015, which requires law enforcement agencies to forward the contents of a SAK related to an investigation initiated after the act's effective date to a crime laboratory within 30 days for analysis and directs the crime laboratory to perform the analysis as soon as possible after receipt.<sup>24</sup>

### **SAKs Not Submitted for DNA Testing in Florida**

At the direction of the Legislature, the FDLE has conducted a statewide assessment of SAKs that have not been submitted for DNA analysis by law enforcement.<sup>25</sup> Agencies had access to the online survey from August 15 – December 15, 2015.<sup>26</sup>

Sixty-nine percent of Florida's police departments responded to the survey and 100 percent of the sheriff's offices responded.<sup>27</sup> These 279 law enforcement agencies represent 89 percent of the state's population.<sup>28</sup>

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<sup>21</sup> See Arkansas House Bill 1208 (2015) (requiring annual audits of untested SOEKs stored by law enforcement agencies and healthcare providers and submission of reports to the State Crime Laboratory and Legislature); Kentucky Senate Joint Resolution 20 (2015) (directing the state's Auditor of Public Accounts to study the number of untested SOEKs in the possession of law enforcement and prosecutorial agencies and to report such information to the Legislative Research Commission); Virginia Senate Bill 658 (2014) (requiring law enforcement agencies to inventory and report all untested physical evidence recovery kits to the Department of Forensic Science and requiring the Department to report to the General Assembly).

<sup>22</sup> COLO. REV. STAT. §24-33.5-113 (2015).

<sup>23</sup> 725 IL. COMP. STAT. 202/10 and 202/15 (2015).

<sup>24</sup> OHIO REV. CODE ANN. §2933.82 (2015).

<sup>25</sup> Florida Department of Law Enforcement Sexual Assault Kit Assessment, <http://www.fdle.state.fl.us/docs/SAKResults.pdf>.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

Survey responses indicate that there are 13,435 unsubmitted SAKs in law enforcement evidence storage statewide.<sup>29</sup> Of the 13,435 unsubmitted SAKs, the agencies indicated that 9,484 of them should be submitted for DNA testing.<sup>30</sup> Individual agency guidelines, not state law, dictate which SAKs should be submitted for testing.<sup>31</sup>

The FDLE statewide survey did not specifically request the responding agencies to do a case-by-case analysis of the reasons why all reported SAKs being held in evidence were not submitted for testing.<sup>32</sup> Agencies were asked to identify from a list of five possible reasons (and an “other” category) provided in the survey why a SAK may not have been submitted.<sup>33</sup> Among the reasons a SAK may not have been submitted was that the victim was a non-reporting victim.<sup>34</sup>

The survey asked (and the agencies responded):

Please indicate the reasons for not submitting sexual assault kits (mark all that apply):

41% - victim decided not to proceed  
 31% - case not being prosecuted by State Attorney’s Office  
 20% - suspect pled guilty/no contest  
 18% - non-reporting victim

A summary of “other reasons” written in by agencies included: allegation unfounded, recanted; no issue of identification; suspect convicted on other charges; did not recognize the evolution of DNA testing; victim deceased.<sup>35</sup>

### **The FDLE Plan for Analyzing Backlog of Unsubmitted SAKs**

Part of the report by the FDLE on the SAK Assessment includes alternatives for analyzing and uploading the results of the unsubmitted SAK backlog. It should be remembered that the FDLE’s crime labs are only part of the statewide criminal analysis laboratory system. The entire system consists of six laboratories operated by the FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties. The Indian River lab is a regional lab which provides forensic services to Indian River, Martin, Okeechobee, and St. Lucie counties.<sup>36</sup> The FDLE alternative plans regarding the SAK backlog relate only to those cases that should come to an FDLE lab, not those that will be analyzed by local labs.

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

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

<sup>31</sup> *Id.*

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

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*; (Note: There was an attempt by the survey to gather specific numbers from the agencies as to how many SAKs were being held in evidence only because the victim was a non-reporting victim, but the accuracy of this quantification by some of the agencies is somewhat unclear based upon other responses given by the agencies and the wording of the survey.)

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

<sup>36</sup> Section 943.35, F.S.

The FDLE suggests that a comprehensive business plan which incorporates DNA analysis of the backlog of untested SAKs should consider:

- The recent bulk submission of 2,000 older SAKs;
- The remaining 6,600 untested backlog of SAKs within the FDLE lab jurisdiction accounted for in the survey of law enforcement agencies;
- Current incoming casework;
- Increasing biology/DNA evidence submissions anticipated by the FDLE over time;
- Issues regarding getting and keeping qualified lab personnel;
- The acquisition of equipment that can make the lab process more efficient;
- Increased lab capacity; and
- The FDLE's ability to outsource selected cases.

Additionally, the FDLE suggests that agencies should be encouraged to develop formal policies and standardized procedures for collecting, submitting, and tracking SAKs in order to limit the impact to the statewide lab system.<sup>37</sup>

### **III. Effect of Proposed Changes:**

The bill creates s. 943.326, F.S., which addresses the collection and processing of evidence in sexual offense investigations which may contain DNA evidence. The bill states that the timely submission and testing of sexual assault evidence kits is a core public safety issue.

The bill requires that a sexual offense evidence kit collected in a sexual offense investigation be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is received by a law enforcement agency if a report of the sexual offense is made to the agency, or when the victim or his or her representative requests that the evidence be tested.

Testing of the sexual offense evidence kit must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system. The testing requirement is met when a member of the statewide criminal analysis laboratory system tests the contents of the kit in an attempt to identify the foreign DNA attributable to a suspect.

A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency approves the kit's destruction.

The victim, or his or her representative, shall be informed of the purpose of testing and of his or her right to demand testing. The victim shall be informed by either the medical provider conducting the physical forensic examination for purposes of evidence collection for a sexual offense evidence kit or, if no kit is collected, a law enforcement agency that collects *other* DNA evidence associated with the offense.

If probative information is obtained from testing the sexual offense evidence kit then the examination of other evidence directly related to the crime scene should be based upon the

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<sup>37</sup> Florida Department of Law Enforcement Sexual Assault Kit Assessment, <http://www.fdle.state.fl.us/docs/SAKResults.pdf>.

potential evidentiary value to the case as cooperatively determined by the investigating agency, laboratory, and the prosecutor.

By January 1, 2017, the FDLE and each lab within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, must adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence obtained in connection with an alleged sexual offense.

The guidelines and procedures must include:

- Standards for packaging evidence for submission to the laboratories for testing;
- What evidence must be submitted for testing, which would include a collected sexual offense evidence kit and possibly other evidence related to the crime scene;
- Timeframes for evidence submission including the 30 day deadline for collected sexual offense evidence kits as set forth in the bill;
- Timeframes for evidence analysis including the bill's requirement that testing of sexual offense evidence kits must be completed no later than 120 days after submission; and
- Timeframes for evidence comparison to DNA databases.

The newly-created s. 943.326, F.S. does not create a cause of action or create rights for a person to challenge the admission of evidence or create an action for damages or relief for a violation of the new section of law.

The bill becomes effective on July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, Section 18(a), of the Florida Constitution, states that county and municipality governments are not bound by any general law requiring one or more county or municipality governments to spend funds, unless it satisfies certain exemptions or exceptions. One such exemption is that the law will have an “insignificant fiscal impact.”

The term “insignificant” has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. The 2010 United States census, which contains the most recent federal census data, indicates that the Florida population is 18,801,310.<sup>38</sup> A bill having a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1.88 million would be characterized as a mandate.

The bill's requirements for SAK submission to laboratories may require the expenditure of funds by the counties where the five local laboratories are located if state funding for these laboratories is not available. Currently, such expenditures are indeterminate.

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<sup>38</sup> U.S. Census Bureau, 2010 Census Interactive Population Search, <http://www.census.gov/2010census/popmap/ipmtext.php?fl=12> (last visited Nov. 30, 2015).

One of the exceptions to the application of Section 18(a), Article VII, Florida Constitution, is a law that applies to all persons similarly situated, including state and local governments. It is anticipated that the FDLE will also see increased evidence testing costs so it appears as if the bill meets the exception, and the only other Constitutional requirement is that the Legislature determine whether the bill fulfills an important state interest. The bill contains a finding of important state interest on lines 59-61.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

CS/SB 636 does not impose any requirements that would result in a fiscal impact to the Florida Department of Law Enforcement. The bill establishes a 120-day time limit for the testing of sexual offense evidence kits; however, the FDLE currently processes serology evidence well within this new standard. As a result, the bill's requirements do not require additional staffing or resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 943.326 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on January 25, 2016:**

- Creates or modifies timeframes within which sexual offense evidence kits must be submitted for testing (30 days) and have the testing completed (120 days), which are triggered by the alleged victim making a report with law enforcement or requesting testing;
- Requires safe storage of collected sexual offense evidence kits;
- Collected kits are required to be retained until the prosecuting agency approves their destruction;
- Eliminates rule-making by the FDLE for handling sexual offense evidence kits and substitutes a collaboration between the FDLE, local labs in the statewide system, and the Florida Council Against Sexual Violence to adopt and disseminate guidelines and procedures;
- Specifies minimum requirements for the guidelines and procedures;
- Eliminates the reporting requirement of the FDLE by the original bill;
- Provides for the handling of other evidence related to the alleged crime scene; and
- Specifies that the bill does not create a cause of action or any individual rights or other relief for a violation of the new section of law.

**B. Amendments:**

None.

By the Committee on Criminal Justice; and Senator Benacquisto

591-02537-16

2016636c1

A bill to be entitled  
An act relating to evidence collected in sexual  
offense investigations; creating s. 943.326, F.S.;  
requiring that a sexual offense evidence kit or other  
DNA evidence be submitted to a member of the statewide  
criminal analysis laboratory system within a specified  
timeframe after specified occurrences; requiring a  
medical provider or law enforcement agency to inform  
an alleged victim of a sexual offense of certain  
information relating to sexual offense evidence kits;  
requiring the retention of specified evidence;  
requiring adoption and dissemination of guidelines and  
procedures by certain entities by a specified date;  
requiring the testing of sexual offense evidence kits  
within a specified timeframe after submission to a  
member of the statewide criminal analysis laboratory;  
providing requirements for such guidelines and  
procedures; providing construction; providing an  
effective date.

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

Section 1. Section 943.326, Florida Statutes, is created to  
read:

943.326 DNA evidence collected in sexual offense  
investigations.—

(1) A sexual offense evidence kit, or other DNA evidence if  
a kit is not collected, must be submitted to a member of the  
statewide criminal analysis laboratory system under s. 943.32  
for forensic testing within 30 days after:

(a) Receipt of the evidence by a law enforcement agency if  
a report of the sexual offense is made to the law enforcement



591-02537-16

2016636c1

33 agency; or

34 (b) A request to have the evidence tested is made to the  
35 medical provider or the law enforcement agency by:

36 1. The alleged victim;

37 2. The alleged victim's parent, guardian, or legal  
38 representative, if the alleged victim is a minor; or

39 3. The alleged victim's personal representative, if the  
40 alleged victim is deceased.

41 (2) An alleged victim or, if applicable, the person  
42 representing the alleged victim under subparagraph (1) (b)2. or  
43 subparagraph (1) (b)3. must be informed of the purpose of  
44 submitting evidence for testing and the right to request testing  
45 under subsection (1) by:

46 (a) A medical provider conducting a forensic physical  
47 examination for purposes of a sexual offense evidence kit; or

48 (b) A law enforcement agency that collects other DNA  
49 evidence associated with the sexual offense if a kit is not  
50 collected under paragraph (a).

51 (3) A collected sexual offense evidence kit must be  
52 retained in a secure, environmentally safe manner until the  
53 prosecuting agency has approved its destruction.

54 (4) By January 1, 2017, the department and each laboratory  
55 within the statewide criminal analysis laboratory system, in  
56 coordination with the Florida Council Against Sexual Violence,  
57 shall adopt and disseminate guidelines and procedures for the  
58 collection, submission, and testing of DNA evidence that is  
59 obtained in connection with an alleged sexual offense. The  
60 timely submission and testing of sexual offense evidence kits is  
61 a core public safety issue. Testing of sexual offense evidence

591-02537-16

2016636c1

62 kits must be completed no later than 120 days after submission  
63 to a member of the statewide criminal analysis laboratory  
64 system.

65 (a) The guidelines and procedures must include the  
66 requirements of this section, standards for how evidence is to  
67 be packaged for submission, what evidence must be submitted to a  
68 member of the statewide criminal analysis laboratory system, and  
69 timeframes for when the evidence must be submitted, analyzed,  
70 and compared to DNA databases.

71 (b) The testing requirements of this section are satisfied  
72 when a member of the statewide criminal analysis laboratory  
73 system tests the contents of the sexual offense evidence kit in  
74 an attempt to identify the foreign DNA attributable to a  
75 suspect. If a sexual offense evidence kit is not collected, the  
76 laboratory may receive and examine other items directly related  
77 to the crime scene, such as clothing or bedding or personal  
78 items left behind by the suspect. If probative information is  
79 obtained from the testing of the sexual offense evidence kit,  
80 the examination of other evidence should be based on the  
81 potential evidentiary value to the case and determined through  
82 cooperation among the investigating agency, the laboratory, and  
83 the prosecutor.

84 (5) This section does not create a cause of action or  
85 create any rights for an individual to challenge the admission  
86 of evidence or create a cause of action for damages or any other  
87 relief for a violation of this section.

88 Section 2. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Banking and Insurance, *Chair*  
Appropriations, *Vice Chair*  
Appropriations Subcommittee on Health  
and Human Services  
Education Pre-K-12  
Higher Education  
Judiciary  
Rules

### SENATOR LIZBETH BENACQUISTO

30th District

### JOINT COMMITTEE:

Joint Legislative Auditing Committee  
Joint Select Committee on Collective Bargaining

January 25, 2016

The Honorable Joe Negron  
Senate Criminal Justice, Chair  
408 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

### RE: SB 636- Rape Kit Testing

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 636, Relating to Rape Kit Testing, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Lizbeth Benacquist".

Lizbeth Benacquist  
Senate District 30

Cc: Tim Sadberry

#### REPLY TO:

- ☐ 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

436

Bill Number (if applicable)

Topic Related to Testing Sexual Assault Kits

Amendment Barcode (if applicable)

Name Theresa Prichard

Job Title Director of Advocacy

Address 1820 E. Park Ave Ste 100

Phone 850-297-2000

Street

Tallahassee

FL

32301

City

State

Zip

Email tprichard@fcasv.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Council Against sexual violence

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

636

Bill Number (if applicable)

Topic Sex Assault Kits

Amendment Barcode (if applicable)

Name Rob Johnson

Job Title Leg. Director

Address PL-01 Capitol

Phone 245-0155

Street

Tall FL 32399

City

State

Zip

Email rob-johnson@myfloridalegal.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Attorney General

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

SB 0636

*Bill Number (if applicable)*

Topic Evidence Collected in Sexual Assault

*Amendment Barcode (if applicable)*

Name Sarrah Carroll

Job Title Lobbyist

Address 123 S. Adams

Phone 850-671-4401

*Street*

Tallahassee

FL

32301

Email carroll@sostrategy.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

CS/SB 6316

Bill Number (if applicable)

Topic Evidence in Sexual Offense Investigations

Amendment Barcode (if applicable)

Name Stephanie Kunkel

Job Title \_\_\_\_\_

Address 873 Kingsway Rd

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-320-4208

Email Stef.Kunkel@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Federation of Business and Professional Women

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

Meeting Date

SB 636

Bill Number (if applicable)

Topic Evidence Collected in Sexual Assault Investigations

Amendment Barcode (if applicable)

Name Dennis Jones

Job Title Retired Police Chief

Address 957 Pelican Bay Drive

Street

Phone 386-566-1715

Daytona Beach FL 32119

City

State

Zip

Email dmjna223@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14

Meeting Date

SB 636

Bill Number (if applicable)

Topic DNA Rape kit testing

Amendment Barcode (if applicable)

Name Ron Book

Job Title

Address 104 W. Jefferson

Phone 850 224 3424

Street

TLH

Email

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing

Lauren's Kids

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

636  
Bill Number (if applicable)

Topic SAKs

Amendment Barcode (if applicable) \_\_\_\_\_

Name Jennifer C Pruitt

Job Title Ast. Commissioner

Address PO 1441

Phone 8504107001

Street

Tal FL 32306

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FD LE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

636

Bill Number (if applicable)

Topic Sex kits

Amendment Barcode (if applicable)

Name Greg Pouncil

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr.

Phone \_\_\_\_\_

Street

Largo

City

Fla.

State

33773

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Pinellas County Florida Government Corruption

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: PCS/SB 700 (365564)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senator Soto

SUBJECT: Public Records/Juvenile Criminal History Information

DATE: February 12, 2016

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2. <u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3. _____	_____	<u>FP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 700 addresses inconsistencies that exist between s. 985.04(1), F.S. (making the majority of juvenile records confidential), and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult), by:

- Making the records of juveniles who have been found to have committed three or more misdemeanors confidential and exempt (currently they are not);
- Ensuring that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed to be not confidential and exempt under s. 943.053, F.S.;
- Permitting a custodian of public records to choose not to post a juvenile's arrest or booking photograph that is not confidential and exempt under s. 985.04(2), F.S., on the custodian's website, while maintaining the public's right of access to the photograph;
- Requiring the Florida Department of Law Enforcement (FDLE) to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status; and
- Specifying how the FDLE must release juvenile criminal history records.

The bill expands existing public record exemptions and repeals them on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage since it expands public records exemptions.

The FDLE indicates that the bill will have no fiscal impact on the department if its requirements are implemented as part of the ongoing Computerized Criminal History (CCH) system update/replacement project, which began in Fiscal Year 2015-2016 and is expected to be completed in Fiscal Year 2017-2018. Senate Bill 2500, the Senate proposed 2016-2017 General Appropriations Act, includes \$2.5 million for continued implementation of the CCH project. There would be a fiscal impact of approximately \$100,000 if the requirements are implemented before the CCH system is updated.

The bill is effective upon becoming law.

## **II. Present Situation:**

### **Public Records Laws**

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.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

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

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act<sup>10</sup> requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.<sup>11</sup> It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.<sup>12</sup>

### **Confidential Information of Juveniles**

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system are confidential. There are several exceptions to this general provision of confidentiality. For example, s. 985.04(2), F.S., provides in part that the name, photograph, address, and crime or arrest report of certain juveniles is not confidential and exempt from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- Transferred to the adult system by indictment, judicial waiver, or direct file;
- Taken into custody by a law enforcement officer for a violation of law subject to mandatory direct file under s. 985.557(2)(b) or (d), F.S.; or
- Transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

### **Criminal Justice Information Program**

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the FDLE to act as the state's central criminal justice information<sup>13</sup> repository. Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for

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<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S.

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(5)(b), F.S.

<sup>13</sup> Section 943.045(12), F.S., provides "criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

inclusion in the CJIP.<sup>14</sup> This information can then be transmitted between criminal justice agencies.<sup>15</sup>

Currently, s. 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to the FDLE the fingerprints, palm prints, and facial images of:

- Each adult person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- A juvenile who is charged with or found to have committed an offense, which would be a felony if committed by an adult; or
- A minor who is charged with or found to have committed an enumerated offense, unless the minor is issued a civil citation pursuant to s. 985.12, F.S.

### **Dissemination of Criminal History Information under Chapter 943, F.S.**

Criminal history information<sup>16</sup> compiled by the CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.<sup>17</sup> With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 dollars per name submitted.<sup>18</sup>

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.<sup>19</sup> Additionally, the statute is silent as to the release of a juvenile's information which has been made confidential pursuant to s. 985.04, F.S.

### ***G.G. v. FDLE***

In *G.G. v. FDLE*,<sup>20</sup> a juvenile with no prior criminal history record was arrested for petit theft – a first degree misdemeanor. Several weeks after the arrest, G.G.'s attorney received G.G.'s criminal history information from the FDLE, and discovered that it included information relating to the petit theft arrest.<sup>21</sup> G.G. filed suit, claiming that the petit theft information should be confidential and exempt under s. 985.04(1), F.S.<sup>22</sup> The trial court disagreed, holding that

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<sup>14</sup> Section 943.052, F.S.

<sup>15</sup> Section 985.051, F.S.

<sup>16</sup> Section 943.045(5), F.S., defines "criminal history information" as information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

<sup>17</sup> Section 943.053(3)(a), F.S.

<sup>18</sup> Section 943.053(3)(b), F.S. The guardian ad litem program; vendors of the Department of Children and Families, the DJJ, and the Department of Elderly Affairs; the Department of Agriculture and Consumer Services; and other qualified entities are charged a lesser amount.

<sup>19</sup> Section 943.053(3)(a), F.S.

<sup>20</sup> 97 So. 3d 268 (Fla. 1st DCA 2012).

<sup>21</sup> *Id.* at 269.

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

s. 943.053(3), F.S., creates an exception to confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.<sup>23</sup>

On appeal, the First District Court of Appeal reversed the trial court's decision and held that the FDLE's authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.<sup>24</sup>

### **FDLE – Release of Juvenile Information since *G.G. v. FDLE***

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential. However, s. 985.04(2), F.S., creates exceptions for records if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

In an effort to comply with the ruling in *G.G. v. FDLE*, the FDLE is ensuring that only the above-described records are released. However, because of programming limitations<sup>25</sup> and incomplete reporting of juvenile disposition information,<sup>26</sup> the FDLE reports that it is unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors.<sup>27</sup> As such, the FDLE is currently only releasing the following juvenile records to private entities and non-criminal justice agencies:

- Records of juveniles taken into custody or charged with a crime that would be a felony if committed by an adult; and
- Records of juveniles who are treated as adults.<sup>28</sup>

### **III. Effect of Proposed Changes:**

The bill addresses the inconsistencies that exist between s. 985.04(1), F.S. (making the majority of juvenile records confidential), and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult), by:

- Ensuring that the specified juvenile records deemed to be not confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed to be not confidential and exempt under s. 985.04, F.S.; and
- Requiring the FDLE to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status.

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

<sup>24</sup> *Id.* at 273.

<sup>25</sup> The FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. Florida Department of Law Enforcement, *2016 Bill Analysis for SB 700* (November 3, 2015) (on file with the Senate Criminal Justice Committee).

<sup>26</sup> Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. (The juvenile reporting rate for all arrests is currently 48.5%, while the adult rate is 72.2%.) *Id.*

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

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



**Section 985.04, F.S.**

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than just confidential).<sup>29</sup>

The bill also amends s. 985.04(2), F.S., to specify that the following juvenile records are not confidential and exempt:

- Records where a juvenile has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been charged with a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been found to have committed an offense which, if committed by an adult, would be a felony; or
- Records where a juvenile has been transferred to adult court pursuant to part X of ch. 985, F.S.

Notably, the bill removes language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records will now be confidential and exempt.

Finally, this section of the bill authorizes a custodian of public records to choose not to post a juvenile's arrest or booking photograph on the custodian's website even though the photograph is not confidential and exempt under s. 985.04(2), F.S. However, this authorization does not restrict public access to the record.

**Section 943.053, F.S.**

The bill amends s. 943.053, F.S., so that the list of juvenile records deemed to be not confidential and exempt under s. 985.04(2), F.S., will be identical to the list of juvenile records deemed to be not confidential and exempt under s. 943.053, F.S. Because the language regarding three or more misdemeanors is not included on the list, the FDLE will no longer be tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies.

The bill further amends s. 943.053, F.S., establishing a separate process for the dissemination of juvenile criminal history information. Under this process, juvenile criminal history information, including the information that is made confidential and exempt, is available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates or his or her attorney;

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<sup>29</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See 85-62 Fla. Op. Att'y Gen. (August 1, 1985).

- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S.,<sup>30</sup> for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

Juvenile criminal history information that is not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.

The bill provides that juvenile records deemed confidential and exempt under the provisions of s. 943.053, F.S., which are released by the sheriff, the DOC, or the DJJ to private entities under contract with each entity retain their confidential status upon release to these private entities.

The bill repeals all new public records exemptions created in the bill on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>31</sup>

Lastly, the bill makes conforming changes to ss. 496.4101 and 943.056, F.S., to reflect changes made in the act.

The bill takes effect upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

###### **Vote Requirement**

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

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<sup>30</sup> These sections require persons who are seeking employment with specified agencies (e.g., in part, the Department of Children and Families, the Department of Health, and the DJJ) to acknowledge their criminal history record, even if such record has been sealed or expunged.

<sup>31</sup> FLA. CONST. art. I, s. 24(c).

**Public Necessity Statement**

Article I, s. 24(c) of the Florida 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 and includes the required public necessity statement.

**Breadth of Exemption**

Article I, s. 24(c) of the Florida 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 limited to certain criminal history information of juveniles.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/SB 700 may result in a positive economic benefit to juveniles with misdemeanor records who are seeking employment as these records will no longer be released to the public.

C. Government Sector Impact:

According to the FDLE, there should be no fiscal impact upon the department if the requirements of the bill are implemented as part of the ongoing Computerized Criminal History (CCH) system update/replacement project, which began in Fiscal Year 2015-2016 and is expected to be completed in Fiscal Year 2017-2018. Senate Bill 2500, the Senate proposed 2016-2017 General Appropriations Act, includes \$2.5 million for continued implementation of the CCH project. If the bill is implemented in the current CCH system before the system is updated, it will cost the department \$100,000.<sup>32</sup>

**VI. Technical Deficiencies:**

None.

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<sup>32</sup> Florida Department of Law Enforcement, *2016 Bill Analysis for SB 700* (November 3, 2015), and Email from Bobbie Baggett, Legislative Analyst, Office of External Affairs, Florida Department of Law Enforcement, (January 27, 2016) (on file with the Senate Criminal Justice Committee).

**VII. Related Issues:**

The FDLE recommends that the bill's effective date be changed to July 1, 2018 because that is when the CCH system replacement project will be completed and the bill's requirements can be fully implemented without the department incurring additional costs.<sup>33</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.04 and 943.053.

This bill makes conforming and technical changes to the following sections of the Florida Statutes: 496.4101 and 943.056.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 11, 2016:**

- Amends s. 985.04(2)(a), F.S., to permit a custodian of public records to choose not to post a juvenile's arrest or booking photograph that is not confidential and exempt under s. 985.04(2), F.S., on the custodian's website, while maintaining the public's right of access to the photograph;

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>33</sup> Email from Bobbie Baggett, Legislative Analyst, Office of External Affairs, Florida Department of Law Enforcement, (January 27, 2016) (on file with the Senate Criminal Justice Committee).



662766

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/12/2016	.	
	.	
	.	
	.	

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Appropriations Subcommittee on Criminal and Civil Justice (Soto)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete line 87  
and insert:  
119.07(1) solely because of the child's age. For arrest or  
booking photographs of a child not confidential and exempt under  
this subsection, a custodian of public records may choose not to  
electronically post such arrest or booking photograph on the  
custodian's website, although this does not restrict public  
access to records as provided under this subsection.



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11  
12 ===== T I T L E   A M E N D M E N T =====  
13 And the title is amended as follows:  
14       Delete line 8  
15 and insert:  
16       records of certain juvenile offenders; authorizing a  
17       custodian to not post on the custodian's website  
18       certain arrest or booking photographs of a child;  
19       providing for

By Senator Soto

14-00618A-16

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A bill to be entitled  
An act relating to public records; amending s. 985.04, F.S.; specifying that certain confidential information obtained under chapter 985, F.S., relating to juvenile justice, is exempt from public records requirements; providing applicability; revising applicability of public records requirements with respect to the arrest records of certain juvenile offenders; providing for future review and repeal of such applicability provisions; amending s. 943.053, F.S.; providing an exemption from public records requirements for juvenile information compiled by the Criminal Justice Information Program from intrastate sources; providing exceptions; providing for future review and repeal of the exemption; providing for release by the Department of Law Enforcement of the criminal history information of a juvenile which has been deemed confidential and exempt under certain circumstances; amending ss. 496.4101 and 943.056, F.S.; conforming provisions to changes made by the act; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 985.04, Florida Statutes, are amended to read:

985.04 Oaths; records; confidential information.—

(1) (a) Except as provided in subsections (2), (3), (6), and (7) and s. 943.053, all information obtained under this chapter

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in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department, the Florida Commission on Offender Review, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information obtained before, on, or after the effective date of this exemption.

(b) Such confidential and exempt information ~~and~~ may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Florida Commission on Offender Review, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon order of the court.

(c) Within each county, the sheriff, the chiefs of police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties. The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel, and the conditions under which school records are to be made available to appropriate department personnel. Such agreement shall require notification to any classroom teacher of assignment to the teacher's



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classroom of a juvenile who has been placed in a probation or commitment program for a felony offense. The agencies entering into such agreement must comply with s. 943.0525, and must maintain the confidentiality of information that is otherwise exempt from s. 119.07(1), as provided by law.

(2) (a) Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:

1. (a) Taken into custody ~~if the child has been taken into custody~~ by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

2. Charged with a violation of law which, if committed by an adult, would be a felony;

3. Found to have committed an offense which, if committed by an adult, would be a felony; or

4. Transferred to adult court pursuant to part X of this chapter,

~~(b) Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;~~

~~(c) Transferred to the adult system under s. 985.557, indicted under s. 985.56, or waived under s. 985.556;~~

~~(d) Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2) (b) or (d); or~~

~~(e) Transferred to the adult system but sentenced to the juvenile system under s. 985.565~~

are ~~shall~~ not be considered confidential and exempt from s. 119.07(1) solely because of the child's age.

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(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsections (3), (8), (9), and (10) of section 943.053, Florida Statutes, are amended to read:

943.053 Dissemination of criminal justice information; fees.—

(3)(a) Criminal history information, ~~including information relating to an adult minors,~~ compiled by the Criminal Justice Information Program from intrastate sources shall be available on a priority basis to criminal justice agencies for criminal justice purposes free of charge. After providing the program with all known personal identifying information, persons in the private sector and noncriminal justice agencies may be provided criminal history information upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement. ~~Any access to criminal history information by the private sector or noncriminal justice agencies as provided in this subsection shall be assessed without regard to the quantity or category of criminal history record information requested.~~

(b)1. Criminal history information relating to a juvenile compiled by the Criminal Justice Information Program from intrastate sources shall be released as provided in this section. Such information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, unless such juvenile has been:

a. Taken into custody by a law enforcement officer for a

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117 violation of law which, if committed by an adult, would be a  
118 felony;

119 b. Charged with a violation of law which, if committed by  
120 an adult, would be a felony;

121 c. Found to have committed an offense which, if committed  
122 by an adult, would be a felony; or

123 d. Transferred to adult court pursuant to part X of chapter  
124 985,

125  
126 and provided the criminal history record has not been expunged  
127 or sealed under any law applicable to such record.

128 2. This paragraph is subject to the Open Government Sunset  
129 Review Act in accordance with s. 119.15 and shall stand repealed  
130 on October 2, 2021, unless reviewed and saved from repeal  
131 through reenactment by the Legislature.

132 (c)1. Criminal history information relating to juveniles,  
133 including criminal history information consisting in whole or in  
134 part of information that is confidential and exempt under  
135 paragraph (b), shall be available to:

136 a. A criminal justice agency for criminal justice purposes  
137 on a priority basis and free of charge;

138 b. The person to whom the record relates, or his or her  
139 attorney;

140 c. The parent, guardian, or legal custodian of the person  
141 to whom the record relates, provided such person has not reached  
142 the age of majority, been emancipated by a court, or been  
143 legally married; or

144 d. An agency or entity specified in s. 943.0585(4) or s.  
145 943.059(4), for the purposes specified therein, and to any

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146 person within such agency or entity who has direct  
147 responsibility for employment, access authorization, or  
148 licensure decisions.

149 2. After providing the program with all known personal  
150 identifying information, the criminal history information  
151 relating to a juvenile which is not confidential and exempt  
152 under this subsection may be released to the private sector and  
153 noncriminal justice agencies not specified in s. 943.0585(4) or  
154 s. 943.059(4) in the same manner as provided in paragraph (a).  
155 Criminal history information relating to a juvenile which is not  
156 confidential and exempt under this subsection is the entire  
157 criminal history information relating to a juvenile who  
158 satisfies any of the criteria listed in sub-subparagraphs  
159 (b)1.a. through (b)1.d., except for any portion of such  
160 juvenile's criminal history record which has been expunged or  
161 sealed under any law applicable to such record.

162 3. All criminal history information relating to juveniles,  
163 other than that provided to criminal justice agencies for  
164 criminal justice purposes, shall be provided upon tender of fees  
165 as established in this subsection and in the manner prescribed  
166 by rule of the Department of Law Enforcement.

167 (d) The fee for access to criminal history information by  
168 the private sector or a noncriminal justice agency shall be  
169 assessed without regard to the size or category of criminal  
170 history record information requested.

171 (e) ~~(b)~~ The fee per record for criminal history information  
172 provided pursuant to this subsection and s. 943.0542 is \$24 per  
173 name submitted, except that the fee for the guardian ad litem  
174 program and vendors of the Department of Children and Families,

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the Department of Juvenile Justice, and the Department of Elderly Affairs shall be \$8 for each name submitted; the fee for a state criminal history provided for application processing as required by law to be performed by the Department of Agriculture and Consumer Services shall be \$15 for each name submitted; and the fee for requests under s. 943.0542, which implements the National Child Protection Act, shall be \$18 for each volunteer name submitted. The state offices of the Public Defender shall not be assessed a fee for Florida criminal history information or wanted person information.

(8) Notwithstanding ~~the provisions of~~ s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 and juvenile records as provided for in paragraph (3)(b), the sheriff of any county that has contracted with a private entity to operate a county detention facility pursuant to ~~the provisions of~~ s. 951.062 shall provide that private entity, in a timely manner, copies of the Florida criminal history records for its inmates. The sheriff may assess a charge for the Florida criminal history records pursuant to ~~the provisions of~~ chapter 119. Sealed records and confidential juvenile records received by the private entity under this section remain confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(9) Notwithstanding ~~the provisions of~~ s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 and juvenile records as provided for in paragraph (3)(b), the Department of Corrections shall provide, in a timely

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manner, copies of the Florida criminal history records for inmates housed in a private state correctional facility to the private entity under contract to operate the facility pursuant to ~~the provisions of~~ s. 944.105. The department may assess a charge for the Florida criminal history records pursuant to ~~the provisions of~~ chapter 119. Sealed records and confidential juvenile records received by the private entity under this section remain confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(10) Notwithstanding ~~the provisions of~~ s. 943.0525 and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 or of juvenile records as provided for in paragraph (3)(b), the Department of Juvenile Justice or any other state or local criminal justice agency may provide copies of the Florida criminal history records for juvenile offenders currently or formerly detained or housed in a contracted juvenile assessment center or detention facility or serviced in a contracted treatment program and for employees or other individuals who will have access to these facilities, only to the entity under direct contract with the Department of Juvenile Justice to operate these facilities or programs pursuant to ~~the provisions of~~ s. 985.688. The criminal justice agency providing such data may assess a charge for the Florida criminal history records pursuant to ~~the provisions of~~ chapter 119. Sealed records and confidential juvenile records received by the private entity under this section remain confidential and exempt from ~~the provisions of~~ s. 119.07(1). Information provided under this section shall be used only for the criminal justice purpose for

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which it was requested and may not be further disseminated.

Section 3. Paragraph (b) of subsection (3) of section 496.4101, Florida Statutes, is amended to read:

496.4101 Licensure of professional solicitors and certain employees thereof.—

(3)

(b) Fees for state and federal fingerprint processing and fingerprint retention fees shall be borne by the applicant. The state cost for fingerprint processing is that authorized in s. 943.053(3)(e) ~~943.053(3)(b)~~ for records provided to persons or entities other than those specified as exceptions therein.

Section 4. Subsection (1) of section 943.056, Florida Statutes, is amended to read:

943.056 Criminal history records; access, review, and challenge.—

(1) For purposes of verification of the accuracy and completeness of a criminal history record, the Department of Law Enforcement shall provide, in the manner prescribed by rule, such record for review upon verification, by fingerprints, of the identity of the requesting person. If a minor, or the parent or legal guardian of a minor, requests a copy of the minor's criminal history record, the Department of Law Enforcement shall provide such copy, including any portions of the record which may be confidential under s. 943.053(3)(b), for review upon verification, by fingerprints, of the identity of the minor. The providing of such record shall not require the payment of any fees, except those provided for by federal regulations.

Section 5. The Legislature finds that it is a public necessity that the criminal history information of juveniles,

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who have not been adjudicated delinquent of a felony or who have been found only to have committed misdemeanor offenses and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution under ss. 985.04 and 943.053, Florida Statutes. Many individuals who have either completed their sanctions and received treatment or who were never charged in the juvenile justice system have found it difficult to obtain employment. The presence of an arrest or a misdemeanor record in these individuals' juvenile past and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program creates an unnecessary barrier to becoming productive members of society, thus frustrating the rehabilitative purpose of the juvenile system. The Legislature therefore finds that it is in the best interest of the public that individuals with juvenile misdemeanor records are given the opportunity to become contributing members of society. Therefore, prohibiting the unfettered release of juvenile misdemeanor records and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program is of greater importance than any public benefit that may be derived from the full disclosure and release of such arrest records and information.

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





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Rules, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Environmental Preservation and Conservation  
Finance and Tax  
Judiciary

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR DARREN SOTO

*Minority Caucus Rules Chair*

14th District

February 3, 2016

The Honorable Joe Negron  
Appropriations Subcommittee on Criminal and Civil Justice  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Negron,

I respectfully request that Senate Bill 700, Public Records/Criminal History Information, be placed on the agenda as soon as possible. Senate Bill 700 specifies that certain confidential information relating to juvenile justice is exempt from public records requirements. This bill further revises the applicability of public record requirements to the arrest of juvenile offenders, as well as providing exceptions to the bill for specific juvenile records and agencies. The bill also provides for future dates of review and repeal of such applicability provisions.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto  
State Senator, District 14

Cc: Tim Sadberry, Staff Director  
Michelle Sanders, Committee Administrative Assistant

### REPLY TO:

- ☐ Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- ☐ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16  
Meeting Date

700  
Bill Number (if applicable)

Topic JUVENILE - PUBLIC RECORDS EXEMPTION

Amendment Barcode (if applicable)

Name DIANA RAGBEER

Job Title DIRECTOR PUBLIC POLICY

Address 3150 SW 3RD AVE  
Street 3TH FLOOR  
MIAMI FL 33129  
City State Zip

Phone 305 571 5700

Email diana@thechildrenstrust.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing THE CHILDREN'S TRUST

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

SB 0700

*Bill Number (if applicable)*

Topic Public Records/Juvenile Criminal History Information

*Amendment Barcode (if applicable)*

Name Sarrah Carroll

Job Title Lobbyist

Address 123 S. Adams

Phone 850-671-4401

*Street*

Tallahassee

FL

32301

Email carroll@sostrategy.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

700

Bill Number (if applicable)

Topic Confidentiality Juveniles

Name Colleen Mackin

Job Title Consultant

Address 11 S. Magnolia Dr #4

Street

Tallahassee

City

State

Zip

Amendment Barcode (if applicable)  
☒ Waive support  
Amendment

Phone 7272441032

Email cmackin@iamfor  
kids.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing The Children's Campaign

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

700

Bill Number (if applicable)

Topic CONFIDENTIALITY

Amendment Barcode (if applicable)

Name STE NUZZO

Job Title VP Polig

Address 100 N. DUNAL

Phone 888. 322. 9941

Street

TAM.

City

FL

State

32301

Zip

Email SNUZZO@JAMESMADISON-ORG

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing TITE JAMESMADISON INST.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

*Meeting Date*

700

*Bill Number (if applicable)*

Topic Public Records Juveniles

*Amendment Barcode (if applicable)*

Name Larry Eger

Job Title Public Defender, 12th Circuit

Address 2071 Ringling Blvd.

Phone 941.861.5500

*Street*

Sarasota

Florida

34237

Email egersrq@gmail.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 11, 2016

Meeting Date

SB 700

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Jennifer C Pritt

Job Title Assistant Commissioner

Address 2331 Phillips Rd

Street

Phone 850 410 7001

Tallahassee FL 32306

City

State

Zip

Email jennifer.pritt@fdle.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FDLE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

---

BILL: CS/SB 784

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Human Trafficking

DATE: February 11, 2016

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	<b>Fav/CS</b>
2. Harkness	Sadberry	ACJ	<b>Recommend: Favorable</b>
3. _____	_____	FP	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 784 addresses human trafficking and offenses that are often associated with human trafficking by:

- Reclassifying the felony degree of human trafficking offenses under s. 787.06, F.S., which increases the maximum penalty of these offenses, if the victim suffers great bodily harm, permanent disability, or permanent disfigurement;
- Clarifying that the offense of branding a victim of human trafficking is for the purpose of committing or facilitating a human trafficking offense under s. 797.06, F.S.;
- Adding human trafficking as a predicate (qualifying) felony for first degree murder in the commission of a felony;
- Increasing from a second degree misdemeanor (maximum penalty of 60 days in jail) to a first degree misdemeanor (up to one year in jail) a first violation of s. 796.06, F.S. (renting space to be used for lewdness, assignation, prostitution), and increasing from a first degree misdemeanor to a third degree felony (maximum penalty of 5 years in state prison) a second or subsequent violation of that statute;
- Amending s. 796.07, F.S. (prostitution and related acts), to:
  - Remove minors from being prosecuted for prostitution, lewdness, or assignation under s. 796.07, F.S.;
  - Specify that programs offered by faith-based providers are included in a required educational program on the negative effects of prostitution and human trafficking (applicable to offenders sentenced for soliciting prostitution or related acts) if such programs exist in the judicial circuit; and



- Reclassify the misdemeanor or felony degree of a violation of s. 796.07, F.S., if the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of the statute is a massage establishment that is or should be licensed under s. 480.043, F.S.;
- Requiring the Department of Health to issue an emergency order suspending the license of a massage therapist of the massage establishment if the therapist, establishment owner, etc., committed a reclassified violation of s. 796.07, F.S.;
- Requiring the Board of Massage Therapy to deny an application for a new or renewal massage therapist license if the applicant has committed a reclassified violation of s. 796.07, F.S.;
- Requiring the Department of Health to deny an application for a new or renewal massage establishment license if the applicant has committed a reclassified violation of s. 796.07, F.S.;
- Consistent with removing minors from being prosecuted for a violation of s. 796.07, F.S., involving prostitution, lewdness, or assignation, removing language regarding arrest or prosecution of a minor for these offenses from the definition “sexual abuse of a child” in ch. 39, F.S. (child dependency); and
- Adding racketeering to the list of the offenses that may require a person to register as a sexual predator or sexual offender if the court makes a written finding that the racketeering activity involved at least one registration-qualifying sexual offense or one registration-qualifying offense with sexual intent or motive.

The Criminal Justice Impact Conference (CJIC) reviewed CS/SB 784 on January 29, 2016 and concluded that the bill has an overall positive, but insignificant, impact on prison beds. As a result, the bill, as filed, has no significant fiscal impact to the state. CS/SB 784 amends multiple statutes and therefore has varying effects on state prison beds. See Section V.

The bill has an effective date of October 1, 2016.

## **II. Present Situation:**

### **Human Trafficking**

Section 787.06, F.S., punishes human trafficking, which the statute defines as the “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.” The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking using labor or services or for commercial sexual activity.<sup>1</sup>

Relevant to the bill, s. 787.06(4)(b), F.S., provides that it is a second degree felony for a person to permanently brand,<sup>2</sup> or direct to be branded, a victim of an offense under s. 787.06, F.S.

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<sup>1</sup> See s. 787.06(3) and (4), F.S.

<sup>2</sup> Section 787.06(4)(b), F.S., defines permanently brand as a mark on the body that can only be removed or repaired by surgical means, laser treatment or other medical procedure.

## **Felony Murder**

Florida law punishes felony murder. Section 782.04(1)(a)2., F.S., defines first degree murder as including the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate any offense listed in this subparagraph, such as drug trafficking, arson, or sexual battery. Currently, human trafficking is not a listed offense.

First degree murder is a capital felony punishable by death if the proceeding held to determine the sentence according to the procedure set forth in s. 921.141, F.S.,<sup>3</sup> results in findings by the court that such person be punished by death. If such proceeding results in findings by the court that the person not be punished by death, such person must be punished by life imprisonment and is ineligible for parole.

## **Massage Therapist and Massage Establishment Licensing**

Chapter 480, F.S., entitled the “Massage Practice Act” (Act), governs the practice of massage<sup>4</sup> in Florida. A significant portion of the Act is dedicated to regulating massage establishments, which are defined as “a site or premises, or portion thereof, wherein a massage therapist practices massage.”<sup>5</sup>

Massage establishments may only operate if they have applied for and received a license from the Department of Health (DOH) in accordance with rules adopted by the Board of Massage Therapy (Board).<sup>6</sup> The Board’s rules:

- Govern the operation of massage establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, and insurance coverage;
- Require the DOH to inspect a proposed massage establishment upon receipt of an application for licensure to ensure that the site is to be utilized for massage; and
- Require the DOH to periodically inspect licensed massage establishments at least once a year.<sup>7</sup>

In order to be licensed as a massage therapist, an applicant must:

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;

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<sup>3</sup> Section 921.141, F.S., requires a court, upon conviction or adjudication of guilt of a defendant of a capital felony, to conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable. After hearing all the evidence, the jury must deliberate and render an advisory sentence to the court, based upon specified aggravating and mitigating circumstances. Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, must enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it must set forth in writing its findings upon which the sentence of death is based. However, the United States Supreme Court recently held that Florida’s capital sentencing scheme violates the Sixth Amendment of the United States Constitution. See *Hurst v. Florida*, Case No. 14–7505 (January 12, 2016) (Slip. Op.), available at [http://www.supremecourt.gov/opinions/15pdf/14-7505\\_5ie6.pdf](http://www.supremecourt.gov/opinions/15pdf/14-7505_5ie6.pdf) (last visited on January 25, 2016).

<sup>4</sup> The term “massage” is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation. Section 480.033(3), F.S.

<sup>5</sup> Section 480.033(7), F.S.

<sup>6</sup> Section 480.043(1), F.S.

<sup>7</sup> See Rules 64B7-26.003, 64B7-26.004, and 64B7-26.005, F.A.C.

- Complete a course of study at a massage school or apprentice program approved by the Board;
- Pass an examination; and
- Submit to a background screening.<sup>8</sup>

In addition to practicing massage therapy in a licensed massage establishment, a massage therapist may practice at a client's residence or office, at a sports event, or at a convention or trade show.<sup>9</sup>

The DOH must issue an emergency order suspending the license of a massage therapist or massage establishment upon information that the therapist, a person with ownership interest in the establishment, or other specified person<sup>10</sup> has committed a listed offense, e.g., a violation of s. 787.06, F.S. (human trafficking), and s. 796.07(4)(c), F.S. (third or subsequent violation of s. 796.07, F.S., relating to prostitution and related acts).<sup>11</sup>

The Board must deny an application for a new or renewal massage therapist license if the applicant has committed a listed offense (essentially the same list of offenses that requires an emergency license-suspension order).<sup>12</sup> Similarly, the DOH must deny an application for a new or renewal massage establishment license if the applicant has committed a listed offense (essentially the same list of offenses that requires an emergency license-suspension order).<sup>13</sup>

Additionally, Florida law prohibits sexual misconduct<sup>14</sup> in the practice of massage therapy.<sup>15</sup> In 2013, the Legislature passed legislation to restrict the practice of illicit sex acts at massage establishments by limiting the hours a massage establishment may be open at night.<sup>16</sup>

### **Renting and Using Space for Lewdness, Assignment, or Prostitution**

Section 796.06(1), F.S., provides that it is unlawful for any person to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used for the purpose of lewdness, assignment,<sup>17</sup> or prostitution. Section 796.06(2), F.S., provides that a first violation of s. 796.06, F.S., is a second degree misdemeanor; a second or subsequent violation is a first degree misdemeanor.

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<sup>8</sup> Sections 480.041, and 480.042, F.S.

<sup>9</sup> Section 480.046(1)(n), F.S.

<sup>10</sup> For a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the establishment. Section 456.074(5), F.S.

<sup>11</sup> Id.

<sup>12</sup> Section 480.041(7), F.S.

<sup>13</sup> Section 480.03(8), F.S.

<sup>14</sup> "Sexual misconduct in the practice of massage therapy means violation of the massage therapist-patient relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient." Section 480.0485, F.S.

<sup>15</sup> Id.

<sup>16</sup> Ch. 2013-212, L.O.F. Section 480.0475(1), F.S., provides that a person may not operate a massage establishment between the hours of midnight and 5 a.m., with exceptions. A person who violates this subsection commits a first degree misdemeanor but any subsequent violations is a third degree felony. Section 480.0475(3), F.S.

<sup>17</sup> The term "assignment" is not defined in statute. In the context of s. 796.06, F.S., it is essentially setting up an appointment or meeting for prostitution or related acts punished by the statute.

## **Prostitution**

Section 796.07(2), F.S., punishes engaging in prostitution and related acts. Currently both minors and adults may be charged with engaging in prostitution, lewdness, or assignation.<sup>18</sup>

Relevant to the bill, s. 787.07(2)(f), F.S., punishes soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignation. Section 796.07(5), F.S., in part, provides that in addition to any other penalty imposed, the court shall order a person convicted of a violation of paragraph (2)(f) to pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, if such program exists in the judicial circuit in which the offender is sentenced.

In 2014, the Legislature amended ch. 796, F.S.<sup>19</sup> One of the amendments was the creation of s. 796.001, F.S., which provides:

It is the intent of the Legislature that adults who involve minors in any behavior prohibited under this chapter be prosecuted under other laws of this state, such as, but not limited to, s. 787.06, chapter 794, chapter 800, s. 810.145, chapter 827, and chapter 847. The Legislature finds that prosecution of such adults under this chapter is inappropriate since a minor is unable to consent to such behavior.

This legislation also repealed the following provisions from ch. 796, F.S.:

- Procuring persons under age 18 for prostitution;
- Selling or buying of minors into prostitution; and
- Reclassifying prostitution violations involving minors.

## **Sexual Predator and Sexual Offender Registration**

Florida law requires certain persons to register as a sexual predator or sexual offender. A person is designated by a court to be a sexual predator and administratively determined to be a sexual offender by the Florida Department of Law Enforcement (FDLE). In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>20</sup>

A sexual predator or sexual offender must comply with a number of registration requirements.<sup>21</sup> Most of these requirements relate to the registration of particular identifying and residence information but other information may also be required (e.g., vehicular information, attendance at an institution of higher education, and temporarily or permanently departing from or reentering this state). The agency to which the person reports this information is determined by

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<sup>18</sup> Section 796.07(2)(e), F.S.

<sup>19</sup> Ch 2014-160, L.O.F.

<sup>20</sup> See ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S.

<sup>21</sup> *Id.* Failure to comply with these requirements is generally a third degree felony. See ss. 775.21, 943.0435, and 985.4815, F.S.

the person's status or the type of information that has to be reported. For example, if the person is not in the custody of or under the supervision of the Department of Corrections, Department of Juvenile Justice, or Department of Children and Families (civilly-confined violent sexual predators), he or she would report, in most circumstances, to the local sheriff's office. An exception would be reporting to the Department of Highway Safety and Motor Vehicles to obtain or renew a driver license or state identification card (or to update information relevant to the license or card).

Information reported by registered sexual predators and sexual offenders is provided to the FDLE and entered in a statewide database. The FDLE maintains a website that makes available to the public some of this information (e.g., identifying information, residence information, and registration-qualifying sexual offense or offenses).<sup>22</sup>

### **III. Effect of Proposed Changes:**

The bill, which takes effect October 1, 2016, addresses human trafficking and offenses often associated with human trafficking, in the following manner:

#### **Human Trafficking**

The bill amends s. 787.06, F.S., the human trafficking statute, to reclassifying the felony degree of human trafficking offenses under s. 787.06, F.S., which increases the maximum penalty of these offenses, if the victim suffers great bodily harm, permanent disability, or permanent disfigurement. The offense is reclassified as follows:

- A second degree felony<sup>23</sup> is reclassified as a first degree felony;<sup>24</sup> and
- A first degree felony is reclassified as a life felony.<sup>25</sup>

Section 787.06, F.S., is also amended to clarify that the offense of branding a victim of human trafficking is for the purpose of committing or facilitating a human trafficking offense under that statute.

#### **Felony Murder**

The bill amends s. 782.04(1)(a)2., F.S., to add human trafficking as a predicate (qualifying) felony for first degree murder in the commission of a felony.

#### **Renting and Using Space for Lewdness, Assignment, or Prostitution**

The bill amends s. 796.06(2), F.S., to increase from a second degree misdemeanor (maximum penalty of 60 days in jail) to a first degree misdemeanor (up to one year in jail) a first violation of s. 796.06, F.S. (renting space to be used for lewdness, assignment, prostitution), and increase

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<sup>22</sup> See <https://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on January 20, 2016).

<sup>23</sup> The maximum penalty is 15 years in state prison. Section 775.082, F.S.

<sup>24</sup> The maximum penalty is generally 30 years in state prison. Section 775.082, F.S.

<sup>25</sup> The maximum penalty is generally life imprisonment or a terms of years not exceeding life imprisonment. Section 775.082, F.S.

from a first degree misdemeanor to a third degree felony (maximum penalty of five years in state prison) a second or subsequent violation of that statute.

### **Prostitution**

The bill amends s. 796.07(2)(e), F.S., to provide that only an adult may be charged under the statute with engaging in prostitution, lewdness, or assignation.

As previously noted s. 796.07(2)(f), F.S., provides that it is unlawful to solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation. Section 796.07(5), F.S., in part, provides that in addition to any other penalty imposed, the court shall order a person convicted of a violation of paragraph (2)(f) to pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, if such program exists in the judicial circuit in which the offender is sentenced. The bill specifies that an educational program includes such programs offered by faith-based providers (if they exist in the judicial circuit in which the offender is sentenced).

The bill also amends s. 796.07, F.S., to reclassify the misdemeanor or felony degree of a violation of s. 796.07, F.S., if the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of the statute is a massage establishment that is or should be licensed under s. 480.043, F.S. The reclassification is as follows:

- A second degree misdemeanor for a first violation is reclassified as a first degree misdemeanor;
- A first degree misdemeanor for a second violation is reclassified as a third degree felony;<sup>26</sup> and
- A third degree felony for a third or subsequent violation is reclassified as a second degree felony.

Consistent with removing minors from being prosecuted for a violation of s. 796.07, F.S., involving prostitution, lewdness, or assignation, the bill removes language regarding arrest or prosecution of a minor for these offenses from the definition “sexual abuse of a child” in s. 39.01, F.S., the definitions section of ch. 39, F.S. (child dependency).

### **Massage Therapist and Massage Establishment Licensing**

The bill amends s. 456.074(5), F.S., to require the Department of Health to issue an emergency order suspending the license of a massage therapist of the massage establishment if the therapist, establishment owner, etc., committed a reclassified violation of s. 796.07, F.S.

The bill amends s. 480.041(7), F.S., to requiring the Board of Massage Therapy to deny an application for a new or renewal massage therapist license if the applicant has committed a reclassified violation of s. 796.07, F.S.

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<sup>26</sup> The maximum penalty is five years in state prison. Section 775.082, F.S. However, if the third degree is not a forcible felony and if the total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082(10), F.S.

The bill amends s. 480.043(8), F.S., to require the Department of Health to deny an application for a new or renewal massage establishment license if the applicant has committed a reclassified violation of s. 796.07, F.S.

### **Sexual Predator and Sexual Offender Registration**

The bill amends the list of offenses in ss. 775.21, 943.0435, 944.606, and 944.707, F.S., which are relevant qualifying offenses for purposes of designation as a sexual predator or classification as a sexual offender and for registration requirements applicable to those offenders. The bill adds the following additional qualifying offense: racketeering (s. 895.03, F.S.) where the court has made a written finding that the racketeering activity involved at least one sexual offense in the list of qualifying offenses or at least one offense in the list with sexual intent or motive.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

None.

### **C. Government Sector Impact:**

The Criminal Justice Impact Conference (CJIC), which provides the official estimate of the prison bed impact, reviewed SB 784 on January 29, 2016 and concluded that the bill, as filed, has an overall positive, but insignificant, impact on prison beds. As a result, the bill, as filed, has no significant fiscal impact to the state. CS/SB 784 amends multiple statutes and therefore has varying effects on state prison beds.

The bill:

- Amends s. 782.04(1)(a)2., F.S., to make it a first degree murder when an unlawful killing is committed by a person engaged in the perpetration of human trafficking. In Fiscal Year 2014-2015, there were 12 offenders sentenced under s. 787.06, F.S.

(human trafficking), and 9 of these offenders were sentenced to prison (average sentence length 149.3 months). None of those sentenced to prison were charged with the additional offense of first degree murder. Furthermore, no offender sent to prison for manslaughter or murder had an additional charge of human trafficking. The CJIC estimated that this provision has a positive, but insignificant, impact on prison beds.

- Amends s. 787.06(4)(b), F.S., to clarify that a person can only be convicted of branding a victim of human trafficking if it is for the purpose of committing or facilitating an offense of human trafficking. In Fiscal Year 2014-2015, there were no offenders sentenced under s. 787.06(4)(b), F.S. The CJIC estimated that this provision has a negative, but insignificant, impact on prison beds.
- Amends s. 787.06, F.S., to provide that if a human trafficking offense causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense, the degree of that offense will be reclassified as follows: second degree felony increased to a first degree felony and a first degree felony increased to a life felony. In Fiscal Year 2014-2015, there were 12 offenders sentenced under s. 787.06, F.S. (human trafficking), and nine of these offenders were sentenced to prison (average sentence length 149.3 months). Two offenders were charged with felony battery in addition to human trafficking, and one was charged with domestic battery. The CJIC estimated that this provision has a positive, but insignificant, impact on prison beds.
- Amends s. 796.06(2)(b), F.S., to increase the current first degree misdemeanor to an unranked third degree felony for a second or subsequent violation of renting space to be used for lewdness, assignation, or prostitution. In Fiscal Year 2014-2015, of the eight convictions and one adjudication withheld for violating s. 796.06, F.S., all were second degree misdemeanors and none were repeat offenders. In Fiscal Year 2014-2015, the incarceration rate for an unranked third degree felony was 9.9 percent. The CJIC estimated that this provision has a positive, but insignificant, impact on prison beds.
- Amends s. 796.07(2)(a), F.S., to reclassify the second degree misdemeanor offense as a first degree misdemeanor for a first violation, a first degree misdemeanor as an unranked third degree felony for a second violation, and the third degree felony as a second degree felony for a third or subsequent violation, if the place, structure, building, or conveyance that is owned, established, maintained, or operated for prostitution is a massage establishment required to be licensed under s. 480.043, F.S. In Fiscal Year 2014-2015, there were no guilty/convicted counts and two adjudication withheld counts for violating s. 796.07(2)(a), F.S. The CJIC estimated that this provision has a positive, but insignificant, impact on prison beds.
- Amends s. 796.07(2)(e), F.S., to specify that only adults may be charged with the offense of offering to commit, or to commit, or to engage in, prostitution, lewdness, or assignation. This offense is currently a second degree misdemeanor for a first violation, a first degree misdemeanor for a second violation, and an unranked third degree felony for a third or subsequent violation. In Fiscal Year 2014-2015, there was one guilty/convicted count and one adjudication withheld count for violating s. 796.07(2)(e), F.S. In Fiscal Year 2014-2015, there were no offenders sentenced for committing the offense of prostitution for a third or subsequent violation while under 18 years of age. The CJIC estimated that this provision has a negative, but insignificant, impact on prison beds.



- Amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to add the offense of s. 895.03, F.S. (racketeering) to the qualifying offenses for sexual offender and sexual predator if the court has made written findings that the racketeering activity involved at least one sexual offense included in the definition of sexual predator or sexual offender or the offense involved sexual intent or motive. This change adds these offenders to the pool of offenders who could potentially commit sexual offender/predator registration-related offenses. In Fiscal Year 2014-2015, there were 12 offenders sentenced under s. 787.06, F.S. (human trafficking), and nine of these offenders were sentenced to prison (mean sentence length 149.3 months) and one was sentenced to prison with both racketeering and sexual offenses. The CJIC estimated that this provision has a positive, but insignificant, impact on prison beds.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.01, 456.074, 480.041, 480.043, 782.04, 787.06, 796.06, 796.07, 775.21, 943.0435, 944.606, and 944.607.

The bill reenacts provisions of the following sections of the Florida Statutes: 39.0139, 39.509, 39.806, 60.05, 63.089, 63.092, 68.07, 92.55, 95.11, 322.141, 394.495, 394.912, 394.9125, 397.4872, 409.1678, 775.082, 775.0823, 775.0862, 775.0877, 775.13, 775.15, 775.21, 775.24, 775.25, 775.261, 782.065, 794.075, 796.08, 796.09, 895.02, 903.0351, 903.046, 921.0022, 921.16, 921.141, 938.10, 943.0435, 943.0436, 944.607, 944.608, 944.609, 947.1405, 947.16, 948.06, 948.062, 948.063, 948.064, 948.12, 948.16, 948.30, 948.31, 960.065, 985.04, 985.265, 985.4815, 1012.315, and 1012.467.

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS by Criminal Justice on January 25, 2016:**

- Reclassifies the felony degree of human trafficking offenses under s. 787.06, F.S., which increases the maximum penalty of these offenses, if the victim suffers great bodily harm, permanent disability, or permanent disfigurement;
- Clarifies that the offense of branding a victim of human trafficking is for the purpose of committing or facilitating a human trafficking offense under s. 797.06, F.S.;
- Adds human trafficking as a predicate (qualifying) felony for first degree murder in the commission of a felony;
- Increases from a second degree misdemeanor (maximum penalty of 60 days in jail) to a first degree misdemeanor (up to one year in jail) a first violation of s. 796.06, F.S.

(renting space to be used for lewdness, assignation, prostitution), and increases from a first degree misdemeanor to a third degree felony (maximum penalty of five years in state prison) a second or subsequent violation of that statute;

- Amends s. 796.07, F.S. (prostitution and related acts) to reclassify the misdemeanor or felony degree of a violation of s. 796.07, F.S., if the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of the statute is a massage establishment that is or should be licensed under s. 480.043, F.S.;
- Requires the Department of Health to issue an emergency order suspending the license of a massage therapist of the massage establishment if the therapist, establishment owner, etc., committed a reclassified violation of s. 796.07, F.S.;
- Requires the Board of Massage Therapy to deny an application for a new or renewal massage therapist license if the applicant has committed a reclassified violation of s. 796.07, F.S.;
- Requires the Department of Health to deny an application for a new or renewal massage establishment license if the applicant has committed a reclassified violation of s. 796.07, F.S.; and
- Consistent with removing minors from being prosecuted for a violation of s. 796.07, F.S., involving prostitution, lewdness, or assignation, removing language regarding arrest or prosecution of a minor for these offenses from the definition “sexual abuse of a child” in ch. 39, F.S. (child dependency).

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Flores

591-02541-16

2016784c1

1                   A bill to be entitled  
2       An act relating to human trafficking; amending s.  
3       39.01, F.S.; revising the definition of the term  
4       "sexual abuse of a child" to delete a reference to a  
5       child being arrested or prosecuted for specified  
6       offenses; amending s. 782.04, F.S.; including human  
7       trafficking as a predicate offense for felony murder;  
8       amending s. 787.06, F.S.; creating an increased  
9       penalty for causing great bodily harm, permanent  
10      disability, or permanent disfigurement; prohibiting  
11      permanently branding, or directing the permanent  
12      branding, of a victim of human trafficking with  
13      specified intent; amending s. 456.074, F.S.; requiring  
14      the Department of Health to issue an emergency order  
15      suspending the license of a massage therapist or  
16      massage establishment if the therapist or a specified  
17      person connected to the establishment is convicted of  
18      owning, establishing, maintaining, or operating a  
19      place, structure, building, or conveyance for  
20      lewdness, assignation, or prostitution in conjunction  
21      with the establishment; correcting a cross-reference;  
22      amending s. 480.041, F.S.; providing that a licensed  
23      massage therapist may not receive a new or renewal  
24      license if the applicant is convicted of owning,  
25      establishing, maintaining, or operating a place,  
26      structure, building, or conveyance for lewdness,  
27      assignation, or prostitution in conjunction with a  
28      massage establishment; correcting a cross-reference;  
29      amending s. 480.043, F.S.; providing that a licensed  
30      massage establishment may not receive a new or renewal  
31      license if specified persons connected to the  
32      establishment are convicted of owning, establishing,

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33 maintaining, or operating a place, structure,  
34 building, or conveyance for lewdness, assignation, or  
35 prostitution in conjunction with the establishment;  
36 correcting a cross-reference; amending s. 796.06,  
37 F.S.; increasing criminal penalties for the offense of  
38 renting space to be used for lewdness, assignation, or  
39 prostitution; amending s. 796.07, F.S.; providing that  
40 minors may not be charged with specified prostitution  
41 offenses; specifying that certain educational programs  
42 may be offered by faith-based providers; providing for  
43 the reclassification of the offense of owning,  
44 establishing, maintaining, or operating a place,  
45 structure, building, or conveyance for lewdness,  
46 assignation, or prostitution if the offense is  
47 committed in conjunction with a massage establishment;  
48 amending ss. 775.21 and 943.0435, F.S.; requiring a  
49 person convicted of specified racketeering offenses to  
50 register as a sexual predator or sexual offender under  
51 certain circumstances; amending ss. 944.606 and  
52 944.607, F.S.; revising the definition of the term  
53 "sexual offender" for purposes of offender  
54 notification to include a person convicted of  
55 specified racketeering offenses if the court makes  
56 specified findings; reenacting s. 394.495(4)(p), F.S.,  
57 relating to the child and adolescent mental health  
58 system of care, s. 409.1678(1)(c) and (6)(a) and (b),  
59 F.S., relating to specialized residential options for  
60 children who are victims of sexual exploitation, and  
61 s. 960.065(5), F.S., relating to eligibility for

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awards, to incorporate the amendment made by the act to s. 39.01, F.S., in references thereto; reenacting s. 39.806(1)(d) and (n), F.S., relating to grounds for termination of parental rights, to incorporate the amendments made by the act to ss. 775.21 and 782.04, F.S., in references thereto; reenacting s. 63.089(4)(b), F.S., relating to proceedings to terminate parental rights pending adoption, to incorporate the amendments made by the act to ss. 775.21 and 782.04, F.S., in references thereto; reenacting s. 95.11(10), F.S., relating to limitations other than for the recovery of real property, s. 775.082(1)(b) and (3)(a), (b), and (c), F.S., relating to penalties, s. 782.065, F.S., relating to murder of specified officers, s. 921.16(1), F.S., relating to when sentences should be concurrent and when they should be consecutive, s. 948.062(1)(a), F.S., relating to reviewing and reporting serious offenses committed by offenders placed on probation or community control, s. 985.265(3)(b), F.S., relating to detention transfer and release, and s. 1012.315(1)(d), F.S., relating to disqualification from employment, to incorporate the amendment made by the act to s. 782.04, F.S., in references thereto; reenacting s. 1012.467(2)(g), F.S., relating to noninstructional contractors who are permitted access to school grounds when students are present, to incorporate the amendments made by the act to ss. 782.04 and 943.0435, F.S., in references thereto; reenacting s. 775.0823(1)

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and (2), F.S., relating to violent offenses committed against certain officers, attorneys, and judges, s. 921.0022(3)(i), F.S., relating to the offense severity ranking chart, s. 947.146(3)(i), F.S., relating to the Control Release Authority, and s. 394.912(9)(a), F.S., relating to definitions relating to involuntary civil commitment of sexually violent predators, to incorporate the amendment made by the act to s. 782.04, F.S., in references thereto; reenacting s. 775.15(19), F.S., relating to time limitations, to incorporate the amendment made by the act to s. 787.06, F.S., in a reference thereto; reenacting s. 60.05(4), F.S., relating to abatement of nuisances, s. 775.0877(1)(m), F.S., relating to criminal transmission of HIV, s. 796.08(2) and (3), F.S., relating to screening for HIV and sexually transmissible diseases, s. 796.09(2), F.S., relating to certain civil causes of action, s. 895.02(1)(a), F.S., relating to definitions for the Florida RICO Act, and s. 948.16(1)(a), F.S., relating to specified misdemeanor pretrial intervention programs, to incorporate the amendment made by the act to s. 796.07, F.S., in references thereto; reenacting s. 39.0139(3)(a), F.S., relating to visitation or other contact, s. 39.509(6)(b), F.S., relating to grandparents rights, s. 63.092(3), F.S., relating to a report to the court of intended placement by an adoption entity, to incorporate the amendment made by the act to s. 775.21, F.S., in references thereto;

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reenacting s. 68.07(3)(i) and (6), F.S., relating to change of name, to incorporate the amendments made by this act to ss. 775.21 and 943.0435, F.S., in references thereto; reenacting s. 322.141(3), F.S., relating to color or markings of certain licenses or identification cards, to incorporate the amendments made by this act to ss. 775.21, 943.0435, and 944.607, F.S., in references thereto; reenacting s. 397.4872(2)(a) and (c), F.S., relating to exemption from disqualification, to incorporate the amendments made by this act to ss. 775.21 and 943.0435, F.S., in references thereto; reenacting s. 775.13(4)(e) and (f), F.S., relating to registration of convicted felons, to incorporate the amendments made by this act to ss. 775.21, 943.0435, and 944.607, F.S., in references thereto; reenacting s. 775.25, F.S., relating to prosecutions for acts or omissions, to incorporate the amendments made to this act by ss. 775.21, 943.0435, 944.606, and 944.607, F.S., in references thereto; reenacting s. 775.261(3)(b), F.S., relating to The Florida Career Offender Registration Act, to incorporate the amendments made by this act to ss. 775.21, 943.0435, and 944.607, F.S., in references thereto; reenacting s. 794.075(1), F.S., relating to sexual predators and erectile dysfunction drugs, and s. 903.0351(1)(c), F.S., relating to restrictions on pretrial release pending probation-violation hearing or community-control-violation hearing, to incorporate the amendment made by the act to s. 775.21, F.S., in

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149 references thereto; reenacting s. 903.046(2)(m), F.S.,  
150 relating to purpose of and criteria for bail  
151 determination, to incorporate the amendments made by  
152 this act to ss. 775.21 and 943.0435, F.S., in  
153 references thereto; reenacting s. 921.141(5)(o), F.S.,  
154 relating to sentence of death or life imprisonment for  
155 capital felonies, to incorporate the amendment made by  
156 the act to s. 775.21, F.S., in a reference thereto;  
157 reenacting s. 938.10(1), F.S., relating to additional  
158 court cost imposed in cases of certain crimes, to  
159 incorporate the amendments made by this act to ss.  
160 775.21 and 943.0435, F.S., in references thereto;  
161 reenacting s. 943.0435(3), (4), and (5), F.S.,  
162 relating to sexual offenders required to register with  
163 the department, to incorporate the amendments made by  
164 this act to ss. 775.21, 944.606, and 944.607, F.S., in  
165 references thereto; reenacting s. 944.607(4)(a) and  
166 (9), F.S., relating to notification to the Department  
167 of Law Enforcement of information on sexual offenders,  
168 to incorporate the amendments made by this act to ss.  
169 775.21 and 943.0435, F.S., in references thereto;  
170 reenacting s. 944.608(7), F.S., relating to  
171 notification to the Department of Law Enforcement of  
172 information on career offenders, to incorporate the  
173 amendments made by this act to ss. 775.21 and 944.607,  
174 F.S., in references thereto; reenacting s. 944.609(4),  
175 F.S., relating to career offenders and notification  
176 upon release, to incorporate the amendment made by the  
177 act to s. 775.21, F.S., in references thereto;



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reenacting s. 947.1405(2)(c), (10), and (12), F.S., relating to the conditional release program, to incorporate the amendments made by this act to ss. 775.21 and 943.0435, F.S., in references thereto; reenacting s. 948.06(4) and (8)(b), (c), and (d), F.S., relating to violation of probation or community control, to incorporate the amendments made by this act to ss. 782.04, 775.21, 943.0435, and 944.607, F.S., in references thereto; reenacting s. 948.063, F.S., relating to violations of probation or community control by designated sexual offenders and sexual predators, to incorporate the amendments made by this act to ss. 775.21, 943.0435, and 944.607, F.S., in references thereto; reenacting s. 948.064(4), F.S., relating to notification of status as a violent felony offender of special concern, and s. 948.12(3), F.S., relating to intensive supervision for postprison release of violent offenders, to incorporate the amendment made by the act to s. 775.21, F.S., in references thereto; reenacting s. 948.30(3)(b) and (4), F.S., relating to additional terms and conditions of probation or community control for certain sex offenses, to incorporate the amendments made by this act to ss. 775.21 and 943.0435, F.S., in references thereto; reenacting s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation or community control, and s. 985.04(6)(b), F.S., relating to oaths, records, and confidential information, to incorporate the

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amendments made by the act to ss. 775.21, 943.0435,  
944.606, and 944.607, F.S., in references thereto;  
reenacting s. 985.4815(9), F.S., relating to  
notification to the Department of Law Enforcement of  
information on juvenile sexual offenders, to  
incorporate the amendments made by this act to ss.  
775.21 and 943.0435, F.S., in references thereto;  
reenacting s. 92.55(1)(b), F.S., relating to judicial  
or other proceedings involving certain victims,  
witnesses, and persons, to incorporate the amendments  
made by this act to ss. 775.21 and 943.0435, F.S., in  
references thereto; reenacting s. 394.9125(2)(a),  
F.S., relating to state attorney authority to refer a  
person for civil commitment, to incorporate the  
amendment made by the act to s. 943.0435, F.S., in a  
reference thereto; reenacting s. 775.21(5)(d) and  
(10)(c), F.S., relating to the Florida Sexual  
Predators Act, to incorporate the amendments made by  
this act to ss. 943.0435 and 944.607, F.S., in  
references thereto; reenacting s. 775.24(2), F.S.,  
relating to the duty of the court to uphold laws  
governing sexual predators and sexual offenders, to  
incorporate the amendments made by this act to ss.  
943.0435, 944.606, and 944.607, F.S., in references  
thereto; reenacting s. 943.0436(2), F.S., relating to  
the duty of the court to uphold laws governing sexual  
predators and sexual offenders, to incorporate the  
amendments made by this act to ss. 775.21, 943.0435,  
944.606, and 944.607, F.S., in references thereto;

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reenacting s. 775.0862(2), F.S., relating to  
reclassification of sexual offenses against students  
by authority figures, to incorporate the amendment  
made by the act to s. 943.0435, F.S., in a reference  
thereto; providing an effective date.

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

Section 1. Paragraph (g) of subsection (69) of section  
39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the  
context otherwise requires:

(69) "Sexual abuse of a child" for purposes of finding a  
child to be dependent means one or more of the following acts:

(g) The sexual exploitation of a child, which includes the  
act of a child offering to engage in or engaging in  
prostitution, ~~provided that the child is not under arrest or is  
not being prosecuted in a delinquency or criminal proceeding for  
a violation of any offense in chapter 796 based on such  
behavior,~~ or the act of allowing, encouraging, or forcing a  
child to:

1. Solicit for or engage in prostitution;
2. Engage in a sexual performance, as defined by chapter  
827; or
3. Participate in the trade of human trafficking as  
provided in s. 787.06(3)(g).

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

782.04 Murder.—

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

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;
2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:
  - a. Trafficking offense prohibited by s. 893.135(1),
  - b. Arson,
  - c. Sexual battery,
  - d. Robbery,
  - e. Burglary,
  - f. Kidnapping,
  - g. Escape,
  - h. Aggravated child abuse,
  - i. Aggravated abuse of an elderly person or disabled adult,
  - j. Aircraft piracy,
  - k. Unlawful throwing, placing, or discharging of a destructive device or bomb,
  - l. Carjacking,
  - m. Home-invasion robbery,
  - n. Aggravated stalking,
  - o. Murder of another human being,
  - p. Resisting an officer with violence to his or her person,
  - q. Aggravated fleeing or eluding with serious bodily injury or death,
  - r. Felony that is an act of terrorism or is in furtherance of an act of terrorism,
  - s. Human trafficking; or
3. Which resulted from the unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in

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s. 893.03(2)(a)4., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

Section 3. Subsections (8) and (9) of section 787.06, Florida Statutes, are renumbered as subsections (9) and (10), respectively, paragraph (b) of subsection (4) is amended, and a new subsection (8) is added to that section, to read:

787.06 Human trafficking.—

(4)

(b) Any person who, for the purpose of committing or facilitating an offense under this section, permanently brands, or directs to be branded, a victim of an offense under this section commits a second degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subsection, the term "permanently branded" means a mark on the individual's body that, if it can be removed or repaired at all, can only be removed or repaired by surgical means, laser treatment, or other medical procedure.

(8) The degree of an offense shall be reclassified as follows if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of an offense under this section:

(a) A felony of the second degree shall be reclassified as a felony of the first degree.

(b) A felony of the first degree shall be reclassified as a

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323 life felony.

324 Section 4. Subsection (5) of section 456.074, Florida  
325 Statutes, is amended to read:

326 456.074 Certain health care practitioners; immediate  
327 suspension of license.—

328 (5) The department shall issue an emergency order  
329 suspending the license of a massage therapist or establishment  
330 as defined in chapter 480 upon receipt of information that the  
331 massage therapist, a person with an ownership interest in the  
332 establishment, or, for a corporation that has more than \$250,000  
333 of business assets in this state, the owner, officer, or  
334 individual directly involved in the management of the  
335 establishment has been convicted or found guilty of, or has  
336 entered a plea of guilty or nolo contendere to, regardless of  
337 adjudication, a violation of s. 796.07(2)(a) which is  
338 reclassified under s. 796.07(7) or a felony offense under any of  
339 the following provisions of state law or a similar provision in  
340 another jurisdiction:

341 (a) Section 787.01, relating to kidnapping.

342 (b) Section 787.02, relating to false imprisonment.

343 (c) Section 787.025, relating to luring or enticing a  
344 child.

345 (d) Section 787.06, relating to human trafficking.

346 (e) Section 787.07, relating to human smuggling.

347 (f) Section 794.011, relating to sexual battery.

348 (g) Section 794.08, relating to female genital mutilation.

349 (h) Former s. 796.03, relating to procuring a person under  
350 the age of 18 for prostitution.

351 (i) Former s. 796.035, relating to the selling or buying of

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minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of prostitution.

(l) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

Section 5. Subsection (7) of section 480.041, Florida Statutes, is amended to read:

480.041 Massage therapists; qualifications; licensure; endorsement.—

(7) The board shall deny an application for a new or

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renewal license if an applicant has been convicted or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, a violation of s. 796.07(2)(a) which is reclassified under s. 796.07(7) or a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.

(h) Former s. 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Former s. 796.035, relating to the selling or buying of minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of prostitution.

(l) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.



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(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

Section 6. Subsection (8) of section 480.043, Florida Statutes, is amended to read:

480.043 Massage establishments; requisites; licensure; inspection.—

(8) The department shall deny an application for a new or renewal license if a person with an ownership interest in the establishment or, for a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the establishment has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a violation of s. 796.07(2)(a) which is reclassified under s. 796.07(7) or a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

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(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.

(h) Former s. 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Former s. 796.035, relating to selling or buying of minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of prostitution.

(l) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of

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material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

Section 7. Subsection (2) of section 796.06, Florida Statutes, is amended to read:

796.06 Renting space to be used for lewdness, assignation, or prostitution.—

(2) A person who violates this section commits:

(a) A misdemeanor of the first ~~second~~ degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

(b) A felony ~~misdemeanor~~ of the third ~~first~~ degree for a second or subsequent violation, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

Section 8. Paragraph (e) of subsection (2) and paragraph (b) of subsection (5) of section 796.07, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

796.07 Prohibiting prostitution and related acts.—

(2) It is unlawful:

(e) For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.

(5)

(b) In addition to any other penalty imposed, the court shall order a person convicted of a violation of paragraph (2)(f) to:

1. Perform 100 hours of community service; and

2. Pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as

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a sexual violence prevention education program, including such programs offered by faith-based providers, if such programs exist ~~program exists~~ in the judicial circuit in which the offender is sentenced.

(7) If the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of paragraph (2) (a) is a massage establishment that is or should be licensed under s. 480.043, the offense shall be reclassified to the next higher degree as follows:

(a) A misdemeanor of the second degree for a first violation is reclassified as a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A misdemeanor of the first degree for a second violation is reclassified as a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A felony of the third degree for a third or subsequent violation is reclassified as a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 9. Paragraph (a) of subsection (4) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a “sexual predator” under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first degree felony violation, or

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any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent or guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025; s. 827.071; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed

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555 in this sub-subparagraph with sexual intent or motive; s.

556 916.1075(2); or s. 985.701(1); or a violation of a similar law  
557 of another jurisdiction;

558 2. The offender has not received a pardon for any felony or  
559 similar law of another jurisdiction that is necessary for the  
560 operation of this paragraph; and

561 3. A conviction of a felony or similar law of another  
562 jurisdiction necessary to the operation of this paragraph has  
563 not been set aside in any postconviction proceeding.

564 Section 10. Paragraph (a) of subsection (1) of section  
565 943.0435, Florida Statutes, is amended to read:

566 943.0435 Sexual offenders required to register with the  
567 department; penalty.—

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

569 (a)1. "Sexual offender" means a person who meets the  
570 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
571 subparagraph c., or sub-subparagraph d., as follows:

572 a.(I) Has been convicted of committing, or attempting,  
573 soliciting, or conspiring to commit, any of the criminal  
574 offenses proscribed in the following statutes in this state or  
575 similar offenses in another jurisdiction: s. 393.135(2); s.  
576 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
577 the victim is a minor and the defendant is not the victim's  
578 parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s.  
579 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05;  
580 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);  
581 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
582 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03,  
583 if the court makes a written finding that the racketeering

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584 activity involved at least one sexual offense listed in this  
585 sub-sub-subparagraph or at least one offense listed in this sub-  
586 sub-subparagraph with sexual intent or motive; s. 916.1075(2);  
587 or s. 985.701(1); or any similar offense committed in this state  
588 which has been redesignated from a former statute number to one  
589 of those listed in this sub-sub-subparagraph; and

590 (II) Has been released on or after October 1, 1997, from  
591 the sanction imposed for any conviction of an offense described  
592 in sub-sub-subparagraph (I). For purposes of sub-sub-  
593 subparagraph (I), a sanction imposed in this state or in any  
594 other jurisdiction includes, but is not limited to, a fine,  
595 probation, community control, parole, conditional release,  
596 control release, or incarceration in a state prison, federal  
597 prison, private correctional facility, or local detention  
598 facility;

599 b. Establishes or maintains a residence in this state and  
600 who has not been designated as a sexual predator by a court of  
601 this state but who has been designated as a sexual predator, as  
602 a sexually violent predator, or by another sexual offender  
603 designation in another state or jurisdiction and was, as a  
604 result of such designation, subjected to registration or  
605 community or public notification, or both, or would be if the  
606 person were a resident of that state or jurisdiction, without  
607 regard to whether the person otherwise meets the criteria for  
608 registration as a sexual offender;

609 c. Establishes or maintains a residence in this state who  
610 is in the custody or control of, or under the supervision of,  
611 any other state or jurisdiction as a result of a conviction for  
612 committing, or attempting, soliciting, or conspiring to commit,

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any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph; or

d. On or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense:

(I) Section 794.011, excluding s. 794.011(10);

(II) Section 800.04(4)(a)2. where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;

(III) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals; or

(IV) Section 800.04(5)(d) where the court finds the use of



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force or coercion and unclothed genitals.

2. For all qualifying offenses listed in sub-subparagraph (1)(a)1.d., the court shall make a written finding of the age of the offender at the time of the offense.

For each violation of a qualifying offense listed in this subsection, except for a violation of s. 794.011, the court shall make a written finding of the age of the victim at the time of the offense. For a violation of s. 800.04(4), the court shall also make a written finding indicating whether the offense involved sexual activity and indicating whether the offense involved force or coercion. For a violation of s. 800.04(5), the court shall also make a written finding that the offense did or did not involve unclothed genitals or genital area and that the offense did or did not involve the use of force or coercion.

Section 11. Paragraph (b) of subsection (1) of section 944.606, Florida Statutes, is amended to read:

944.606 Sexual offenders; notification upon release.—

(1) As used in this section:

(b) "Sexual offender" means a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.

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827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this paragraph or at least one offense listed in this paragraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection, when the department has received verified information regarding such conviction; an offender's computerized criminal history record is not, in and of itself, verified information.

Section 12. Paragraph (a) of subsection (1) of section 944.607, Florida Statutes, is amended to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

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

(a) "Sexual offender" means a person who is in the custody or control of, or under the supervision of, the department or is in the custody of a private correctional facility:

1. On or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.

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827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court  
makes a written finding that the racketeering activity involved  
at least one sexual offense listed in this subparagraph or at  
least one offense listed in this subparagraph with sexual intent  
or motive; s. 916.1075(2); or s. 985.701(1); or any similar  
offense committed in this state which has been redesignated from  
a former statute number to one of those listed in this  
paragraph; or

2. Who establishes or maintains a residence in this state  
and who has not been designated as a sexual predator by a court  
of this state but who has been designated as a sexual predator,  
as a sexually violent predator, or by another sexual offender  
designation in another state or jurisdiction and was, as a  
result of such designation, subjected to registration or  
community or public notification, or both, or would be if the  
person were a resident of that state or jurisdiction, without  
regard as to whether the person otherwise meets the criteria for  
registration as a sexual offender.

Section 13. For the purpose of incorporating the amendment  
made by this act to section 39.01, Florida Statutes, in a  
reference thereto, paragraph (p) of subsection (4) of section  
394.495, Florida Statutes, is reenacted to read:

394.495 Child and adolescent mental health system of care;  
programs and services.—

(4) The array of services may include, but is not limited  
to:

(p) Trauma-informed services for children who have suffered  
sexual exploitation as defined in s. 39.01(69)(g).

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Section 14. For the purpose of incorporating the amendment made by this act to section 39.01, Florida Statutes, in references thereto, paragraph (c) of subsection (1) and paragraphs (a) and (b) of subsection (6) of section 409.1678, Florida Statutes, are reenacted to read:

409.1678 Specialized residential options for children who are victims of sexual exploitation.—

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

(c) "Sexually exploited child" means a child who has suffered sexual exploitation as defined in s. 39.01(69)(g) and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

(6) LOCATION INFORMATION.—

(a) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01(69)(g), which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such confidential and exempt information held by an agency before, on, or after the effective date of the exemption.

(b) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01(69)(g), may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations in the safe house, safe foster home, or other residential facility.

Section 15. For the purpose of incorporating the amendment

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made by this act to section 39.01, Florida Statutes, in a reference thereto, subsection (5) of section 960.065, Florida Statutes, is reenacted to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01(69)(g).

Section 16. For the purpose of incorporating the amendments made by this act to sections 775.21 and 782.04, Florida Statutes, in references thereto, paragraphs (d) and (n) of subsection (1) of section 39.806, Florida Statutes, are reenacted to read:

39.806 Grounds for termination of parental rights.—

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

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

1. The period of time for which the parent is expected to be incarcerated will constitute a significant portion of the child's minority. When determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first

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787 degree felony violation of s. 794.011; or has been convicted of  
788 an offense in another jurisdiction which is substantially  
789 similar to one of the offenses listed in this paragraph. As used  
790 in this section, the term "substantially similar offense" means  
791 any offense that is substantially similar in elements and  
792 penalties to one of those listed in this subparagraph, and that  
793 is in violation of a law of any other jurisdiction, whether that  
794 of another state, the District of Columbia, the United States or  
795 any possession or territory thereof, or any foreign  
796 jurisdiction; or

797 3. The court determines by clear and convincing evidence  
798 that continuing the parental relationship with the incarcerated  
799 parent would be harmful to the child and, for this reason, that  
800 termination of the parental rights of the incarcerated parent is  
801 in the best interest of the child. When determining harm, the  
802 court shall consider the following factors:

- 803 a. The age of the child.  
804 b. The relationship between the child and the parent.  
805 c. The nature of the parent's current and past provision  
806 for the child's developmental, cognitive, psychological, and  
807 physical needs.  
808 d. The parent's history of criminal behavior, which may  
809 include the frequency of incarceration and the unavailability of  
810 the parent to the child due to incarceration.  
811 e. Any other factor the court deems relevant.

812 (n) The parent is convicted of an offense that requires the  
813 parent to register as a sexual predator under s. 775.21.

814 Section 17. For the purpose of incorporating the amendments  
815 made by this act to sections 775.21 and 782.04, Florida

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Statutes, in references thereto, paragraph (b) of subsection (4) of section 63.089, Florida Statutes, is reenacted to read:

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

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

(b) The child has been abandoned when the parent of a child is incarcerated on or after October 1, 2001, in a federal, state, or county correctional institution and:

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

2. The incarcerated parent has been determined by a court of competent jurisdiction to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, convicted of child abuse as defined in s.

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827.03, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of a substantially similar offense in another jurisdiction. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

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

Section 18. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, subsection (10) of section 95.11, Florida Statutes, is reenacted to read:

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

(10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph (4) (d), an action for wrongful death seeking damages authorized under s. 768.21 brought against a natural person for an intentional tort resulting in death from acts described in s.



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874 782.04 or s. 782.07 may be commenced at any time. This  
875 subsection shall not be construed to require an arrest, the  
876 filing of formal criminal charges, or a conviction for a  
877 violation of s. 782.04 or s. 782.07 as a condition for filing a  
878 civil action.

879 Section 19. For the purpose of incorporating the amendment  
880 made by this act to section 782.04, Florida Statutes, in  
881 references thereto, paragraph (b) of subsection (1) and  
882 paragraphs (a), (b), and (c) of subsection (3) of section  
883 775.082, Florida Statutes, are reenacted to read:

884 775.082 Penalties; applicability of sentencing structures;  
885 mandatory minimum sentences for certain reoffenders previously  
886 released from prison.—

887 (1)

888 (b)1. A person who actually killed, intended to kill, or  
889 attempted to kill the victim and who is convicted under s.  
890 782.04 of a capital felony, or an offense that was reclassified  
891 as a capital felony, which was committed before the person  
892 attained 18 years of age shall be punished by a term of  
893 imprisonment for life if, after a sentencing hearing conducted  
894 by the court in accordance with s. 921.1401, the court finds  
895 that life imprisonment is an appropriate sentence. If the court  
896 finds that life imprisonment is not an appropriate sentence,  
897 such person shall be punished by a term of imprisonment of at  
898 least 40 years. A person sentenced pursuant to this subparagraph  
899 is entitled to a review of his or her sentence in accordance  
900 with s. 921.1402(2) (a).

901 2. A person who did not actually kill, intend to kill, or  
902 attempt to kill the victim and who is convicted under s. 782.04

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of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

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

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

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

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

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

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

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

(I) A term of imprisonment for life; or

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

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

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

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

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

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2) (b) or (c). Such a finding shall be based upon

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whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

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

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

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

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

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

c. The court shall make a written finding as to whether a

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990 person is eligible for a sentence review hearing under s.  
991 921.1402(2)(b) or (c). Such a finding shall be based upon  
992 whether the person actually killed, intended to kill, or  
993 attempted to kill the victim. The court may find that multiple  
994 defendants killed, intended to kill, or attempted to kill the  
995 victim.

996 (c) Notwithstanding paragraphs (a) and (b), a person  
997 convicted of an offense that is not included in s. 782.04 but  
998 that is an offense that is a life felony or is punishable by a  
999 term of imprisonment for life or by a term of years not  
1000 exceeding life imprisonment, or an offense that was reclassified  
1001 as a life felony or an offense punishable by a term of  
1002 imprisonment for life or by a term of years not exceeding life  
1003 imprisonment, which was committed before the person attained 18  
1004 years of age may be punished by a term of imprisonment for life  
1005 or a term of years equal to life imprisonment if the judge  
1006 conducts a sentencing hearing in accordance with s. 921.1401 and  
1007 finds that life imprisonment or a term of years equal to life  
1008 imprisonment is an appropriate sentence. A person who is  
1009 sentenced to a term of imprisonment of more than 20 years is  
1010 entitled to a review of his or her sentence in accordance with  
1011 s. 921.1402(2)(d).

1012 Section 20. For the purpose of incorporating the amendment  
1013 made by this act to section 782.04, Florida Statutes, in  
1014 references thereto, section 782.065, Florida Statutes, is  
1015 reenacted to read:

1016 782.065 Murder; law enforcement officer, correctional  
1017 officer, correctional probation officer.—Notwithstanding ss.  
1018 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant

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shall be sentenced to life imprisonment without eligibility for release upon findings by the trier of fact that, beyond a reasonable doubt:

(1) The defendant committed murder in the first degree in violation of s. 782.04(1) and a death sentence was not imposed; murder in the second or third degree in violation of s. 782.04(2), (3), or (4); attempted murder in the first or second degree in violation of s. 782.04(1)(a)1. or (2); or attempted felony murder in violation of s. 782.051; and

(2) The victim of any offense described in subsection (1) was a law enforcement officer, part-time law enforcement officer, auxiliary law enforcement officer, correctional officer, part-time correctional officer, auxiliary correctional officer, correctional probation officer, part-time correctional probation officer, or auxiliary correctional probation officer, as those terms are defined in s. 943.10, engaged in the lawful performance of a legal duty.

Section 21. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, subsection (1) of section 921.16, Florida Statutes, is reenacted to read:

921.16 When sentences to be concurrent and when consecutive.—

(1) A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not

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1048 charged in the same indictment, information, or affidavit shall  
1049 be served consecutively unless the court directs that two or  
1050 more of the sentences be served concurrently. Any sentence for  
1051 sexual battery as defined in chapter 794 or murder as defined in  
1052 s. 782.04 must be imposed consecutively to any other sentence  
1053 for sexual battery or murder which arose out of a separate  
1054 criminal episode or transaction.

1055 Section 22. For the purpose of incorporating the amendment  
1056 made by this act to section 782.04, Florida Statutes, in a  
1057 reference thereto, paragraph (a) of subsection (1) of section  
1058 948.062, Florida Statutes, is reenacted to read:

1059 948.062 Reviewing and reporting serious offenses committed  
1060 by offenders placed on probation or community control.—

1061 (1) The department shall review the circumstances related  
1062 to an offender placed on probation or community control who has  
1063 been arrested while on supervision for the following offenses:

1064 (a) Any murder as provided in s. 782.04;

1065 Section 23. For the purpose of incorporating the amendment  
1066 made by this act to section 782.04, Florida Statutes, in a  
1067 reference thereto, paragraph (b) of subsection (3) of section  
1068 985.265, Florida Statutes, is reenacted to read:

1069 985.265 Detention transfer and release; education; adult  
1070 jails.—

1071 (3)

1072 (b) When a juvenile is released from secure detention or  
1073 transferred to nonsecure detention, detention staff shall  
1074 immediately notify the appropriate law enforcement agency,  
1075 school personnel, and victim if the juvenile is charged with  
1076 committing any of the following offenses or attempting to commit

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any of the following offenses:

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

Section 24. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 1012.315, Florida Statutes, is reenacted to read:

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

(1) Any felony offense prohibited under any of the following statutes:

(d) Section 782.04, relating to murder.

Section 25. For the purpose of incorporating the amendment made by this act to sections 782.04 and 943.0435, Florida Statutes, in references thereto, paragraph (g) of subsection (2) of section 1012.467, Florida Statutes, is reenacted to read:

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

(2)



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

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

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

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

4. Section 775.30, relating to terrorism.

5. Section 782.04, relating to murder.

6. Section 787.01, relating to kidnapping.

7. Any offense under chapter 800, relating to lewdness and indecent exposure.

8. Section 826.04, relating to incest.

9. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

Section 26. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, subsections (1) and (2) of section 775.0823, Florida Statutes, are reenacted to read:

775.0823 Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant

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1135 state attorneys, justices, or judges.—The Legislature does  
1136 hereby provide for an increase and certainty of penalty for any  
1137 person convicted of a violent offense against any law  
1138 enforcement or correctional officer, as defined in s. 943.10(1),  
1139 (2), (3), (6), (7), (8), or (9); against any state attorney  
1140 elected pursuant to s. 27.01 or assistant state attorney  
1141 appointed under s. 27.181; or against any justice or judge of a  
1142 court described in Art. V of the State Constitution, which  
1143 offense arises out of or in the scope of the officer's duty as a  
1144 law enforcement or correctional officer, the state attorney's or  
1145 assistant state attorney's duty as a prosecutor or investigator,  
1146 or the justice's or judge's duty as a judicial officer, as  
1147 follows:

1148 (1) For murder in the first degree as described in s.  
1149 782.04(1), if the death sentence is not imposed, a sentence of  
1150 imprisonment for life without eligibility for release.

1151 (2) For attempted murder in the first degree as described  
1152 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,  
1153 or s. 775.084.

1154  
1155 Notwithstanding the provisions of s. 948.01, with respect to any  
1156 person who is found to have violated this section, adjudication  
1157 of guilt or imposition of sentence shall not be suspended,  
1158 deferred, or withheld.

1159 Section 27. For the purpose of incorporating the amendment  
1160 made by this act to section 782.04, Florida Statutes, in a  
1161 reference thereto, paragraph (i) of subsection (3) of section  
1162 921.0022, Florida Statutes, is reenacted to read:

1163 921.0022 Criminal Punishment Code; offense severity ranking

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chart.—

(3) OFFENSE SEVERITY RANKING CHART

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
499.0051 (9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling

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or exceeding \$100,000.

1175

655.50(10)(b)3.           1st    Failure to report financial  
transactions totaling or  
exceeding \$100,000 by financial  
institution.

1176

775.0844                   1st    Aggravated white collar crime.

1177

782.04(1)                   1st    Attempt, conspire, or solicit  
to commit premeditated murder.

1178

782.04(3)                   1st,PBL   Accomplice to murder in  
connection with arson, sexual  
battery, robbery, burglary,  
aggravated fleeing or eluding  
with serious bodily injury or  
death, and other specified  
felonies.

1179

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

1180

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

1181

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- 1182 787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or  
reward or as a shield or  
hostage.
- 1183 787.01(1)(a)2. 1st,PBL Kidnapping with intent to  
commit or facilitate commission  
of any felony.
- 1184 787.01(1)(a)4. 1st,PBL Kidnapping with intent to  
interfere with performance of  
any governmental or political  
function.
- 1185 787.02(3)(a) 1st,PBL False imprisonment; child under  
age 13; perpetrator also  
commits aggravated child abuse,  
sexual battery, or lewd or  
lascivious battery,  
molestation, conduct, or  
exhibition.
- 1186 787.06(3)(c)1. 1st Human trafficking for labor and  
services of an unauthorized  
alien child.
- 787.06(3)(d) 1st Human trafficking using  
coercion for commercial sexual  
activity of an unauthorized  
adult alien.

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1187

787.06(3)(f)1.      1st,PBL    Human trafficking for  
commercial sexual activity by  
the transfer or transport of  
any child from outside Florida  
to within the state.

1188

790.161                      1st      Attempted capital destructive  
device offense.

1189

790.166(2)                  1st,PBL    Possessing, selling, using, or  
attempting to use a weapon of  
mass destruction.

1190

794.011(2)                  1st      Attempted sexual battery;  
victim less than 12 years of  
age.

1191

794.011(2)                  Life      Sexual battery; offender  
younger than 18 years and  
commits sexual battery on a  
person less than 12 years.

1192

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.

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1194

794.011 (4) (b) 1st Sexual battery, certain  
circumstances; victim and  
offender 18 years of age or  
older.

1195

794.011 (4) (c) 1st Sexual battery, certain  
circumstances; victim 12 years  
of age or older; offender  
younger than 18 years.

1196

794.011 (4) (d) 1st, PBL Sexual battery, certain  
circumstances; victim 12 years  
of age or older; prior  
conviction for specified sex  
offenses.

1197

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.

1198

794.08 (2) 1st Female genital mutilation;  
victim younger than 18 years of  
age.

1199

800.04 (5) (b) Life Lewd or lascivious molestation;  
victim less than 12 years;  
offender 18 years or older.

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1200	812.13 (2) (a)	1st, PBL	Robbery with firearm or other deadly weapon.
1201	812.133 (2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.
1202	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
1203	817.535 (3) (b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
1204	817.535 (4) (a) 2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
1205	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, PBL	Fraudulent use of personal identification information of



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an individual under the age of  
18 by his or her parent, legal  
guardian, or person exercising  
custodial authority.

1206

827.03 (2) (a) 1st Aggravated child abuse.

1207

847.0145 (1) 1st Selling, or otherwise  
transferring custody or  
control, of a minor.

1208

847.0145 (2) 1st Purchasing, or otherwise  
obtaining custody or control,  
of a minor.

1209

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.

1210

893.135 1st Attempted capital trafficking  
offense.

1211

893.135 (1) (a) 3. 1st Trafficking in cannabis, more  
than 10,000 lbs.

1212

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893.135 1st Trafficking in cocaine, more  
(1) (b) 1.c. than 400 grams, less than 150  
kilograms.

1213

893.135 1st Trafficking in illegal drugs,  
(1) (c) 1.c. more than 28 grams, less than  
30 kilograms.

1214

893.135 1st Trafficking in hydrocodone, 200  
(1) (c) 2.d. grams or more, less than 30  
kilograms.

1215

893.135 1st Trafficking in oxycodone, 100  
(1) (c) 3.d. grams or more, less than 30  
kilograms.

1216

893.135 1st Trafficking in phencyclidine,  
(1) (d) 1.c. more than 400 grams.

1217

893.135 1st Trafficking in methaqualone,  
(1) (e) 1.c. more than 25 kilograms.

1218

893.135 1st Trafficking in amphetamine,  
(1) (f) 1.c. more than 200 grams.

1219

893.135 1st Trafficking in gamma-  
(1) (h) 1.c. hydroxybutyric acid (GHB), 10  
kilograms or more.

1220

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893.135 1st Trafficking in 1,4-Butanediol,  
(1) (j) 1.c. 10 kilograms or more.

1221

893.135 1st Trafficking in Phenethylamines,  
(1) (k) 2.c. 400 grams or more.

1222

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

1223

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

1224

1225

Section 28. For the purpose of incorporating the amendment  
made by this act to section 782.04, Florida Statutes, in a  
reference thereto, paragraph (i) of subsection (3) of section  
947.146, Florida Statutes, is reenacted to read:

947.146 Control Release Authority.—

(3) Within 120 days prior to the date the state  
correctional system is projected pursuant to s. 216.136 to  
exceed 99 percent of total capacity, the authority shall  
determine eligibility for and establish a control release date  
for an appropriate number of parole ineligible inmates committed  
to the department and incarcerated within the state who have  
been determined by the authority to be eligible for

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discretionary early release pursuant to this section. In establishing control release dates, it is the intent of the Legislature that the authority prioritize consideration of eligible inmates closest to their tentative release date. The authority shall rely upon commitment data on the offender information system maintained by the department to initially identify inmates who are to be reviewed for control release consideration. The authority may use a method of objective risk assessment in determining if an eligible inmate should be released. Such assessment shall be a part of the department's management information system. However, the authority shall have sole responsibility for determining control release eligibility, establishing a control release date, and effectuating the release of a sufficient number of inmates to maintain the inmate population between 99 percent and 100 percent of total capacity. Inmates who are ineligible for control release are inmates who are parole eligible or inmates who:

(i) Are convicted, or have been previously convicted, of committing or attempting to commit murder in the first, second, or third degree under s. 782.04(1), (2), (3), or (4), or have ever been convicted of any degree of murder or attempted murder in another jurisdiction;

In making control release eligibility determinations under this subsection, the authority may rely on any document leading to or generated during the course of the criminal proceedings, including, but not limited to, any presentence or postsentence investigation or any information contained in arrest reports relating to circumstances of the offense.

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Section 29. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (a) of subsection (9) of section 394.912, Florida Statutes, is reenacted to read:

394.912 Definitions.—As used in this part, the term:

(9) "Sexually violent offense" means:

(a) Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2.;

Section 30. For the purpose of incorporating the amendment made by this act to section 787.06, Florida Statutes, in a reference thereto, subsection (19) of section 775.15, Florida Statutes, is reenacted to read:

775.15 Time limitations; general time limitations; exceptions.—

(19) A prosecution for a violation of s. 787.06 may be commenced at any time. This subsection applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2014.

Section 31. For the purpose of incorporating the amendment made by this act to section 796.07, Florida Statutes, in a reference thereto, subsection (4) of section 60.05, Florida Statutes, is reenacted to read:

60.05 Abatement of nuisances.—

(4) On trial if the existence of a nuisance is shown, the court shall issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance and shall adjudge that the costs are a lien on all personal property found in the place of the nuisance and on the failure of the property to bring enough to pay the costs, then on the

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real estate occupied by the nuisance. No lien shall attach to the real estate of any other than said persons unless 5 days' written notice has been given to the owner or his or her agent who fails to begin to abate the nuisance within said 5 days. In a proceeding abating a nuisance pursuant to s. 823.10 or s. 823.05, if a tenant has been convicted of an offense under chapter 893 or s. 796.07, the court may order the tenant to vacate the property within 72 hours if the tenant and owner of the premises are parties to the nuisance abatement action and the order will lead to the abatement of the nuisance.

Section 32. For the purpose of incorporating the amendment made by this act to section 796.07, Florida Statutes, in a reference thereto, paragraph (m) of subsection (1) of section 775.0877, Florida Statutes, is reenacted to read:

775.0877 Criminal transmission of HIV; procedures; penalties.—

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, or the attempt thereof, which offense or attempted offense involves the transmission of body fluids from one person to another:

(m) Sections 796.07 and 796.08, relating to prostitution; the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates,

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subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

Section 33. For the purpose of incorporating the amendment made by this act to section 796.07, Florida Statutes, in references thereto, subsections (2) and (3) of section 796.08, Florida Statutes, are reenacted to read:

796.08 Screening for HIV and sexually transmissible diseases; providing penalties.—

(2) A person arrested under s. 796.07 may request screening for a sexually transmissible disease under direction of the Department of Health and, if infected, shall submit to appropriate treatment and counseling. A person who requests screening for a sexually transmissible disease under this subsection must pay any costs associated with such screening.

(3) A person convicted under s. 796.07 of prostitution or procuring another to commit prostitution must undergo screening for a sexually transmissible disease, including, but not limited to, screening to detect exposure to the human immunodeficiency virus, under direction of the Department of Health. If the person is infected, he or she must submit to treatment and counseling prior to release from probation, community control, or incarceration. Notwithstanding the provisions of s. 384.29, the results of tests conducted pursuant to this subsection shall be made available by the Department of Health to the offender, medical personnel, appropriate state agencies, state attorneys,

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and courts of appropriate jurisdiction in need of such information in order to enforce the provisions of this chapter.

Section 34. For the purpose of incorporating the amendment made by this act to section 796.07, Florida Statutes, in a reference thereto, subsection (2) of section 796.09, Florida Statutes, is reenacted to read:

796.09 Coercion; civil cause of action; evidence; defenses; attorney's fees.—

(2) As used in this section, the term "prostitution" has the same meaning as in s. 796.07.

Section 35. For the purpose of incorporating the amendment made by this act to section 796.07, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is reenacted to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid



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1383 fraud.

1384 5. Section 414.39, relating to public assistance fraud.

1385 6. Section 440.105 or s. 440.106, relating to workers'  
1386 compensation.

1387 7. Section 443.071(4), relating to creation of a fictitious  
1388 employer scheme to commit reemployment assistance fraud.

1389 8. Section 465.0161, relating to distribution of medicinal  
1390 drugs without a permit as an Internet pharmacy.

1391 9. Section 499.0051, relating to crimes involving  
1392 contraband and adulterated drugs.

1393 10. Part IV of chapter 501, relating to telemarketing.

1394 11. Chapter 517, relating to sale of securities and  
1395 investor protection.

1396 12. Section 550.235 or s. 550.3551, relating to dogracing  
1397 and horseracing.

1398 13. Chapter 550, relating to jai alai frontons.

1399 14. Section 551.109, relating to slot machine gaming.

1400 15. Chapter 552, relating to the manufacture, distribution,  
1401 and use of explosives.

1402 16. Chapter 560, relating to money transmitters, if the  
1403 violation is punishable as a felony.

1404 17. Chapter 562, relating to beverage law enforcement.

1405 18. Section 624.401, relating to transacting insurance  
1406 without a certificate of authority, s. 624.437(4)(c)1., relating  
1407 to operating an unauthorized multiple-employer welfare  
1408 arrangement, or s. 626.902(1)(b), relating to representing or  
1409 aiding an unauthorized insurer.

1410 19. Section 655.50, relating to reports of currency  
1411 transactions, when such violation is punishable as a felony.

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1412 20. Chapter 687, relating to interest and usurious  
1413 practices.

1414 21. Section 721.08, s. 721.09, or s. 721.13, relating to  
1415 real estate timeshare plans.

1416 22. Section 775.13(5)(b), relating to registration of  
1417 persons found to have committed any offense for the purpose of  
1418 benefiting, promoting, or furthering the interests of a criminal  
1419 gang.

1420 23. Section 777.03, relating to commission of crimes by  
1421 accessories after the fact.

1422 24. Chapter 782, relating to homicide.

1423 25. Chapter 784, relating to assault and battery.

1424 26. Chapter 787, relating to kidnapping or human  
1425 trafficking.

1426 27. Chapter 790, relating to weapons and firearms.

1427 28. Chapter 794, relating to sexual battery, but only if  
1428 such crime was committed with the intent to benefit, promote, or  
1429 further the interests of a criminal gang, or for the purpose of  
1430 increasing a criminal gang member's own standing or position  
1431 within a criminal gang.

1432 29. Former s. 796.03, former s. 796.035, s. 796.04, s.  
1433 796.05, or s. 796.07, relating to prostitution.

1434 30. Chapter 806, relating to arson and criminal mischief.

1435 31. Chapter 810, relating to burglary and trespass.

1436 32. Chapter 812, relating to theft, robbery, and related  
1437 crimes.

1438 33. Chapter 815, relating to computer-related crimes.

1439 34. Chapter 817, relating to fraudulent practices, false  
1440 pretenses, fraud generally, and credit card crimes.

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1441 35. Chapter 825, relating to abuse, neglect, or  
1442 exploitation of an elderly person or disabled adult.

1443 36. Section 827.071, relating to commercial sexual  
1444 exploitation of children.

1445 37. Section 828.122, relating to fighting or baiting  
1446 animals.

1447 38. Chapter 831, relating to forgery and counterfeiting.

1448 39. Chapter 832, relating to issuance of worthless checks  
1449 and drafts.

1450 40. Section 836.05, relating to extortion.

1451 41. Chapter 837, relating to perjury.

1452 42. Chapter 838, relating to bribery and misuse of public  
1453 office.

1454 43. Chapter 843, relating to obstruction of justice.

1455 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or  
1456 s. 847.07, relating to obscene literature and profanity.

1457 45. Chapter 849, relating to gambling, lottery, gambling or  
1458 gaming devices, slot machines, or any of the provisions within  
1459 that chapter.

1460 46. Chapter 874, relating to criminal gangs.

1461 47. Chapter 893, relating to drug abuse prevention and  
1462 control.

1463 48. Chapter 896, relating to offenses related to financial  
1464 transactions.

1465 49. Sections 914.22 and 914.23, relating to tampering with  
1466 or harassing a witness, victim, or informant, and retaliation  
1467 against a witness, victim, or informant.

1468 50. Sections 918.12 and 918.13, relating to tampering with  
1469 jurors and evidence.

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1470 Section 36. For the purpose of incorporating the amendment  
1471 made by this act to section 796.07, Florida Statutes, in a  
1472 reference thereto, paragraph (a) of subsection (1) of section  
1473 948.16, Florida Statutes, is reenacted to read:

1474 948.16 Misdemeanor pretrial substance abuse education and  
1475 treatment intervention program; misdemeanor pretrial veterans'  
1476 treatment intervention program.—

1477 (1)(a) A person who is charged with a nonviolent,  
1478 nontraffic-related misdemeanor and identified as having a  
1479 substance abuse problem or who is charged with a misdemeanor for  
1480 possession of a controlled substance or drug paraphernalia under  
1481 chapter 893, prostitution under s. 796.07, possession of alcohol  
1482 while under 21 years of age under s. 562.111, or possession of a  
1483 controlled substance without a valid prescription under s.  
1484 499.03, and who has not previously been convicted of a felony,  
1485 is eligible for voluntary admission into a misdemeanor pretrial  
1486 substance abuse education and treatment intervention program,  
1487 including a treatment-based drug court program established  
1488 pursuant to s. 397.334, approved by the chief judge of the  
1489 circuit, for a period based on the program requirements and the  
1490 treatment plan for the offender, upon motion of either party or  
1491 the court's own motion, except, if the state attorney believes  
1492 the facts and circumstances of the case suggest the defendant is  
1493 involved in dealing and selling controlled substances, the court  
1494 shall hold a preadmission hearing. If the state attorney  
1495 establishes, by a preponderance of the evidence at such hearing,  
1496 that the defendant was involved in dealing or selling controlled  
1497 substances, the court shall deny the defendant's admission into  
1498 the pretrial intervention program.

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Section 37. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 39.0139, Florida Statutes, is reenacted to read:

39.0139 Visitation or other contact; restrictions.—

(3) PRESUMPTION OF DETRIMENT.—

(a) A rebuttable presumption of detriment to a child is created when:

1. A court of competent jurisdiction has found probable cause exists that a parent or caregiver has sexually abused a child as defined in s. 39.01;

2. A parent or caregiver has been found guilty of, regardless of adjudication, or has entered a plea of guilty or nolo contendere to, charges under the following statutes or substantially similar statutes of other jurisdictions:

a. Section 787.04, relating to removing minors from the state or concealing minors contrary to court order;

b. Section 794.011, relating to sexual battery;

c. Section 798.02, relating to lewd and lascivious behavior;

d. Chapter 800, relating to lewdness and indecent exposure;

e. Section 826.04, relating to incest; or

f. Chapter 827, relating to the abuse of children; or

3. A court of competent jurisdiction has determined a parent or caregiver to be a sexual predator as defined in s. 775.21 or a parent or caregiver has received a substantially similar designation under laws of another jurisdiction.

Section 38. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a

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reference thereto, paragraph (b) of subsection (6) of section 39.509, Florida Statutes, is reenacted to read:

39.509 Grandparents rights.—Notwithstanding any other provision of law, a maternal or paternal grandparent as well as a stepgrandparent is entitled to reasonable visitation with his or her grandchild who has been adjudicated a dependent child and taken from the physical custody of the parent unless the court finds that such visitation is not in the best interest of the child or that such visitation would interfere with the goals of the case plan. Reasonable visitation may be unsupervised and, where appropriate and feasible, may be frequent and continuing. Any order for visitation or other contact must conform to the provisions of s. 39.0139.

(6) In determining whether grandparental visitation is not in the child's best interest, consideration may be given to the following:

(b) The designation by a court as a sexual predator as defined in s. 775.21 or a substantially similar designation under laws of another jurisdiction.

Section 39. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, subsection (3) of section 63.092, Florida Statutes, is reenacted to read:

63.092 Report to the court of intended placement by an adoption entity; at-risk placement; preliminary study.—

(3) PRELIMINARY HOME STUDY.—Before placing the minor in the intended adoptive home, a preliminary home study must be performed by a licensed child-placing agency, a child-caring agency registered under s. 409.176, a licensed professional, or

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an agency described in s. 61.20(2), unless the adoptee is an adult or the petitioner is a stepparent or a relative. If the adoptee is an adult or the petitioner is a stepparent or a relative, a preliminary home study may be required by the court for good cause shown. The department is required to perform the preliminary home study only if there is no licensed child-placing agency, child-caring agency registered under s. 409.176, licensed professional, or agency described in s. 61.20(2), in the county where the prospective adoptive parents reside. The preliminary home study must be made to determine the suitability of the intended adoptive parents and may be completed prior to identification of a prospective adoptive minor. A favorable preliminary home study is valid for 1 year after the date of its completion. Upon its completion, a signed copy of the home study must be provided to the intended adoptive parents who were the subject of the home study. A minor may not be placed in an intended adoptive home before a favorable preliminary home study is completed unless the adoptive home is also a licensed foster home under s. 409.175. The preliminary home study must include, at a minimum:

- (a) An interview with the intended adoptive parents;
- (b) Records checks of the department's central abuse registry and criminal records correspondence checks under s. 39.0138 through the Department of Law Enforcement on the intended adoptive parents;
- (c) An assessment of the physical environment of the home;
- (d) A determination of the financial security of the intended adoptive parents;
- (e) Documentation of counseling and education of the

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intended adoptive parents on adoptive parenting;

(f) Documentation that information on adoption and the adoption process has been provided to the intended adoptive parents;

(g) Documentation that information on support services available in the community has been provided to the intended adoptive parents; and

(h) A copy of each signed acknowledgment of receipt of disclosure required by s. 63.085.

If the preliminary home study is favorable, a minor may be placed in the home pending entry of the judgment of adoption. A minor may not be placed in the home if the preliminary home study is unfavorable. If the preliminary home study is unfavorable, the adoption entity may, within 20 days after receipt of a copy of the written recommendation, petition the court to determine the suitability of the intended adoptive home. A determination as to suitability under this subsection does not act as a presumption of suitability at the final hearing. In determining the suitability of the intended adoptive home, the court must consider the totality of the circumstances in the home. A minor may not be placed in a home in which there resides any person determined by the court to be a sexual predator as defined in s. 775.21 or to have been convicted of an offense listed in s. 63.089(4)(b)2.

Section 40. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (i) of subsection (3) and subsection (6) of section 68.07, Florida Statutes, are



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reenacted to read:

68.07 Change of name.—

(3) Each petition shall be verified and show:

(i) Whether the petitioner has ever been required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435.

(6) The clerk of the court must, within 5 business days after the filing of the final judgment, send a report of the judgment to the Department of Law Enforcement on a form to be furnished by that department. If the petitioner is required to register as a sexual predator or a sexual offender pursuant to s. 775.21 or s. 943.0435, the clerk of court shall electronically notify the Department of Law Enforcement of the name change, in a manner prescribed by that department, within 2 business days after the filing of the final judgment. The Department of Law Enforcement must send a copy of the report to the Department of Highway Safety and Motor Vehicles, which may be delivered by electronic transmission. The report must contain sufficient information to identify the petitioner, including the results of the criminal history records check if applicable, the new name of the petitioner, and the file number of the judgment. The Department of Highway Safety and Motor Vehicles shall monitor the records of any sexual predator or sexual offender whose name has been provided to it by the Department of Law Enforcement. If the sexual predator or sexual offender does not obtain a replacement driver license or identification card within the required time as specified in s. 775.21 or s. 943.0435, the Department of Highway Safety and Motor Vehicles shall notify the Department of Law Enforcement. The Department

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of Law Enforcement shall notify applicable law enforcement agencies of the predator's or offender's failure to comply with registration requirements. Any information retained by the Department of Law Enforcement and the Department of Highway Safety and Motor Vehicles may be revised or supplemented by said departments to reflect changes made by the final judgment. With respect to a person convicted of a felony in another state or of a federal offense, the Department of Law Enforcement must send the report to the respective state's office of law enforcement records or to the office of the Federal Bureau of Investigation. The Department of Law Enforcement may forward the report to any other law enforcement agency it believes may retain information related to the petitioner.

Section 41. For the purpose of incorporating the amendments made by this act to sections 775.21, 943.0435, and 944.607, Florida Statutes, in references thereto, subsection (3) of section 322.141, Florida Statutes, is reenacted to read:

322.141 Color or markings of certain licenses or identification cards.—

(3) All licenses for the operation of motor vehicles or identification cards originally issued or reissued by the department to persons who are designated as sexual predators under s. 775.21 or subject to registration as sexual offenders under s. 943.0435 or s. 944.607, or who have a similar designation or are subject to a similar registration under the laws of another jurisdiction, shall have on the front of the license or identification card the following:

(a) For a person designated as a sexual predator under s. 775.21 or who has a similar designation under the laws of

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another jurisdiction, the marking "SEXUAL PREDATOR."

(b) For a person subject to registration as a sexual offender under s. 943.0435 or s. 944.607, or subject to a similar registration under the laws of another jurisdiction, the marking "943.0435, F.S."

Section 42. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraphs (a) and (c) of subsection (2) of section 397.4872, Florida Statutes, are reenacted to read:

397.4872 Exemption from disqualification; publication.—

(2) The department may exempt a person from ss. 397.487(6) and 397.4871(5) if it has been at least 3 years since the person has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense. An exemption from the disqualifying offenses may not be given under any circumstances for any person who is a:

(a) Sexual predator pursuant to s. 775.21;

(c) Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

Section 43. For the purpose of incorporating the amendments made by this act to sections 775.21, 943.0435, and 944.607, Florida Statutes, in references thereto, paragraphs (e) and (f) of subsection (4) of section 775.13, Florida Statutes, are reenacted to read:

775.13 Registration of convicted felons, exemptions; penalties.—

(4) This section does not apply to an offender:

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(e) Who is a sexual predator and has registered as required under s. 775.21;

(f) Who is a sexual offender and has registered as required in s. 943.0435 or s. 944.607; or

Section 44. For the purpose of incorporating the amendments made by this act to sections 775.21, 943.0435, 944.606, and 944.607, Florida Statutes, in references thereto, section 775.25, Florida Statutes, is reenacted to read:

775.25 Prosecutions for acts or omissions.—A sexual predator or sexual offender who commits any act or omission in violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s. 944.607, or former s. 947.177 may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the sexual predator or sexual offender, in the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator or sexual offender, in the county where the sexual predator or sexual offender was released from incarceration, or in the county of the intended address of the sexual predator or sexual offender as reported by the predator or offender prior to his or her release from incarceration. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

Section 45. For the purpose of incorporating the amendments made by this act to sections 775.21, 943.0435, and 944.607, Florida Statutes, in references thereto, paragraph (b) of subsection (3) of section 775.261, Florida Statutes, is reenacted to read:

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1731 775.261 The Florida Career Offender Registration Act.—

1732 (3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.—

1733 (b) This section does not apply to any person who has been  
1734 designated as a sexual predator and required to register under  
1735 s. 775.21 or who is required to register as a sexual offender  
1736 under s. 943.0435 or s. 944.607. However, if a person is no  
1737 longer required to register as a sexual predator under s. 775.21  
1738 or as a sexual offender under s. 943.0435 or s. 944.607, the  
1739 person must register as a career offender under this section if  
1740 the person is otherwise designated as a career offender as  
1741 provided in this section.

1742 Section 46. For the purpose of incorporating the amendment  
1743 made by this act to section 775.21, Florida Statutes, in a  
1744 reference thereto, subsection (1) of section 794.075, Florida  
1745 Statutes, is reenacted to read:

1746 794.075 Sexual predators; erectile dysfunction drugs.—

1747 (1) A person may not possess a prescription drug, as  
1748 defined in s. 499.003(43), for the purpose of treating erectile  
1749 dysfunction if the person is designated as a sexual predator  
1750 under s. 775.21.

1751 Section 47. For the purpose of incorporating the amendment  
1752 made by this act to section 775.21, Florida Statutes, in a  
1753 reference thereto, paragraph (c) of subsection (1) of section  
1754 903.0351, Florida Statutes, is reenacted to read:

1755 903.0351 Restrictions on pretrial release pending  
1756 probation-violation hearing or community-control-violation  
1757 hearing.—

1758 (1) In the instance of an alleged violation of felony  
1759 probation or community control, bail or any other form of

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pretrial release shall not be granted prior to the resolution of the probation-violation hearing or the community-control-violation hearing to:

(c) A person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense as defined in s. 948.06(8)(c) on or after the effective date of this act.

Section 48. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (m) of subsection (2) of section 903.046, Florida Statutes, is reenacted to read:

903.046 Purpose of and criteria for bail determination.—

(2) When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider:

(m) Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under chapter 316, is required to register as a sexual offender under s. 943.0435 or a sexual predator under s. 775.21; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Section 49. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (o) of subsection (5) of section 921.141, Florida Statutes, is reenacted to read:

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921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

Section 50. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, subsection (1) of section 938.10, Florida Statutes, is reenacted to read:

938.10 Additional court cost imposed in cases of certain crimes.—

(1) If a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, any offense against a minor in violation of s. 784.085, chapter 787, chapter 794, former s. 796.03, former s. 796.035, s. 800.04, chapter 827, s. 847.012, s. 847.0133, s. 847.0135(5), s. 847.0138, s. 847.0145, s. 893.147(3), or s. 985.701, or any offense in violation of s. 775.21, s. 823.07, s. 847.0125, s. 847.0134, or s. 943.0435, the court shall impose a court cost of \$151 against the offender in addition to any other cost or penalty required by law.

Section 51. For the purpose of incorporating the amendments made by this act to sections 775.21, 944.606, and 944.607, Florida Statutes, in references thereto, subsections (3), (4), and (5) of section 943.0435, Florida Statutes, are reenacted to read:

943.0435 Sexual offenders required to register with the

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department; penalty.—

(3) Within 48 hours after the report required under subsection (2), a sexual offender shall report in person at a driver license office of the Department of Highway Safety and Motor Vehicles, unless a driver license or identification card that complies with the requirements of s. 322.141(3) was previously secured or updated under s. 944.607. At the driver license office the sexual offender shall:

(a) If otherwise qualified, secure a Florida driver license, renew a Florida driver license, or secure an identification card. The sexual offender shall identify himself or herself as a sexual offender who is required to comply with this section and shall provide proof that the sexual offender reported as required in subsection (2). The sexual offender shall provide any of the information specified in subsection (2), if requested. The sexual offender shall submit to the taking of a photograph for use in issuing a driver license, renewed license, or identification card, and for use by the department in maintaining current records of sexual offenders.

(b) Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver license or identification card as required by this section. The driver license or identification card issued must be in compliance with s. 322.141(3).

(c) Provide, upon request, any additional information necessary to confirm the identity of the sexual offender, including a set of fingerprints.

(4) (a) Each time a sexual offender's driver license or identification card is subject to renewal, and, without regard



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1847 to the status of the offender's driver license or identification  
1848 card, within 48 hours after any change in the offender's  
1849 permanent, temporary, or transient residence or change in the  
1850 offender's name by reason of marriage or other legal process,  
1851 the offender shall report in person to a driver license office,  
1852 and is subject to the requirements specified in subsection (3).  
1853 The Department of Highway Safety and Motor Vehicles shall  
1854 forward to the department all photographs and information  
1855 provided by sexual offenders. Notwithstanding the restrictions  
1856 set forth in s. 322.142, the Department of Highway Safety and  
1857 Motor Vehicles may release a reproduction of a color-photograph  
1858 or digital-image license to the Department of Law Enforcement  
1859 for purposes of public notification of sexual offenders as  
1860 provided in this section and ss. 943.043 and 944.606. A sexual  
1861 offender who is unable to secure or update a driver license or  
1862 identification card with the Department of Highway Safety and  
1863 Motor Vehicles as provided in subsection (3) and this subsection  
1864 shall also report any change in the sexual offender's permanent,  
1865 temporary, or transient residence or change in the offender's  
1866 name by reason of marriage or other legal process within 48  
1867 hours after the change to the sheriff's office in the county  
1868 where the offender resides or is located and provide  
1869 confirmation that he or she reported such information to the  
1870 Department of Highway Safety and Motor Vehicles.

1871 (b)1. A sexual offender who vacates a permanent, temporary,  
1872 or transient residence and fails to establish or maintain  
1873 another permanent, temporary, or transient residence shall,  
1874 within 48 hours after vacating the permanent, temporary, or  
1875 transient residence, report in person to the sheriff's office of

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the county in which he or she is located. The sexual offender shall specify the date upon which he or she intends to or did vacate such residence. The sexual offender must provide or update all of the registration information required under paragraph (2)(b). The sexual offender must provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

2. A sexual offender shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual offender must provide the addresses and locations where he or she maintains a transient residence. Each sheriff's office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this subparagraph. Reporting to the sheriff's office as required by this subparagraph does not exempt registrants from any reregistration requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this subparagraph. The sheriff's office shall, within 2 business days, electronically submit and update all information provided by the sexual offender to the department.

(c) A sexual offender who remains at a permanent,

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temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the offender indicated he or she would or did vacate such residence, report in person to the agency to which he or she reported pursuant to paragraph (b) for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under paragraph (b) but fails to make a report as required under this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) The failure of a sexual offender who maintains a transient residence to report in person to the sheriff's office every 30 days as required in subparagraph (b)2. is punishable as provided in subsection (9).

(e) A sexual offender shall register all electronic mail addresses and Internet identifiers with the department before using such electronic mail addresses and Internet identifiers. The department shall establish an online system through which sexual offenders may securely access and update all electronic mail address and Internet identifier information.

(5) This section does not apply to a sexual offender who is also a sexual predator, as defined in s. 775.21. A sexual predator must register as required under s. 775.21.

Section 52. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (a) of subsection (4) and subsection (9) of section 944.607, Florida Statutes, are

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reenacted to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

(4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated shall register with the Department of Corrections within 3 business days after sentencing for a registrable offense and otherwise provide information as required by this subsection.

(a) The sexual offender shall provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); all home telephone numbers and cellular telephone numbers; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is under supervision in this state, including any rural route address or post office box; if no permanent or temporary address, any transient residence within the state; and address, location or description, and dates of any current or known future temporary residence within the state or out of state. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has. The Department of Corrections shall verify the

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address of each sexual offender in the manner described in ss. 775.21 and 943.0435. The department shall report to the Department of Law Enforcement any failure by a sexual predator or sexual offender to comply with registration requirements.

(9) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register and obtain a distinctive driver license or identification card in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register and obtain a distinctive driver license or identification card as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(9).

Section 53. For the purpose of incorporating the amendments made by this act to sections 775.21 and 944.607, Florida Statutes, in references thereto, subsection (7) of section 944.608, Florida Statutes, is reenacted to read:

944.608 Notification to Department of Law Enforcement of information on career offenders.—

(7) A career offender who is under the supervision of the department but who is not incarcerated shall, in addition to the registration requirements provided in subsection (3), register in the manner provided in s. 775.261(4)(c), unless the career offender is a sexual predator, in which case he or she shall register as required under s. 775.21, or is a sexual offender, in which case he or she shall register as required in s. 944.607. A career offender who fails to comply with the

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requirements of s. 775.261(4) is subject to the penalties provided in s. 775.261(8).

Section 54. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in references thereto, subsection (4) of section 944.609, Florida Statutes, is reenacted to read:

944.609 Career offenders; notification upon release.—

(4) The department or any law enforcement agency may notify the community and the public of a career offender's presence in the community. However, with respect to a career offender who has been found to be a sexual predator under s. 775.21, the Department of Law Enforcement or any other law enforcement agency must inform the community and the public of the career offender's presence in the community, as provided in s. 775.21.

Section 55. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (c) of subsection (2) and subsections (10) and (12) of section 947.1405, Florida Statutes, are reenacted to read:

947.1405 Conditional release program.—

(2) Any inmate who:

(c) Is found to be a sexual predator under s. 775.21 or former s. 775.23,

shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions, including payment of the cost of supervision pursuant to s. 948.09. Such supervision shall be

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applicable to all sentences within the overall term of sentences if an inmate's overall term of sentences includes one or more sentences that are eligible for conditional release supervision as provided herein. Effective July 1, 1994, and applicable for offenses committed on or after that date, the commission may require, as a condition of conditional release, that the releasee make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the releasee while in that detention facility. The commission, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the releasee, the present and potential future financial needs and earning ability of the releasee, and dependents, and other appropriate factors. If any inmate placed on conditional release supervision is also subject to probation or community control, resulting from a probationary or community control split sentence within the overall term of sentences, the Department of Corrections shall supervise such person according to the conditions imposed by the court and the commission shall defer to such supervision. If the court revokes probation or community control and resentences the offender to a term of incarceration, such revocation also constitutes a sufficient basis for the revocation of the conditional release supervision on any nonprobationary or noncommunity control sentence without further hearing by the commission. If any such supervision on any nonprobationary or noncommunity control sentence is revoked, such revocation may result in a forfeiture

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of all gain-time, and the commission may revoke the resulting deferred conditional release supervision or take other action it considers appropriate. If the term of conditional release supervision exceeds that of the probation or community control, then, upon expiration of the probation or community control, authority for the supervision shall revert to the commission and the supervision shall be subject to the conditions imposed by the commission. A panel of no fewer than two commissioners shall establish the terms and conditions of any such release. If the offense was a controlled substance violation, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of conditional release supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3). The commission shall also determine whether the terms and conditions of such release have been violated and whether such violation warrants revocation of the conditional release.

(10) Effective for a releasee whose crime was committed on or after September 1, 2005, in violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145, and the unlawful activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older or for a releasee who is designated as a sexual predator pursuant to s. 775.21, in addition to any other provision of this section, the commission must order electronic monitoring for the duration of the releasee's supervision.

(12) In addition to all other conditions imposed, for a releasee who is subject to conditional release for a crime that was committed on or after May 26, 2010, and who has been



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convicted at any time of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s. 943.0435(1)(a)1.a.(I), or a similar offense in another jurisdiction against a victim who was under 18 years of age at the time of the offense, if the releasee has not received a pardon for any felony or similar law of another jurisdiction necessary for the operation of this subsection, if a conviction of a felony or similar law of another jurisdiction necessary for the operation of this subsection has not been set aside in any postconviction proceeding, or if the releasee has not been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354, the commission must impose the following conditions:

(a) A prohibition on visiting schools, child care facilities, parks, and playgrounds without prior approval from the releasee's supervising officer. The commission may also designate additional prohibited locations to protect a victim. The prohibition ordered under this paragraph does not prohibit the releasee from visiting a school, child care facility, park, or playground for the sole purpose of attending a religious service as defined in s. 775.0861 or picking up or dropping off the releasee's child or grandchild at a child care facility or school.

(b) A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume without prior approval from

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the commission.

Section 56. For the purpose of incorporating the amendments made by this act to sections 782.04, 775.21, 943.0435, and 944.607, Florida Statutes, in references thereto, subsection (4) and paragraphs (b), (c), and (d) of subsection (8) of section 948.06, Florida Statutes, are reenacted to read:

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

(4) Notwithstanding any other provision of this section, a felony probationer or an offender in community control who is arrested for violating his or her probation or community control in a material respect may be taken before the court in the county or circuit in which the probationer or offender was arrested. That court shall advise him or her of the charge of a violation and, if such charge is admitted, shall cause him or her to be brought before the court that granted the probation or community control. If the violation is not admitted by the probationer or offender, the court may commit him or her or release him or her with or without bail to await further hearing. However, if the probationer or offender is under supervision for any criminal offense proscribed in chapter 794, s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a registered sexual predator or a registered sexual offender, or is under supervision for a criminal offense for which he or she would meet the registration criteria in s. 775.21, s. 943.0435, or s. 944.607 but for the effective date of those sections, the court must make a finding that the probationer or offender is not a danger to the public prior to release with or without

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bail. In determining the danger posed by the offender's or probationer's release, the court may consider the nature and circumstances of the violation and any new offenses charged; the offender's or probationer's past and present conduct, including convictions of crimes; any record of arrests without conviction for crimes involving violence or sexual crimes; any other evidence of allegations of unlawful sexual conduct or the use of violence by the offender or probationer; the offender's or probationer's family ties, length of residence in the community, employment history, and mental condition; his or her history and conduct during the probation or community control supervision from which the violation arises and any other previous supervisions, including disciplinary records of previous incarcerations; the likelihood that the offender or probationer will engage again in a criminal course of conduct; the weight of the evidence against the offender or probationer; and any other facts the court considers relevant. The court, as soon as is practicable, shall give the probationer or offender an opportunity to be fully heard on his or her behalf in person or by counsel. After the hearing, the court shall make findings of fact and forward the findings to the court that granted the probation or community control and to the probationer or offender or his or her attorney. The findings of fact by the hearing court are binding on the court that granted the probation or community control. Upon the probationer or offender being brought before it, the court that granted the probation or community control may revoke, modify, or continue the probation or community control or may place the probationer into community control as provided in this section. However, the probationer or

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offender shall not be released and shall not be admitted to bail, but shall be brought before the court that granted the probation or community control if any violation of felony probation or community control other than a failure to pay costs or fines or make restitution payments is alleged to have been committed by:

(a) A violent felony offender of special concern, as defined in this section;

(b) A person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense as defined in this section; or

(c) A person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense as defined in this section on or after the effective date of this act.

(8)

(b) For purposes of this section and ss. 903.0351, 948.064, and 921.0024, the term "violent felony offender of special concern" means a person who is on:

1. Felony probation or community control related to the commission of a qualifying offense committed on or after the effective date of this act;

2. Felony probation or community control for any offense committed on or after the effective date of this act, and has previously been convicted of a qualifying offense;

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2195 3. Felony probation or community control for any offense  
2196 committed on or after the effective date of this act, and is  
2197 found to have violated that probation or community control by  
2198 committing a qualifying offense;

2199 4. Felony probation or community control and has previously  
2200 been found by a court to be a habitual violent felony offender  
2201 as defined in s. 775.084(1)(b) and has committed a qualifying  
2202 offense on or after the effective date of this act;

2203 5. Felony probation or community control and has previously  
2204 been found by a court to be a three-time violent felony offender  
2205 as defined in s. 775.084(1)(c) and has committed a qualifying  
2206 offense on or after the effective date of this act; or

2207 6. Felony probation or community control and has previously  
2208 been found by a court to be a sexual predator under s. 775.21  
2209 and has committed a qualifying offense on or after the effective  
2210 date of this act.

2211 (c) For purposes of this section, the term "qualifying  
2212 offense" means any of the following:

2213 1. Kidnapping or attempted kidnapping under s. 787.01,  
2214 false imprisonment of a child under the age of 13 under s.  
2215 787.02(3), or luring or enticing a child under s. 787.025(2)(b)  
2216 or (c).

2217 2. Murder or attempted murder under s. 782.04, attempted  
2218 felony murder under s. 782.051, or manslaughter under s. 782.07.

2219 3. Aggravated battery or attempted aggravated battery under  
2220 s. 784.045.

2221 4. Sexual battery or attempted sexual battery under s.  
2222 794.011(2), (3), (4), or (8)(b) or (c).

2223 5. Lewd or lascivious battery or attempted lewd or

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

6. Robbery or attempted robbery under s. 812.13, carjacking or attempted carjacking under s. 812.133, or home invasion robbery or attempted home invasion robbery under s. 812.135.

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

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

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

10. Poisoning food or water under s. 859.01.

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

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

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

14. Aggravated assault under s. 784.021.

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

16. Aircraft piracy under s. 860.16.

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

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18. Treason under s. 876.32.

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

(d) In the case of an alleged violation of probation or community control other than a failure to pay costs, fines, or restitution, the following individuals shall remain in custody pending the resolution of the probation or community control violation:

1. A violent felony offender of special concern, as defined in this section;

2. A person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense as defined in this section; or

3. A person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense as defined in this section on or after the effective date of this act.

The court shall not dismiss the probation or community control violation warrant pending against an offender enumerated in this paragraph without holding a recorded violation-of-probation hearing at which both the state and the offender are represented.

Section 57. For the purpose of incorporating the amendments

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made by this act to sections 775.21, 943.0435, and 944.607, Florida Statutes, in references thereto, section 948.063, Florida Statutes, is reenacted to read:

948.063 Violations of probation or community control by designated sexual offenders and sexual predators.—

(1) If probation or community control for any felony offense is revoked by the court pursuant to s. 948.06(2)(e) and the offender is designated as a sexual offender pursuant to s. 943.0435 or s. 944.607 or as a sexual predator pursuant to s. 775.21 for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 years of age or older, and if the court imposes a subsequent term of supervision following the revocation of probation or community control, the court must order electronic monitoring as a condition of the subsequent term of probation or community control.

(2) If the probationer or offender is required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435 or s. 944.607 for unlawful sexual activity involving a victim 15 years of age or younger and the probationer or offender is 18 years of age or older and has violated the conditions of his or her probation or community control, but the court does not revoke the probation or community control, the court shall nevertheless modify the probation or community control to include electronic monitoring for any probationer or offender not then subject to electronic monitoring.

Section 58. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, subsection (4) of section 948.064, Florida



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Statutes, is reenacted to read:

948.064 Notification of status as a violent felony offender of special concern.—

(4) The state attorney, or the statewide prosecutor if applicable, shall advise the court at each critical stage in the judicial process, at which the state attorney or statewide prosecutor is represented, whether an alleged or convicted offender is a violent felony offender of special concern; a person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense; or a person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense on or after the effective date of this act.

Section 59. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, subsection (3) of section 948.12, Florida Statutes, is reenacted to read:

948.12 Intensive supervision for postprison release of violent offenders.—It is the finding of the Legislature that the population of violent offenders released from state prison into the community poses the greatest threat to the public safety of the groups of offenders under community supervision. Therefore, for the purpose of enhanced public safety, any offender released from state prison who:

(3) Has been found to be a sexual predator pursuant to s.

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2340 775.21,

2341  
2342 and who has a term of probation to follow the period of  
2343 incarceration shall be provided intensive supervision by  
2344 experienced correctional probation officers. Subject to specific  
2345 appropriation by the Legislature, caseloads may be restricted to  
2346 a maximum of 40 offenders per officer to provide for enhanced  
2347 public safety as well as to effectively monitor conditions of  
2348 electronic monitoring or curfews, if such was ordered by the  
2349 court.

2350 Section 60. For the purpose of incorporating the amendments  
2351 made by this act to sections 775.21 and 943.0435, Florida  
2352 Statutes, in references thereto, paragraph (b) of subsection (3)  
2353 and subsection (4) of section 948.30, Florida Statutes, are  
2354 reenacted to read:

2355 948.30 Additional terms and conditions of probation or  
2356 community control for certain sex offenses.—Conditions imposed  
2357 pursuant to this section do not require oral pronouncement at  
2358 the time of sentencing and shall be considered standard  
2359 conditions of probation or community control for offenders  
2360 specified in this section.

2361 (3) Effective for a probationer or community controllee  
2362 whose crime was committed on or after September 1, 2005, and  
2363 who:

2364 (b) Is designated a sexual predator pursuant to s. 775.21;  
2365 or

2366  
2367 the court must order, in addition to any other provision of this  
2368 section, mandatory electronic monitoring as a condition of the

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probation or community control supervision.

(4) In addition to all other conditions imposed, for a probationer or community controllee who is subject to supervision for a crime that was committed on or after May 26, 2010, and who has been convicted at any time of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s. 943.0435(1)(a)1.a.(I), or a similar offense in another jurisdiction, against a victim who was under the age of 18 at the time of the offense; if the offender has not received a pardon for any felony or similar law of another jurisdiction necessary for the operation of this subsection, if a conviction of a felony or similar law of another jurisdiction necessary for the operation of this subsection has not been set aside in any postconviction proceeding, or if the offender has not been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354, the court must impose the following conditions:

(a) A prohibition on visiting schools, child care facilities, parks, and playgrounds, without prior approval from the offender's supervising officer. The court may also designate additional locations to protect a victim. The prohibition ordered under this paragraph does not prohibit the offender from visiting a school, child care facility, park, or playground for the sole purpose of attending a religious service as defined in s. 775.0861 or picking up or dropping off the offender's children or grandchildren at a child care facility or school.

(b) A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other

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costume to appeal to children, on or preceding Christmas;  
wearing an Easter Bunny costume, or other costume to appeal to  
children, on or preceding Easter; entertaining at children's  
parties; or wearing a clown costume; without prior approval from  
the court.

Section 61. For the purpose of incorporating the amendments  
made by this act to sections 775.21, 943.0435, 944.606, and  
944.607, Florida Statutes, in references thereto, section  
948.31, Florida Statutes, is reenacted to read:

948.31 Evaluation and treatment of sexual predators and  
offenders on probation or community control.—The court may  
require any probationer or community controllee who is required  
to register as a sexual predator under s. 775.21 or sexual  
offender under s. 943.0435, s. 944.606, or s. 944.607 to undergo  
an evaluation, at the probationer or community controllee's  
expense, by a qualified practitioner to determine whether such  
probationer or community controllee needs sexual offender  
treatment. If the qualified practitioner determines that sexual  
offender treatment is needed and recommends treatment, the  
probationer or community controllee must successfully complete  
and pay for the treatment. Such treatment must be obtained from  
a qualified practitioner as defined in s. 948.001. Treatment may  
not be administered by a qualified practitioner who has been  
convicted or adjudicated delinquent of committing, or  
attempting, soliciting, or conspiring to commit, any offense  
that is listed in s. 943.0435(1)(a)1.a.(I).

Section 62. For the purpose of incorporating the amendments  
made by this act to sections 775.21, 943.0435, 944.606, and  
944.607, Florida Statutes, in references thereto, paragraph (b)

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of subsection (6) of section 985.04, Florida Statutes, is reenacted to read:

985.04 Oaths; records; confidential information.—

(6)

(b) Sexual offender and predator registration information as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815 is a public record pursuant to s. 119.07(1) and as otherwise provided by law.

Section 63. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, subsection (9) of section 985.4815, Florida Statutes, is reenacted to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

(9) A sexual offender, as described in this section, who is under the care, jurisdiction, or supervision of the department but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(9).

Section 64. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (b) of subsection (1) of section 92.55, Florida Statutes, is reenacted to read:

92.55 Judicial or other proceedings involving victim or witness under the age of 16, a person who has an intellectual

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disability, or a sexual offense victim or witness; special  
protections; use of registered service or therapy animals.—

(1) For purposes of this section, the term:

(b) "Sexual offense" means any offense specified in s.  
775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).

Section 65. For the purpose of incorporating the amendment  
made by this act to section 943.0435, Florida Statutes, in a  
reference thereto, paragraph (a) of subsection (2) of section  
394.9125, Florida Statutes, is reenacted to read:

394.9125 State attorney; authority to refer a person for  
civil commitment.—

(2) A state attorney may refer a person to the department  
for civil commitment proceedings if the person:

(a) Is required to register as a sexual offender pursuant  
to s. 943.0435;

Section 66. For the purpose of incorporating the amendments  
made by this act to sections 943.0435 and 944.607, Florida  
Statutes, in references thereto, paragraph (d) of subsection (5)  
and paragraph (c) of subsection (10) of section 775.21, Florida  
Statutes, are reenacted to read:

775.21 The Florida Sexual Predators Act.—

(5) SEXUAL PREDATOR DESIGNATION.—An offender is designated  
as a sexual predator as follows:

(d) A person who establishes or maintains a residence in  
this state and who has not been designated as a sexual predator  
by a court of this state but who has been designated as a sexual  
predator, as a sexually violent predator, or by another sexual  
offender designation in another state or jurisdiction and was,  
as a result of such designation, subjected to registration or

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community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(10) PENALTIES.—

(c) Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, to secure a payment from such a predator or offender; who knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records

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information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 67. For the purpose of incorporating the amendments made by this act to sections 943.0435, 944.606, and 944.607, Florida Statutes, in references thereto, subsection (2) of section 775.24, Florida Statutes, is reenacted to read:

775.24 Duty of the court to uphold laws governing sexual predators and sexual offenders.—

(2) If a person meets the criteria in this chapter for designation as a sexual predator or meets the criteria in s. 943.0435, s. 944.606, s. 944.607, or any other law for classification as a sexual offender, the court may not enter an order, for the purpose of approving a plea agreement or for any other reason, which:

(a) Exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders;

(b) Restricts the compiling, reporting, or release of public records information that relates to sexual predators or sexual offenders; or

(c) Prevents any person or entity from performing its duties or operating within its statutorily conferred authority as such duty or authority relates to sexual predators or sexual offenders.



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2543       Section 68. For the purpose of incorporating the amendments  
2544 made by this act to sections 775.21, 943.0435, 944.606 and  
2545 944.607, Florida Statutes, in references thereto, subsection (2)  
2546 of section 943.0436, Florida Statutes, is reenacted to read:

2547       943.0436 Duty of the court to uphold laws governing sexual  
2548 predators and sexual offenders.—

2549       (2) If a person meets the criteria in chapter 775 for  
2550 designation as a sexual predator or meets the criteria in s.  
2551 943.0435, s. 944.606, s. 944.607, or any other law for  
2552 classification as a sexual offender, the court may not enter an  
2553 order, for the purpose of approving a plea agreement or for any  
2554 other reason, which:

2555       (a) Exempts a person who meets the criteria for designation  
2556 as a sexual predator or classification as a sexual offender from  
2557 such designation or classification, or exempts such person from  
2558 the requirements for registration or community and public  
2559 notification imposed upon sexual predators and sexual offenders;

2560       (b) Restricts the compiling, reporting, or release of  
2561 public records information that relates to sexual predators or  
2562 sexual offenders; or

2563       (c) Prevents any person or entity from performing its  
2564 duties or operating within its statutorily conferred authority  
2565 as such duty or authority relates to sexual predators or sexual  
2566 offenders.

2567       Section 69. For the purpose of incorporating the amendment  
2568 made by this act to section 943.0435, Florida Statutes, in a  
2569 reference thereto, subsection (2) of section 775.0862, Florida  
2570 Statutes, is reenacted to read:

2571       775.0862 Sexual offenses against students by authority

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2572 figures; reclassification.—

2573       (2) The felony degree of a violation of an offense listed  
2574 in s. 943.0435(1)(a)1.a., unless the offense is a violation of  
2575 s. 794.011(4)(e)7. or s. 810.145(8)(a)2., shall be reclassified  
2576 as provided in this section if the offense is committed by an  
2577 authority figure of a school against a student of the school.

2578       Section 70. This act shall take effect October 1, 2016.



The Florida Senate

## Committee Agenda Request

SENATE APPROPRIATIONS  
RECEIVED

16 JAN 28 AM 10:16

SENT TO: CHAIRMAN \_\_\_\_\_  
STAFF DIR. \_\_\_\_\_ STAFF \_\_\_\_\_

**To:** Senator Joe Negron, Chair  
Committee on Appropriations Subcommittee on Criminal and Civil Justice

**Subject:** Committee Agenda Request

**Date:** January 26, 2016

---

I respectfully request that **Senate Bill #784**, relating to Human Trafficking, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script that reads "Anitere Flores".

---

Senator Anitere Flores  
Florida Senate, District 37

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

784

Bill Number (if applicable)

Topic

Human Trafficking

Amendment Barcode (if applicable)

Name

Colleen Mackin

Job Title

Consultant

Address

111 S. Magnolia Dr #4

Phone

727 244 1032

Street

Tallahassee

State

Zip

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking: ~~☐~~

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

The Children's Campaign

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11

Meeting Date

784

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Courtney Gager

Job Title Legislative Assistant

Address 4853 S Orange Ave

Phone 407-418-0250

Street

Orlando

City

FL

State

32806

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Family Action, legislative arm of the Florida Family Policy Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

SB 0784

*Bill Number (if applicable)*

Topic Human Trafficking

*Amendment Barcode (if applicable)*

Name Sarrah Carroll

Job Title Lobbyist

Address 123 S. Adams

Phone 850-671-4401

*Street*

Tallahassee

FL

32301

Email carroll@sostrategy.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

784

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Justin Day

Job Title Director

Address 701 S Howard Ave Suite 326-104

Phone 850 222 8900

Street

Tampa

City

FL

State

33606

Zip

Email jd@cardenespartners.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing More Too Life

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

---

BILL: SB 850

INTRODUCER: Senator Bradley

SUBJECT: Offenses Concerning Racketeering and Illegal Debts

DATE: February 10, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Pre-meeting</b>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

---

**I. Summary:**

SB 850 amends civil enforcement provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. Major features of the bill include:

- Authorizing an investigative agency, on behalf of the state, to institute a RICO civil proceeding for forfeiture in the circuit court for the judicial circuit in which the real or personal tangible property is located or in a circuit court in the state for intangible property;
- Authorizing an investigative agency to pursue an action to recover fair market value of unavailable property regardless of when the property is conveyed, alienated, disposed of, diminished in value, or otherwise rendered unavailable for forfeiture;
- Authorizing a court to order the forfeiture of any other property of a defendant up to the value of the property subject to forfeiture (as an alternative to the court ordering an amount equal to the fair market value of the unavailable property);
- Authorizing the Department of Legal Affairs to bring an action for a Florida RICO Act violation to obtain injunctive relief, civil penalties, attorney fees, and costs incurred in the investigation and prosecution of any action under the Florida RICO Act;
- Providing that a natural person who violates the Florida RICO Act may be subject to a civil penalty of up to \$100,000 and any other person who violates the act may be subject to a civil penalty of up to \$1 million, and requiring that moneys recovered for such civil penalties be deposited into the General Revenue Fund;
- Requiring that moneys recovered by the Department of Legal Affairs for attorney fees and costs under the Florida Rico Act be deposited into the Legal Affairs Revolving Trust Fund and authorizing use of those funds to investigate Florida RICO Act violations and enforce the act;
- Authorizing any party to a Florida RICO Act civil action to petition the court for entry of a consent decree or for approval of a settlement agreement;



- Providing that an investigative subpoena issued pursuant to the Florida RICO Act is confidential for 120 days after the date of issuance, unless extended by the court upon a showing of good cause by the investigating agency;
- Providing that the list of claims for which a court directs distribution of forfeiture funds includes claims for restitution by RICO victims; and
- Providing that where the forfeiture action was brought by the Department of Legal Affairs, the restitution is distributed through the Legal Affairs Trust Fund (otherwise, the restitution is distributed by the clerk of the circuit court).

The Department of Legal Affairs indicates that the new civil penalties for Florida RICO Act violations may have an indeterminate positive revenue impact on the General Revenue Fund. Changes regarding recovery of the value of property subject to forfeiture that has become unavailable may also increase forfeiture proceeds by an indeterminate amount.

The bill has an effective date of July 1, 2016.

## **II. Present Situation:**

### **Florida RICO Act**

The “Florida RICO Act” is the short title for ss. 895.01-895.06, F.S. “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.<sup>1</sup> Section 895.03, F.S., punishes as a first degree felony:

- With criminal intent receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity<sup>2</sup> or through the collection of an unlawful debt<sup>3</sup> to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;<sup>4</sup>
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;

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<sup>1</sup> Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. § 1961(1).

<sup>2</sup> “Pattern of racketeering activity” means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within five years after a prior incident of racketeering conduct. Section 895.02(4), F.S.

<sup>3</sup> An “unlawful debt” is any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of any law listed in the definition. Section 895.02(2), F.S. These offenses include violations of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

<sup>4</sup> An “enterprise” is any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity. The definition includes: illicit as well as licit enterprises; governmental, as well as other, entities; and a criminal gang, as defined in s. 874.03, F.S. Section 895.02(3), F.S.

- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.<sup>5</sup>

In addition to criminal penalties, the Florida RICO Act imposes civil liability for violations of the act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.<sup>6</sup>

### **Recovery of Property Unavailable for Forfeiture**

Section 895.05, F.S., provides that if property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a RICO lien notice<sup>7</sup> or after the filing of a civil or criminal proceeding pursuant to the act, whichever is earlier, an investigative agency may institute an action to recover an amount equal to the fair market value of the property, together with investigative costs and attorney's fees incurred by the investigative agency in the action.<sup>8</sup> "[I]f a defendant conveys or otherwise disposes of property subject to forfeiture before the filing of a civil RICO action or the filing of a RICO lien notice, or if the property's value has been diminished, no money judgment can be obtained against the defendant for the dissipated or devalued property and the property in question cannot be forfeited."<sup>9</sup>

### **Investigative Subpoenas**

Section 895.06, F.S., provides that an investigating agency may subpoena witnesses or materials during the course of a civil enforcement investigation. "The purpose of the subpoena power under section 895.06 is to allow an investigative agency to investigate, collect evidence and determine if a RICO violation has occurred."<sup>10</sup> An investigative agency may apply ex parte to a circuit court for an order directing that a person or entity who has been subpoenaed not disclose the existence of the subpoena for a period of 90 days to anyone except the attorney for the subpoenaed person or entity.<sup>11</sup> The 90-day time limit may be extended by the court for good cause shown by the investigative agency.<sup>12</sup>

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<sup>5</sup> Section 895.03(1)-(4), F.S. (prohibited activities).

<sup>6</sup> Section 895.05(2), F.S.

<sup>7</sup> An investigative agency may file a RICO lien notice in the county records when it initiates a civil proceeding. The RICO lien notice creates a lien in favor of the state on the real property or beneficial interest situated in the county where the lien is filed. Section 895.07, F.S. An "investigative agency" is the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney. Section 895.02(7), F.S.

<sup>8</sup> Section 895.05(2), F.S.

<sup>9</sup> Analysis of SB 850 (January 20, 2016), Department of Legal Affairs (on file with the Senate Committee on Criminal Justice). This analysis is cited hereafter as "Department of Legal Affairs Analysis."

<sup>10</sup> *Check 'N Go of Florida, Inc. v. State*, 790 So.2d 454, 457 (Fla. 5th DCA 2001).

<sup>11</sup> Section 895.06(3), F.S. "Investigative subpoenas issued by the enforcement agency can be disclosed unless the agency obtains a court order preventing disclosure of the subpoena for 90 days." Department of Legal Affairs Analysis.

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

### **Omissions Relevant to Civil Enforcement**

Current law does not:

- Specify where an action may be filed if personal property involved in a Florida RICO Act violation is subject to forfeiture;
- Address civil penalties in a Florida RICO Act enforcement action;
- Address consent decrees or settlement agreements in civil actions for Florida RICO Act violations; and
- Authorize restitution to RICO victims.

### **Public Records Exemption**

In 2015, the Legislature created s. 895.06(7), F.S.<sup>13</sup> Section 895.06(7)(a), F.S., provides that information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt under paragraph (a) may be disclosed by the investigative agency to a government entity in the performance of its official duties and to a court or tribunal.<sup>14</sup> This information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.<sup>15</sup> An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.<sup>16</sup>

### **III. Effect of Proposed Changes:**

The bill amends civil enforcement provisions of the Florida RICO Act to:

- Authorize an investigative agency, on behalf of the state, to institute a RICO civil proceeding for forfeiture in the circuit court for the judicial circuit in which the real or personal tangible property<sup>17</sup> is located, or in a circuit court in the state for intangible property;<sup>18</sup>
- Authorize an investigative agency to pursue an action to recover fair market value of unavailable property regardless of when the property is conveyed, alienated, disposed of, diminished in value, or otherwise rendered unavailable for forfeiture;
- Authorize a court to order the forfeiture of any other property of the defendant up to the value of the unavailable property (as an alternative to the court ordering forfeiture of an amount equal to the fair market value of the unavailable property);
- Authorize the Department of Legal Affairs to bring an action for a Florida RICO Act violation to obtain injunctive relief, civil penalties, attorney fees, and costs incurred in the investigation and prosecution of any action under the Florida RICO Act;

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<sup>13</sup> Ch. 2015-99, L.O.F.

<sup>14</sup> Section 895.06(7)(b), F.S.

<sup>15</sup> Section 895.06(7)(c), F.S.

<sup>16</sup> Section 895.06(7)(d), F.S.

<sup>17</sup> The bill states that the terms “real or personal tangible property” and “intangible property” are described in s. 895.05(2)(a), F.S. This paragraph states that all property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of ss. 895.01-895.05, F.S., is subject to civil forfeiture to the state.

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

- Provide that a natural person who violates the Florida RICO Act may be subject to a civil penalty of up to \$100,000 and any other person who violates the act may be subject to a civil penalty of up to \$1 million and require that moneys recovered for civil penalties be deposited into the General Revenue Fund;
- Require that moneys recovered by the Department of Legal Affairs for attorney fees and costs under the Florida Rico Act be deposited into the Legal Affairs Revolving Trust Fund and authorize use of those funds to investigate Florida RICO Act violations and enforce the act;
- Authorize any party to a Florida RICO Act civil action to petition the court for entry of a consent decree or for approval of a settlement agreement;
- Require that the proposed decree or settlement specify the alleged violations, the future obligations of the parties, the relief agreed upon, and the reasons for entering into the consent decree or settlement agreement;
- Provide that current law relating to the suspension of the running of the period of limitations with respect to certain causes of action will apply to actions for injunctive relief, civil penalties, attorney fees, and costs incurred in the investigation and prosecution of any Florida RICO Act violation;<sup>19</sup>
- Provide that an investigative subpoena issued pursuant to the Florida RICO Act is confidential for 120 days after the date of issuance, unless the period is extended by the court upon a showing of good cause by the investigating agency;
- Prohibit a subpoenaed person or entity from disclosing the existence of the subpoena to any person or entity other than the attorney of the subpoenaed person or entity during the 120-day period;
- Require that the subpoena include a reference to the confidentiality of the subpoena and a notice to the recipient of the subpoena that disclosure of the existence of the subpoena to any person or entity other than the attorney of the subpoenaed person or entity is prohibited;
- Authorize an investigative agency to stipulate to protective orders with respect to documents and information submitted in response to an investigative subpoena;
- Provide that the list of claims for which a court directs distribution of forfeiture funds includes claims for restitution by RICO victims; and
- Provide that if the forfeiture action was brought by the Department of Legal Affairs, the restitution is distributed through the Legal Affairs Trust Fund (otherwise, the restitution is distributed by the clerk of the court).

The bill takes effect July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>19</sup> A criminal or civil action or proceeding under the Florida RICO Act may be commenced at any time within five years after the conduct in violation of the act terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent, or restrain any violation of the act, the running of the period of limitations prescribed with respect to certain causes of action (e.g., an action for damages brought by the state) which is based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding is suspended during the pendency of such prosecution, action, or proceeding and for two years following its termination. Section 895.05(10), F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the Department of Legal Affairs, “[t]he civil penalties of up to \$100,000 for a natural person and up to \$1 million for any other person for RICO Act violations created by the bill may have an indeterminate positive revenue impact on the General Revenue Fund.”<sup>20</sup> Changes regarding recovery of the value of property subject to forfeiture that has become unavailable may also increase forfeiture proceeds by an indeterminate amount.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 16.53, 16.56, 895.05, 895.06, 895.09, and 905.34, Florida Statutes.

This bill reenacts provisions of the sections 16.53, 27.345, and 92.142, Florida Statutes to incorporate the amendment made to s. 895.05, F.S, in references to that statute.

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<sup>20</sup> Department of Legal Affairs Analysis, *supra* note 9.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Bradley

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A bill to be entitled

An act relating to offenses concerning racketeering and illegal debts; reordering and amending s. 895.02, F.S.; specifying the earliest date that incidents constituting a pattern of racketeering activity may have occurred; conforming a cross-reference; amending s. 895.05, F.S.; authorizing an investigative agency to institute a civil proceeding for forfeiture in a circuit court in certain circumstances; adding diminution in value as a ground for an action under certain circumstances; removing certain grounds for an action; authorizing a court to order the forfeiture of other property of the defendant up to the value of unavailable property in certain circumstances; authorizing the Department of Legal Affairs to bring an action for certain violations to obtain specified relief, fees, and costs for certain purposes; providing for civil penalties for natural persons and other persons who commit certain violations; providing for deposit of moneys received for certain violations; authorizing a party to a specific civil action to petition the court for entry of a consent decree or for approval of a settlement agreement; providing requirements for such decrees or agreements; amending s. 895.06, F.S.; deleting the definition of "investigative agency" for purposes of provisions relating to civil investigative subpoenas; providing that a subpoena must be confidential for a specified time; restricting to whom the subpoenaed person or

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entity may disclose the existence of the subpoena;  
requiring certain information be included in the  
subpoena; authorizing the investigative agency to  
apply for an order extending the amount of time the  
subpoena remains confidential rather than having it  
extended by the court for a specified period;  
providing that the investigative agency has the  
authority to stipulate to protective orders with  
respect to documents and information submitted in  
response to a subpoena; amending s. 895.09, F.S.;  
conforming a cross-reference; providing for  
distribution of forfeiture proceeds to victims;  
amending ss. 16.56 and 905.34, F.S.; conforming cross-  
references; amending s. 16.53, F.S., and reenacting  
subsection (4) and paragraph (5)(a), relating to the  
Legal Affairs Revolving Trust Fund, to incorporate the  
amendment made by the act to s. 895.05, F.S., a  
reference thereto; conforming a cross-reference;  
reenacting ss. 27.345(1) and 92.142(3), F.S., relating  
to the State Attorney RICO Trust Fund and witness pay,  
respectively, to incorporate the amendment made by the  
act to s. 895.05, F.S., in references thereto;  
providing an effective date.

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

Section 1. Section 895.02, Florida Statutes, is reordered  
and amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:



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59        (8)~~(1)~~ "Racketeering activity" means to commit, to attempt  
60 to commit, to conspire to commit, or to solicit, coerce, or  
61 intimidate another person to commit:

62        (a) Any crime that is chargeable by petition, indictment,  
63 or information under the following provisions of the Florida  
64 Statutes:

65            1. Section 210.18, relating to evasion of payment of  
66 cigarette taxes.

67            2. Section 316.1935, relating to fleeing or attempting to  
68 elude a law enforcement officer and aggravated fleeing or  
69 eluding.

70            3. Section 403.727(3)(b), relating to environmental  
71 control.

72            4. Section 409.920 or s. 409.9201, relating to Medicaid  
73 fraud.

74            5. Section 414.39, relating to public assistance fraud.

75            6. Section 440.105 or s. 440.106, relating to workers'  
76 compensation.

77            7. Section 443.071(4), relating to creation of a fictitious  
78 employer scheme to commit reemployment assistance fraud.

79            8. Section 465.0161, relating to distribution of medicinal  
80 drugs without a permit as an Internet pharmacy.

81            9. Section 499.0051, relating to crimes involving  
82 contraband and adulterated drugs.

83            10. Part IV of chapter 501, relating to telemarketing.

84            11. Chapter 517, relating to sale of securities and  
85 investor protection.

86            12. Section 550.235 or s. 550.3551, relating to dogracing  
87 and horseracing.

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13. Chapter 550, relating to jai alai frontons.
14. Section 551.109, relating to slot machine gaming.
15. Chapter 552, relating to the manufacture, distribution,  
and use of explosives.
16. Chapter 560, relating to money transmitters, if the  
violation is punishable as a felony.
17. Chapter 562, relating to beverage law enforcement.
18. Section 624.401, relating to transacting insurance  
without a certificate of authority, s. 624.437(4)(c)1., relating  
to operating an unauthorized multiple-employer welfare  
arrangement, or s. 626.902(1)(b), relating to representing or  
aiding an unauthorized insurer.
19. Section 655.50, relating to reports of currency  
transactions, when such violation is punishable as a felony.
20. Chapter 687, relating to interest and usurious  
practices.
21. Section 721.08, s. 721.09, or s. 721.13, relating to  
real estate timeshare plans.
22. Section 775.13(5)(b), relating to registration of  
persons found to have committed any offense for the purpose of  
benefiting, promoting, or furthering the interests of a criminal  
gang.
23. Section 777.03, relating to commission of crimes by  
accessories after the fact.
24. Chapter 782, relating to homicide.
25. Chapter 784, relating to assault and battery.
26. Chapter 787, relating to kidnapping or human  
trafficking.
27. Chapter 790, relating to weapons and firearms.

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117 28. Chapter 794, relating to sexual battery, but only if  
118 such crime was committed with the intent to benefit, promote, or  
119 further the interests of a criminal gang, or for the purpose of  
120 increasing a criminal gang member's own standing or position  
121 within a criminal gang.

122 29. Former s. 796.03, former s. 796.035, s. 796.04, s.  
123 796.05, or s. 796.07, relating to prostitution.

124 30. Chapter 806, relating to arson and criminal mischief.

125 31. Chapter 810, relating to burglary and trespass.

126 32. Chapter 812, relating to theft, robbery, and related  
127 crimes.

128 33. Chapter 815, relating to computer-related crimes.

129 34. Chapter 817, relating to fraudulent practices, false  
130 pretenses, fraud generally, and credit card crimes.

131 35. Chapter 825, relating to abuse, neglect, or  
132 exploitation of an elderly person or disabled adult.

133 36. Section 827.071, relating to commercial sexual  
134 exploitation of children.

135 37. Section 828.122, relating to fighting or baiting  
136 animals.

137 38. Chapter 831, relating to forgery and counterfeiting.

138 39. Chapter 832, relating to issuance of worthless checks  
139 and drafts.

140 40. Section 836.05, relating to extortion.

141 41. Chapter 837, relating to perjury.

142 42. Chapter 838, relating to bribery and misuse of public  
143 office.

144 43. Chapter 843, relating to obstruction of justice.

145 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or

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s. 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

(b) Any conduct defined as "racketeering activity" under 18 U.S.C. s. 1961(1).

(12) ~~(2)~~ "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following provisions of law:

1. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

2. Chapter 550, relating to jai alai frontons.

3. Section 551.109, relating to slot machine gaming.

4. Chapter 687, relating to interest and usury.

5. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

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175 (b) In gambling activity in violation of federal law or in  
176 the business of lending money at a rate usurious under state or  
177 federal law.

178 (5)~~(3)~~ "Enterprise" means any individual, sole  
179 proprietorship, partnership, corporation, business trust, union  
180 chartered under the laws of this state, or other legal entity,  
181 or any unchartered union, association, or group of individuals  
182 associated in fact although not a legal entity; and it includes  
183 illicit as well as licit enterprises and governmental, as well  
184 as other, entities. A criminal gang, as defined in s. 874.03,  
185 constitutes an enterprise.

186 (7)~~(4)~~ "Pattern of racketeering activity" means engaging in  
187 at least two incidents of racketeering conduct that have the  
188 same or similar intents, results, accomplices, victims, or  
189 methods of commission or that otherwise are interrelated by  
190 distinguishing characteristics and are not isolated incidents,  
191 provided at least one of such incidents occurred after October  
192 1, 1977, ~~the effective date of this act~~ and that the last of  
193 such incidents occurred within 5 years after a prior incident of  
194 racketeering conduct.

195 (4)~~(5)~~ "Documentary material" means any book, paper,  
196 document, writing, drawing, graph, chart, photograph,  
197 phonorecord, magnetic tape, computer printout, other data  
198 compilation from which information can be obtained or from which  
199 information can be translated into usable form, or other  
200 tangible item.

201 (10)~~(6)~~ "RICO lien notice" means the notice described in s.  
202 895.05(13) ~~s. 895.05(12)~~ or in s. 895.07.

203 (6)~~(7)~~ "Investigative agency" means the Department of Legal

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Affairs, the Office of Statewide Prosecution, or the office of a state attorney.

(1)~~(8)~~ "Beneficial interest" means any of the following:

(a) The interest of a person as a beneficiary under a trust established pursuant to s. 689.07 or s. 689.071 in which the trustee for the trust holds legal or record title to real property;

(b) The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

(c) The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

The term "beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or a limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

(9) "Real property" means any real property or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(11)~~(10)~~ "Trustee" means any of the following:

(a) Any person acting as trustee pursuant to a trust established under s. 689.07 or s. 689.071 in which the trustee holds legal or record title to real property.

(b) Any person who holds legal or record title to real

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property in which any other person has a beneficial interest.

(c) Any successor trustee or trustees to any or all of the foregoing persons.

However, the term "trustee" does not include any person appointed or acting as a personal representative as defined in s. 731.201 or appointed or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued.

(3)~~(11)~~ "Criminal proceeding" means any criminal proceeding commenced by an investigative agency under s. 895.03 or any other provision of the Florida RICO Act.

(2)~~(12)~~ "Civil proceeding" means any civil proceeding commenced by an investigative agency under s. 895.05 or any other provision of the Florida RICO Act.

Section 2. Subsections (2), (5), and (8) through (12) of section 895.05, Florida Statutes, are amended to read:

895.05 Civil remedies.—

(2)(a) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of ~~a provision of~~ ss. 895.01-895.05 is subject to civil forfeiture to the state.

(b) An investigative agency may, on behalf of the state, institute a civil proceeding for forfeiture in the circuit court for the judicial circuit in which the real or personal tangible property, as described in paragraph (a), is located. An investigative agency may, on behalf of the state, institute a civil proceeding for forfeiture in a circuit court in the state

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regarding intangible property as described in paragraph (a).

(c) Upon the entry of a final judgment of forfeiture in favor of the state, the title of the state to the forfeited property shall relate back:

1. In the case of real property or a beneficial interest, to the date of filing of the RICO lien notice in the official records of the county where the real property or beneficial trust is located; if no RICO lien notice is filed, then to the date of the filing of any notice of lis pendens under s. 895.07(5) (a) in the official records of the county where the real property or beneficial interest is located; and if no RICO lien notice or notice of lis pendens is filed, then to the date of recording of the final judgment of forfeiture in the official records of the county where the real property or beneficial interest is located.

2. In the case of personal property, to the date the personal property was seized by the investigating agency.

(d) If property subject to forfeiture is conveyed, alienated, disposed of, diminished in value, or otherwise rendered unavailable for forfeiture ~~after the filing of a RICO lien notice or after the filing of a civil proceeding or criminal proceeding, whichever is earlier~~, the investigative agency may, on behalf of the state, institute an action in any circuit court against the person named in the RICO lien notice or the defendant in the civil proceeding or criminal proceeding, and the court shall enter final judgment against the person named in the RICO lien notice or the defendant in the civil proceeding or criminal proceeding in an amount equal to the fair market value of the property, together with investigative costs



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and attorney ~~attorney's~~ fees incurred by the investigative agency in the action. As an alternative, the court may order the forfeiture of any other property of a defendant up to the value of the property subject to forfeiture. If a civil proceeding is pending, such action shall be filed only in the court where the civil proceeding is pending.

(e) ~~(e)~~ The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. The proceeds realized from such forfeiture and disposition shall be promptly distributed in accordance with the provisions of s. 895.09.

(5) The Department of Legal Affairs, any state attorney, or any state agency having jurisdiction over conduct in violation of a provision of this chapter ~~act~~ may institute civil proceedings under this section. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions, or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(8) A final judgment or decree rendered in favor of the state in any criminal proceeding under this chapter ~~act~~ or any other criminal proceeding under state law shall estop the defendant in any subsequent civil action or proceeding under this chapter ~~act~~ or under s. 772.104 as to all matters as to

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which such judgment or decree would be an estoppel as between the parties.

(9) The Department of Legal Affairs may bring an action for a violation of s. 895.03 to obtain injunctive relief, civil penalties as provided in this subsection, attorney fees, and costs incurred in the investigation and prosecution of any action under this chapter.

(a) A natural person who violates s. 895.03 is subject to a civil penalty of up to \$100,000. Any other person who violates s. 895.03 is subject to a civil penalty of up to \$1 million. Moneys recovered for civil penalties under this paragraph shall be deposited into the General Revenue Fund.

(b) Moneys recovered by the Department of Legal Affairs for attorney fees and costs under this subsection shall be deposited into the Legal Affairs Revolving Trust Fund, which may be used to investigate and enforce this chapter.

(c) In a civil action brought under this subsection by the Department of Legal Affairs, any party to such action may petition the court for entry of a consent decree or for approval of a settlement agreement. The proposed decree or settlement shall specify the alleged violations, the future obligations of the parties, the relief agreed upon, and the reasons for entering into the consent decree or settlement agreement.

(10)~~(9)~~ The Department of Legal Affairs may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or subsection (7) if it certifies that, in its opinion, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Department of Legal

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Affairs had instituted the action or proceeding.

(11)~~(10)~~ Notwithstanding any other provision of law, a criminal or civil action or proceeding under this chapter act may be commenced at any time within 5 years after the conduct in violation of ~~a provision of this chapter act~~ terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent, or restrain any violation of ~~the provisions of this chapter act~~, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsection (6), ~~or~~ subsection (7), or subsection (9) which is based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding shall be suspended during the pendency of such prosecution, action, or proceeding and for 2 years following its termination.

(12)~~(11)~~ The application of one civil remedy under any provision of this chapter act does not preclude the application of any other remedy, civil or criminal, under this chapter act or any other provision of law. Civil remedies under this chapter act are supplemental, and not mutually exclusive.

(13)~~(12)~~ (a) In addition to the authority to file a RICO lien notice set forth in s. 895.07(1), the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney may apply ex parte to a criminal division of a circuit court and, upon petition supported by sworn affidavit, obtain an order authorizing the filing of a RICO lien notice against real property upon a showing of probable cause to believe that the property was used in the course of, intended for use in the course of, derived from, or realized through

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conduct in violation of ~~a provision of~~ ss. 895.01-895.05. If the lien notice authorization is granted, the department shall, after filing the lien notice, forthwith provide notice to the owner of the property by one of the following methods:

1. By serving the notice in the manner provided by law for the service of process.

2. By mailing the notice, postage prepaid, by ~~registered or~~ certified mail to the person to be served at his or her last known address and evidence of the delivery.

3. If neither of the foregoing can be accomplished, by posting the notice on the premises.

(b) The owner of the property may move the court to discharge the lien, and such motion shall be set for hearing at the earliest possible time.

(c) The court shall discharge the lien if it finds that there is no probable cause to believe that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of ~~a provision of~~ ss. 895.01-895.05 or if it finds that the owner of the property neither knew nor reasonably should have known that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of ~~a provision of~~ ss. 895.01-895.05.

(d) No testimony presented by the owner of the property at the hearing is admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury or false statement, nor shall such testimony constitute a waiver of the owner's constitutional right against self-incrimination.

(e) A lien notice secured under ~~the provisions of~~ this

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subsection is valid for a period of 90 days from the date the court granted authorization, which period may be extended for an additional 90 days by the court for good cause shown, unless a civil proceeding is instituted under this section and a lien notice is filed under s. 895.07, in which event the term of the lien notice is governed by s. 895.08.

(f) The filing of a lien notice, whether or not subsequently discharged or otherwise lifted, shall constitute notice to the owner and knowledge by the owner that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of ~~a provision of~~ ss. 895.01-895.05, such that lack of such notice and knowledge shall not be a defense in any subsequent civil or criminal proceeding under this chapter.

Section 3. Section 895.06, Florida Statutes, is amended to read:

895.06 Civil investigative subpoenas; public records exemption.—

~~(1) As used in this section, the term "investigative agency" means the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney.~~

(1)(2) If, pursuant to the civil enforcement provisions of s. 895.05, an investigative agency has reason to believe that a person or other enterprise has engaged in, or is engaging in, activity in violation of this chapter act, the investigative agency may administer oaths or affirmations, subpoena witnesses or material, and collect evidence.

(2)(3) A subpoena issued pursuant to this chapter is confidential for 120 days after the date of its issuance. The

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436 subpoenaed person or entity may not disclose the existence of  
437 the subpoena to any person or entity other than his or her  
438 attorney during the 120-day period. The subpoena must include a  
439 reference to the confidentiality of the subpoena and a notice to  
440 the recipient of the subpoena that disclosure of the existence  
441 of the subpoena to any person or entity other than the  
442 subpoenaed person's or entity's attorney is prohibited. The  
443 investigative agency may apply ex parte to the circuit court for  
444 the circuit in which a subpoenaed person or entity resides, is  
445 found, or transacts business for an order directing that the  
446 subpoenaed person or entity not disclose the existence of the  
447 subpoena to any other person or entity except the subpoenaed  
448 person's attorney for an additional a period of time ~~90 days,~~  
449 ~~which time may be extended by the court~~ for good cause shown by  
450 the investigative agency. The order shall be served on the  
451 subpoenaed person or entity with the subpoena, and the subpoena  
452 must ~~shall~~ include a reference to the order and a notice to the  
453 recipient of the subpoena that disclosure of the existence of  
454 the subpoena to any other person or entity in violation of the  
455 order may subject the subpoenaed person or entity to punishment  
456 for contempt of court. Such an order may be granted by the court  
457 only upon a showing:

458 (a) Of sufficient factual grounds to reasonably indicate a  
459 violation of ss. 895.01-895.06;

460 (b) That the documents or testimony sought appear  
461 reasonably calculated to lead to the discovery of admissible  
462 evidence; and

463 (c) Of facts that ~~which~~ reasonably indicate that disclosure  
464 of the subpoena would hamper or impede the investigation or

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would result in a flight from prosecution.

(3)~~(4)~~ If matter that the investigative agency seeks to obtain by the subpoena is located outside the state, the person or enterprise subpoenaed may make such matter available to the investigative agency or its representative for examination at the place where such matter is located. The investigative agency may designate representatives, including officials of the jurisdiction in which the matter is located, to inspect the matter on its behalf and may respond to similar requests from officials of other jurisdictions.

(4)~~(5)~~ Upon failure of a person or enterprise, without lawful excuse, to obey a subpoena issued under this section or a subpoena issued in the course of a civil proceeding instituted pursuant to s. 895.05, and after reasonable notice to such person or enterprise, the investigative agency may apply to the circuit court in which such civil proceeding is pending or, if no civil proceeding is pending, to the circuit court for the judicial circuit in which such person or enterprise resides, is found, or transacts business for an order compelling compliance. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or material after asserting a privilege against self-incrimination to which the individual is entitled by law shall not have the testimony or material so provided, or evidence derived therefrom, received against him or her in any criminal investigation or proceeding.

(5)~~(6)~~ A person who fails to obey a court order entered pursuant to this section may be punished for contempt of court.

(6) The investigative agency may stipulate to protective orders with respect to documents and information submitted in

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response to a subpoena issued under this section.

(7)(a) Information held by an investigative agency pursuant to an investigation of a violation of s. 895.03 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information made confidential and exempt under paragraph (a) may be disclosed by the investigative agency to:

1. A government entity in the performance of its official duties.

2. A court or tribunal.

(c) Information made confidential and exempt under paragraph (a) is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

(d) For purposes of this subsection, an investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Paragraph (b) of subsection (1) of section 895.09, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

895.09 Disposition of funds obtained through forfeiture proceedings.—

(1) A court entering a judgment of forfeiture in a proceeding brought pursuant to s. 895.05 shall retain jurisdiction to direct the distribution of any cash or of any



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cash proceeds realized from the forfeiture and disposition of the property. The court shall direct the distribution of the funds in the following order of priority:

(b) Any claims against the property by persons who have previously been judicially determined to be innocent persons, pursuant to s. 895.05(2) (e) ~~the provisions of s. 895.05(2) (e)~~, and whose interests are preserved from forfeiture by the court and not otherwise satisfied. Such claims may include any claim by a person appointed by the court as receiver pending litigation.

(d) Any claims for restitution by victims of racketeering activity. If the forfeiture action was brought by the Department of Legal Affairs, the restitution shall be distributed through the Legal Affairs Revolving Trust Fund; otherwise, the restitution shall be distributed by the clerk of the court.

Section 5. Paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is amended to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in

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the definition of racketeering activity in s. 895.02(8)(a)  
~~895.02(1)(a)~~, providing such listed offense is investigated in  
connection with a violation of s. 895.03 and is charged in a  
separate count of an information or indictment containing a  
count charging a violation of s. 895.03, the prosecution of  
which listed offense may continue independently if the  
prosecution of the violation of s. 895.03 is terminated for any  
reason;

4. Any violation of the Florida Anti-Fencing Act;

5. Any violation of the Florida Antitrust Act of 1980, as  
amended;

6. Any crime involving, or resulting in, fraud or deceit  
upon any person;

7. Any violation of s. 847.0135, relating to computer  
pornography and child exploitation prevention, or any offense  
related to a violation of s. 847.0135 or any violation of  
chapter 827 where the crime is facilitated by or connected to  
the use of the Internet or any device capable of electronic data  
storage or transmission;

8. Any violation of chapter 815;

9. Any criminal violation of part I of chapter 499;

10. Any violation of the Florida Motor Fuel Tax Relief Act  
of 2004;

11. Any criminal violation of s. 409.920 or s. 409.9201;

12. Any crime involving voter registration, voting, or  
candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering  
Act;

14. Any criminal violation of the Florida Securities and

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Investor Protection Act; or

15. Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 6. Subsection (3) of section 905.34, Florida Statutes, is amended to read:

905.34 Powers and duties; law applicable.—The jurisdiction of a statewide grand jury impaneled under this chapter shall extend throughout the state. The subject matter jurisdiction of the statewide grand jury shall be limited to the offenses of:

(3) Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(8)(a) ~~895.02(1)(a)~~, providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the

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prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

or any attempt, solicitation, or conspiracy to commit any violation of the crimes specifically enumerated above, when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. The statewide grand jury may return indictments and presentments irrespective of the county or judicial circuit where the offense is committed or triable. If an indictment is returned, it shall be certified and transferred for trial to the county where the offense was committed. The powers and duties of, and law applicable to, county grand juries shall apply to a statewide grand jury except when such powers, duties, and law are inconsistent with the provisions of ss. 905.31-905.40.

Section 7. For the purpose of incorporating the amendment made by this act to section 895.05, Florida Statutes, in a reference thereto, subsection (4) and paragraph (a) of subsection (5) of section 16.53, Florida Statutes, are reenacted, and subsection (6) of that section is amended, to read:

16.53 Legal Affairs Revolving Trust Fund.—

(4) Subject to the provisions of s. 895.09, when the Attorney General files an action pursuant to s. 895.05, funds provided to the Department of Legal Affairs pursuant to s. 895.09(2)(a) or, alternatively, attorneys' fees and costs,

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whichever is greater, shall be deposited in the fund.

(5) (a) In the case of a forfeiture action pursuant to s. 895.05, the remainder of the moneys recovered shall be distributed as set forth in s. 895.09.

(6) "Moneys recovered" means damages or penalties or any other monetary payment, including monetary proceeds from property forfeited to the state pursuant to s. 895.05 remaining after satisfaction of any valid claims made pursuant to s. 895.09(1)(a)-(d) ~~895.09(1)(a)-(e)~~, which damages, penalties, or other monetary payment is made by any defendant by reason of any decree or settlement in any Racketeer Influenced and Corrupt Organization Act or state or federal antitrust action prosecuted by the Attorney General, but excludes attorney ~~attorneys'~~ fees and costs.

Section 8. For the purpose of incorporating the amendment made by this act to section 895.05, Florida Statutes, in a reference thereto, subsection (1) of section 27.345, Florida Statutes, is reenacted to read:

27.345 State Attorney RICO Trust Fund; authorized use of funds; reporting.—

(1) Subject to the provisions of s. 895.09, when a state attorney files an action pursuant to s. 895.05, funds provided to the state attorney pursuant to s. 895.09(2)(a) or, alternatively, attorneys' fees and costs, whichever is greater, shall be deposited in the State Attorney RICO Trust Fund.

Section 9. For the purpose of incorporating the amendment made by this act to section 895.05, Florida Statutes, in a reference thereto, subsection (3) of section 92.142, Florida Statutes, is reenacted to read:

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668 92.142 Witnesses; pay.—

669 (3) Any witness subpoenaed to testify on behalf of the  
670 state in any action brought pursuant to s. 895.05 or chapter 542  
671 who is required to travel outside his or her county of residence  
672 and more than 50 miles from his or her residence, or who is  
673 required to travel from out of state, shall be entitled to per  
674 diem and travel expenses at the same rate provided for state  
675 employees under s. 112.061 in lieu of any state witness fee.

676 Section 10. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Joe Negron, Chair  
Appropriations Subcommittee on Criminal and Civil Justice

**Subject:** Committee Agenda Request

**Date:** February 2, 2016

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I respectfully request that **Senate Bill # 850**, relating to Offenses Concerning Racketeering and Illegal Debts, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Rob Bradley", is written over a horizontal line.

Senator Rob Bradley  
Florida Senate, District 7

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

850

Bill Number (if applicable)

Topic Civil Rico

Amendment Barcode (if applicable)

Name Rob Johnson

Job Title Leg Director

Address PL - 01

Phone 245-0155

Street

Tall

FL

32399

City

State

Zip

Email rob.johnson@myfloridalegal.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Attorney General

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: CS/SB 936

INTRODUCER: Criminal Justice Committee and Senator Ring

SUBJECT: Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability

DATE: February 10, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 936 encourages the use of state-of-the-art digital devices to assist law enforcement, correctional, or other public safety officials in quickly identifying individuals who have been diagnosed with autism, an autism spectrum disorder, or a related developmental disability and notifying the family members, caregivers, and primary intervention professionals of these individuals when a crisis occurs.

The bill provides that, unless extenuating circumstances exist, a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, speech therapist, or related professional who have experience in treating, teaching, or assisting persons with autism, an autism spectrum disorder, or a related developmental disability must be present to assist law enforcement and other public safety officials during all interviews of an individual with autism or autism spectrum disorder, or related developmental disability, whether the individual being interviewed is the victim of a crime, the suspect in a crime, or the defendant formally accused of a crime. It requires law enforcement officers or other public safety officers to document the interview in writing when a professional is not available and make a professional available as soon as practicable. The bill provides that the cost of the professional must be borne by the individual.

The cost of any delay occasioned by the requirements of the bill that certain professionals be present during interviews of individuals with autism, autism spectrum disorder or a related developmental disability is unknown.

The bill has an effective date of July 1, 2016.

## **II. Present Situation:**

The Center for Disease Control (CDC) estimates that one in 68 children have been identified with Autism Spectrum Disorder (ASD).<sup>1</sup> The CDC defines “Autism spectrum disorder” as a developmental disability that can cause significant social, communication, and behavioral challenges. Though there is nothing about how persons who have been diagnosed with ASD look that sets them apart from other people, the CDC states that people with ASD may communicate, interact, behave, and learn in ways that are different from most other people. The range of abilities of people with ASD can span from gifted to severely challenged.<sup>2</sup>

Though formerly diagnosed separately, autistic disorder, pervasive developmental disorder, and Asperger syndrome are now included in the diagnosis of ASD.<sup>3</sup>

Florida law includes the following definitions:

“Autism” is a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.<sup>4</sup>

“Developmental disability” is a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.<sup>5</sup>

“Autism spectrum disorder” is any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association:

1. Autistic disorder;
2. Asperger’s syndrome; and
3. Pervasive developmental disorder not otherwise specified.<sup>6</sup>

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<sup>1</sup> Data from the Autism and Developmental Disabilities Monitoring (ADDM) Network. <http://www.cdc.gov/ncbddd/autism/research.html> (last visited January 26, 2016).

<sup>2</sup> <http://www.cdc.gov/ncbddd/autism/facts.html> (last visited January 26, 2016).

<sup>3</sup> Id.

<sup>4</sup> Section 393.063(3), F.S.

<sup>5</sup> Section 393.063(9), F.S.

<sup>6</sup> Sections 627.6686(2)(b) and 641.31098(2), F.S.

### **III. Effect of Proposed Changes:**

The bill, cited the act as the “Wes Kleinert Fair Interview Act,” encourages the use of state-of-the-art digital devices, such as bracelets, necklaces, and pocket cards that are similar to those kept upon the person of individuals who have certain medical conditions or age-related disabilities, to assist law enforcement, correctional, or other public safety officials and other concerned persons in quickly identifying individuals who have been diagnosed with autism, an autism spectrum disorder, or a related developmental disability and notifying the family members, caregivers, and primary intervention professionals of these individuals when a crisis occurs.

The bill provides that, unless extenuating circumstances exist, a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, speech therapist, or related professional that have experience in treating, teaching, or assisting persons with autism, an autism spectrum disorder, or a related developmental disability be present to assist law enforcement and other public safety officials during all interviews of an individual with autism, an autism spectrum disorder or related developmental disability, whether the individual being interviewed is the victim of a crime, the suspect in a crime, or the defendant formally accused of a crime. It provides for law enforcement officers or other public safety officers to document the interview in writing when a professional is not available and make a professional available as soon as practicable. It provides that the cost of the professional must be borne by the individual.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

An individual with autism, an autism spectrum disorder or a related developmental disability will be responsible for the cost of the professionals required during interviews of persons with those disorders. The cost of the professionals required by CS/SB 936 is unknown.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The cost of any delay occasioned by the requirements of the bill that certain professionals be present during interviews of individuals with autism, autism spectrum disorder or a related developmental disability is unknown.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill does not include sections of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on February 1, 2016:**

The Committee Substitute includes speech therapists in the list of trained professionals that can be present to assist law enforcement and other public safety officials whether the individual being interviewed is the victim of a crime, the suspect in a crime, or the defendant formally accused of a crime. It provides for law enforcement officers or other public safety officers to document the interview in writing when a professional is not available and make a professional available as soon as practicable. It provides that the cost of the professional shall be borne by the individual.

B. Amendments:

None.



479128

LEGISLATIVE ACTION

Senate

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House

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Appropriations Subcommittee on Criminal and Civil Justice  
(Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. This act may be cited as "The Wes Kleinert Fair  
Interview Act."

Section 2. Section 943.0439, Florida Statutes, is created  
to read:

943.0439 Interviews of victims, suspects, or defendants  
with autism or an autism spectrum disorder.—A law enforcement



479128

officer, a correctional officer, or another public safety official shall, upon the request of an individual diagnosed with autism or an autism spectrum disorder or his or her parent or guardian, make a good faith effort to ensure that a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional is present at all interviews of the individual. The professional must have experience treating, teaching, or assisting patients or clients who have been diagnosed with autism or an autism spectrum disorder or related developmental disability or must be certified in special education with a concentration focused on persons with autism or an autism spectrum disorder. All expenses related to the attendance of the professional at interviews shall be borne by the requesting parent, guardian, or individual. Failure to have a professional as defined by this subsection present at the time of the interview is not a basis for suppression of the statement or the contents of the interview or for a cause of action against the law enforcement officer or agency. This subsection applies to such an individual who is the victim, a suspect, or a defendant formally accused of a crime.

(2) Each law enforcement agency must ensure that appropriate policies are developed which implement this section and that training is provided to its law enforcement and correctional officers based on those policies.

Section 3. This section shall take effect July 1, 2016.

===== T I T L E   A M E N D M E N T =====  
And the title is amended as follows:



479128

40 Delete everything before the enacting clause  
41 and insert:

42 A bill to be entitled  
43 An act relating to criminal justice system interviews  
44 of individuals with autism or an autism spectrum  
45 disorder; providing a short title; creating s.  
46 943.0439, F.S.; requiring a law enforcement officer,  
47 correctional officer, or another public safety  
48 official to make a good faith effort, upon the request  
49 of a parent, a guardian, or the individual, to ensure  
50 that specified professionals are present at all  
51 interviews of an individual diagnosed with autism or  
52 an autism spectrum disorder; providing specifications  
53 for the professional; specifying that the parent,  
54 guardian, or individual bears the expense of hiring  
55 the professional; specifying that not having a  
56 professional present is not a basis for suppressing  
57 statements or for bringing a cause of action;  
58 providing applicability; requiring law enforcement  
59 agencies to develop and implement appropriate policies  
60 and provide training; providing an effective date.

By the Committee on Criminal Justice; and Senator Ring

591-02915-16

2016936c1

A bill to be entitled

An act relating to criminal justice system interviews of persons with autism, an autism spectrum disorder, or a related developmental disability; providing a short title; encouraging the use of certain state-of-the-art digital devices for the purposes of identification and notification; requiring that certain professionals with experience in treating, teaching, or assisting persons with autism, an autism spectrum disorder, or a related developmental disability be present during an interview of a person with autism, an autism spectrum disorder, or a related developmental disability conducted by specified persons unless extenuating circumstances exist; requiring a law enforcement officer, a correctional officer, or another public safety official to document in writing any extenuating circumstances; authorizing a law enforcement officer, a correctional officer, or another public safety official to hold persons with autism, an autism spectrum disorder, or a related developmental disability for a reasonable period of time under certain circumstances; providing that the cost of retaining a professional must be borne by such persons; providing an effective date.

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

Section 1. This act may be cited as "The Wes Kleinert Fair Interview Act."

Section 2. (1) The Legislature encourages the use of state-of-the-art digital devices, such as bracelets, necklaces, and pocket cards that are similar to those kept upon the person of



591-02915-16

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33 individuals who have certain medical conditions or age-related  
34 disabilities, to assist law enforcement, correctional, or other  
35 public safety officials and other concerned persons in quickly  
36 identifying individuals who have been diagnosed with autism, an  
37 autism spectrum disorder, or a related developmental disability  
38 and notifying the family members, caregivers, and primary  
39 intervention professionals of such individuals when a crisis  
40 occurs.

41 (2) Unless extenuating circumstances exist, a psychiatrist,  
42 psychologist, mental health counselor, special education  
43 instructor, clinical social worker, speech therapist, or related  
44 professional, each of whom must have experience treating,  
45 teaching, or assisting patients or clients who have been  
46 diagnosed with autism, an autism spectrum disorder, or a related  
47 developmental disability, or must be certified in special  
48 education with a concentration focused on persons with autism,  
49 an autism spectrum disorder, or a related developmental  
50 disability, must be present to assist a law enforcement officer,  
51 a correctional officer, or another public safety official during  
52 all interviews of an individual with autism, an autism spectrum  
53 disorder, or a related developmental disability, whether the  
54 individual being interviewed is the victim of a crime, the  
55 suspect in a crime, or the defendant formally accused of a crime  
56 or is otherwise involved in the criminal justice system. If  
57 extenuating circumstances exist and it is not possible to delay  
58 the interview until such a professional is available, a law  
59 enforcement officer, a correctional officer, or another public  
60 safety official must document the circumstances in writing and  
61 make a professional available as soon as practicable. An

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62 individual with autism, an autism spectrum disorder, or a  
63 related developmental disability may be held for a reasonable  
64 period of time until a professional is retained by the  
65 individual or his or her representative. The cost of the  
66 professional must be borne by the individual.

67 Section 3. This act shall take effect July 1, 2016.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Governmental Oversight and Accountability, *Chair*  
Judiciary, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Children, Families, and Elder Affairs  
Commerce and Tourism

**SENATOR JEREMY RING**

29th District

February 4, 2016

Senator Joe Negron, Chair  
Appropriations Subcommittee on Criminal and Civil Justice  
201 The Capitol  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Negron,

I am writing to respectfully request your cooperation in placing Senate Bill 936, relating to Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability, on the Appropriations Subcommittee on Criminal and Civil Justice agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator District 29

cc: Tim Sadberry, Staff Director  
Michelle Sanders, Committee Administrative Assistant

**REPLY TO:**

- ☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- ☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

SB 936

*Bill Number (if applicable)*

479128

*Amendment Barcode (if applicable)*

Topic Criminal Justice System Interviews of Persons with Autism

Name Sarrah Carroll

Job Title Lobbyist

Address 123 S. Adams

*Street*

Tallahassee

*City*

FL

*State*

32301

*Zip*

Phone 850-671-4401

Email carroll@sostrategy.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: CS/SB 954

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Electronic Monitoring Devices

DATE: February 11, 2016

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Cannon	CJ	<b>Fav/CS</b>
2. Clodfelter	Sadberry	ACJ	<b>Recommend: Favorable</b>
3. _____	_____	FP	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 954 repeals s. 948.11(7), F.S., and moves its provisions into newly created s. 843.23, F.S., which makes it a third degree felony for a person to intentionally and without authority remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or an order by the Florida Commission on Offender Review.

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device.

Additionally, the bill clarifies s. 948.11(1), F.S., that the Department of Corrections (department) may electronically monitor offenders sentenced to community control only when the court has imposed electronic monitoring as a condition of community control.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that SB 954, as filed, will have an insignificant prison bed impact on the department (an increase of ten or fewer beds). It does not appear that the changes made in CS/SB 954 would alter that determination.

The bill has an effective date of October 1, 2016.

## II. Present Situation:

Section 948.11, F.S., provides that the department may, at its discretion, electronically monitor an offender sentenced to community control. Any offender who violates the terms of community control and is restored to community control may be supervised by an electronic monitoring device.

Electronic monitoring may also be a condition of a court or commission order for probationers, community controllees, or conditional releasees who have current or prior convictions for violent or sexual offenses. A system that actively monitors and identifies the offender's locations and timely reports or records the offender's presence near or within a crime scene or in a prohibited area or the offender's departure from specified geographic limitations must be used.<sup>1</sup>

The department may contract with local law enforcement agencies to assist in the location and apprehension of offenders who are in noncompliance as reported by the electronic monitoring system.<sup>2</sup> Any person who intentionally alters, tampers with, damages, or destroys any electronic monitoring equipment required pursuant to court or commission order, unless the person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs, commits a third degree felony.<sup>3</sup>

According to the department's December 2015 Monthly Status Report on the Community Supervision Population, there were 4,458 offenders on electronic monitoring.<sup>4</sup>

<b>Offenders Tracked by Electronic Monitoring December 2015</b>			
Supervision Type	Sex Offenders**	Others	Total
Community Control	164	965	1,129
Post Prison	215	149	364
Probation	2,352	613	2,965
Total Active Global Positioning	2,731	1,727	4,458
* Includes Active and Active-Suspense offenders.			
**Based on primary offense.			

## III. Effect of Proposed Changes:

The bill repeals s. 948.11(7), F.S., and moves its provisions into newly created s. 843.23, F.S., which makes it a third degree felony for a person to knowingly, and without authority remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or an order by the Florida Commission on Offender Review. The prohibitions against removing or circumventing the operation of the electronic monitoring device are not specified in the current statute.

<sup>1</sup> Section 948.11(6), F.S.

<sup>2</sup> Section 948.11(6), F.S.

<sup>3</sup> Section 948.11(4), F.S.

<sup>4</sup> <http://www.dc.state.fl.us/pub/spop/2015/12/tab02.html> (last visited January 19, 2016).

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device.

The bill provides that “electronic monitoring device” as used in this section includes any device that is used to track the location of a person.

The bill amends s. 948.11(1), F.S., to clarify that the department may electronically monitor offenders sentenced to community control only when the court has imposed electronic monitoring as a condition of community control.

The bill has an effective date of October 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that SB 954, as filed, will have an insignificant prison bed impact on the department (an increase of ten or fewer beds). It does not appear that the changes made in CS/SB 954 would alter that determination.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 843.23 of the Florida Statutes.

This bill amends section 948.11 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on January 25, 2016:**

The Committee Substitute clarifies that any person who intentionally removes, destroys, alters, tampers with, damages or circumvents the operation of an electronic monitoring device can be prosecuted under the bill.

**B. Amendments:**

None.





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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/11/2016	.	
	.	
	.	
	.	

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Appropriations Subcommittee on Criminal and Civil Justice  
(Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present paragraphs (g) through (n) of subsection  
(2) of section 775.21, Florida Statutes, are redesignated as  
paragraphs (h) through (o), respectively, a new paragraph (g) is  
added to that subsection, and paragraphs (a), (e), (g), (i), and  
(j) of subsection (6) and paragraph (a) of subsection (8) of  
that section are amended, to read:



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775.21 The Florida Sexual Predators Act.—

(2) DEFINITIONS.—As used in this section, the term:

(g) "Electronic reporting device" means a device through which a person securely reports and communicates by audio and visual means with a law enforcement agency and which:

1. Is administered through an agency or through a third-party monitoring system;

2. Uses global positioning satellites to verify the location of the person reporting;

3. Provides facial recognition;

4. Records communications in high-definition audio and video;

5. Is tamperproof; and

6. Reports tampering attempts to the administering entity.

(6) REGISTRATION.—

(a) A sexual predator shall register with the department through the sheriff's office by providing the following information to the department:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; photograph; address of legal residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses and all Internet identifiers required to be provided pursuant to subparagraph (g)5.; all home telephone numbers and cellular



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40 telephone numbers; date and place of any employment; the make,  
41 model, color, vehicle identification number (VIN), and license  
42 tag number of all vehicles owned; date and place of each  
43 conviction; fingerprints; palm prints; and a brief description  
44 of the crime or crimes committed by the offender. A post office  
45 box may not be provided in lieu of a physical residential  
46 address. The sexual predator shall produce his or her passport,  
47 if he or she has a passport, and, if he or she is an alien,  
48 shall produce or provide information about documents  
49 establishing his or her immigration status. The sexual predator  
50 shall also provide information about any professional licenses  
51 he or she has.

52       a. If the sexual predator's place of residence is a motor  
53 vehicle, trailer, mobile home, or manufactured home, as defined  
54 in chapter 320, the sexual predator shall also provide to the  
55 department written notice of the vehicle identification number;  
56 the license tag number; the registration number; and a  
57 description, including color scheme, of the motor vehicle,  
58 trailer, mobile home, or manufactured home. If a sexual  
59 predator's place of residence is a vessel, live-aboard vessel,  
60 or houseboat, as defined in chapter 327, the sexual predator  
61 shall also provide to the department written notice of the hull  
62 identification number; the manufacturer's serial number; the  
63 name of the vessel, live-aboard vessel, or houseboat; the  
64 registration number; and a description, including color scheme,  
65 of the vessel, live-aboard vessel, or houseboat.

66       b. If the sexual predator is enrolled, employed,  
67 volunteering, or carrying on a vocation at an institution of  
68 higher education in this state, the sexual predator shall also



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69 provide to the department the name, address, and county of each  
70 institution, including each campus attended, and the sexual  
71 predator's enrollment, volunteer, or employment status. Each  
72 change in enrollment, volunteer, or employment status must be  
73 reported through an electronic reporting device, in person at  
74 the sheriff's office, or to the Department of Corrections if the  
75 sexual predator is in the custody or control of or under the  
76 supervision of the Department of Corrections, within 48 hours  
77 after any change in status. The sheriff or the Department of  
78 Corrections shall promptly notify each institution of the sexual  
79 predator's presence and any change in the sexual predator's  
80 enrollment, volunteer, or employment status.

81 c. A sexual predator shall report through an electronic  
82 reporting device or in person to the sheriff's office within 48  
83 hours after any change in vehicles owned to report those vehicle  
84 information changes.

85 2. Any other information determined necessary by the  
86 department, including criminal and corrections records;  
87 nonprivileged personnel and treatment records; and evidentiary  
88 genetic markers when available.

89 (e)1. If the sexual predator is not in the custody or  
90 control of, or under the supervision of, the Department of  
91 Corrections or is not in the custody of a private correctional  
92 facility, the sexual predator shall register through an  
93 electronic reporting device or in person:

94 a. At the sheriff's office in the county where he or she  
95 establishes or maintains a residence within 48 hours after  
96 establishing or maintaining a residence in this state; and

97 b. At the sheriff's office in the county where he or she



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was designated a sexual predator by the court within 48 hours after such finding is made.

2. Any change in the sexual predator's permanent or temporary residence, name, vehicles owned, electronic mail addresses, or Internet identifiers required to be provided pursuant to subparagraph (g)5., after the sexual predator registers through an electronic reporting device or in person at the sheriff's office as provided in subparagraph 1., must be accomplished in the manner provided in paragraphs (g), (i), and (j). When a sexual predator registers with the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the predator and forward the photographs, palm prints, and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

(g)1. Each time a sexual predator's driver license or identification card is subject to renewal, and, without regard to the status of the predator's driver license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver license office and is subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement



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for purposes of public notification of sexual predators as provided in this section. A sexual predator who is unable to secure or update a driver license or identification card with the Department of Highway Safety and Motor Vehicles as provided in paragraph (f) and this paragraph shall also report any change of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles.

2.a. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report through an electronic reporting device or in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator shall provide or update all of the registration information required under paragraph (a). The sexual predator shall provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

b. A sexual predator shall report through an electronic reporting device or in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report



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through an electronic reporting device or in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual predator must provide the addresses and locations where he or she maintains a transient residence. Each sheriff's office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this sub-subparagraph. Reporting to the sheriff's office as required by this sub-subparagraph does not exempt registrants from any reregistration requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this sub-subparagraph. The sheriff's office shall, within 2 business days, electronically submit and update all information provided by the sexual predator to the department.

3. A sexual predator who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report through an electronic reporting device or in person to the sheriff's office to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree,



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185 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

186 4. The failure of a sexual predator who maintains a  
187 transient residence to report through an electronic reporting  
188 device or in person to the sheriff's office every 30 days as  
189 required by sub-subparagraph 2.b. is punishable as provided in  
190 subsection (10).

191 5. A sexual predator shall register all electronic mail  
192 addresses and Internet identifiers with the department before  
193 using such electronic mail addresses and Internet identifiers.  
194 The department shall establish an online system through which  
195 sexual predators may securely access and update all electronic  
196 mail address and Internet identifier information.

197 (i) A sexual predator who intends to establish a permanent,  
198 temporary, or transient residence in another state or  
199 jurisdiction other than the State of Florida shall report  
200 through an electronic reporting device or in person to the  
201 sheriff of the county of current residence within 48 hours  
202 before the date he or she intends to leave this state to  
203 establish residence in another state or jurisdiction or within  
204 21 days before his or her planned departure date if the intended  
205 residence of 5 days or more is outside of the United States. The  
206 sexual predator shall provide to the sheriff the address,  
207 municipality, county, state, and country of intended residence.  
208 The sheriff shall promptly provide to the department the  
209 information received from the sexual predator. The department  
210 shall notify the statewide law enforcement agency, or a  
211 comparable agency, in the intended state, jurisdiction, or  
212 country of residence of the sexual predator's intended  
213 residence. The failure of a sexual predator to provide his or





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her intended place of residence is punishable as provided in subsection (10).

(j) A sexual predator who indicates his or her intent to establish a permanent, temporary, or transient residence in another state, a jurisdiction other than the State of Florida, or another country and later decides to remain in this state shall, within 48 hours after the date upon which the sexual predator indicated he or she would leave this state, report through an electronic reporting device or in person to the sheriff to which the sexual predator reported the intended change of residence, and report his or her intent to remain in this state. If the sheriff is notified by the sexual predator that he or she intends to remain in this state, the sheriff shall promptly report this information to the department. A sexual predator who reports his or her intent to establish a permanent, temporary, or transient residence in another state, a jurisdiction other than the State of Florida, or another country, but who remains in this state without reporting to the sheriff in the manner required by this paragraph, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) VERIFICATION.—The department and the Department of Corrections shall implement a system for verifying the addresses of sexual predators. The system must be consistent with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to such verification or required to be met as a condition for the receipt of federal funds by the state. The Department of Corrections shall verify the addresses of sexual predators who



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are not incarcerated but who reside in the community under the supervision of the Department of Corrections and shall report to the department any failure by a sexual predator to comply with registration requirements. County and local law enforcement agencies, in conjunction with the department, shall verify the addresses of sexual predators who are not under the care, custody, control, or supervision of the Department of Corrections, and may verify the addresses of sexual predators who are under the care, custody, control, or supervision of the Department of Corrections. Local law enforcement agencies shall report to the department any failure by a sexual predator to comply with registration requirements.

(a) A sexual predator shall report through an electronic reporting device or in person each year during the month of the sexual predator's birthday and during every third month thereafter to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. The sheriff's office may determine the appropriate times and days for reporting by the sexual predator, which must be consistent with the reporting requirements of this paragraph. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state



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or out of state; all electronic mail addresses or Internet identifiers required to be provided pursuant to subparagraph (6)(g)5.; all home telephone numbers and cellular telephone numbers; date and place of any employment; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual predator shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual predator shall also provide information about any professional licenses he or she has.

2. If the sexual predator is enrolled, employed, volunteering, or carrying on a vocation at an institution of higher education in this state, the sexual predator shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment, volunteer, or employment status.

3. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide the hull identification number; the manufacturer's serial number; the name of the



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vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

Section 2. Paragraph (i) is added to subsection (1) of section 943.0435, Florida Statutes, and paragraphs (a) and (b) of subsection (2), subsections (7) and (8), and paragraphs (a) and (c) of subsection (14) of that section are amended, to read:

943.0435 Sexual offenders required to register with the department; penalty.—

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

(i) "Electronic reporting device" has the same meaning as provided in s. 775.21.

(2) A sexual offender shall:

(a) Report through an electronic reporting device or in person at the sheriff's office:

1. In the county in which the offender establishes or maintains a permanent, temporary, or transient residence within 48 hours after:

a. Establishing permanent, temporary, or transient residence in this state; or

b. Being released from the custody, control, or supervision of the Department of Corrections or from the custody of a private correctional facility; or

2. In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration under this section if the offender is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility.



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Any change in the information required to be provided pursuant to paragraph (b), including, but not limited to, any change in the sexual offender's permanent, temporary, or transient residence, name, electronic mail addresses, or Internet identifiers required to be provided pursuant to paragraph (4)(e), after the sexual offender reports through an electronic reporting device or in person at the sheriff's office, must be accomplished in the manner provided in subsections (4), (7), and (8).

(b) Provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; fingerprints; palm prints; photograph; occupation and place of employment; address of permanent or legal residence or address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state, address, location or description, and dates of any current or known future temporary residence within the state or out of state; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; all home telephone numbers and cellular telephone numbers; all electronic mail addresses and all Internet identifiers required to be provided pursuant to paragraph (4)(e); date and place of each conviction; and a brief description of the crime or crimes committed by the offender. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a



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passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

1. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department through the sheriff's office written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. If the sexual offender is enrolled, employed, volunteering, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the department through the sheriff's office the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status. Each change in enrollment, volunteer, or employment status must be reported through an electronic reporting device or in person at the sheriff's office, within 48 hours after any change in status. The sheriff shall promptly notify each institution of the sexual offender's presence and



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any change in the sexual offender's enrollment, volunteer, or employment status.

3. A sexual offender shall report through an electronic reporting device or in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

When a sexual offender reports at the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the offender and forward the photographs, palm prints, and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the sexual offender.

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report through an electronic reporting device or in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or within 21 days before his or her planned departure date if the intended residence of 5 days or more is outside of the United States. The notification must include the address, municipality, county, state, and country of intended residence. The sheriff shall promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual



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offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

(8) A sexual offender who indicates his or her intent to establish a permanent, temporary, or transient residence in another state, a jurisdiction other than the State of Florida, or another country and later decides to remain in this state shall, within 48 hours after the date upon which the sexual offender indicated he or she would leave this state, report through an electronic reporting device or in person to the sheriff to which the sexual offender reported the intended change of permanent, temporary, or transient residence, and report his or her intent to remain in this state. The sheriff shall promptly report this information to the department. A sexual offender who reports his or her intent to establish a permanent, temporary, or transient residence in another state, a jurisdiction other than the State of Florida, or another country but who remains in this state without reporting to the sheriff in the manner required by this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(14)(a) A sexual offender must report through an electronic reporting device or in person each year during the month of the sexual offender's birthday and during the sixth month following the sexual offender's birth month to the sheriff's office in the county in which he or she resides or is otherwise located to reregister.

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must





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be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses or Internet identifiers required to be provided pursuant to paragraph (4)(e); all home telephone numbers and cellular telephone numbers; date and place of any employment; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

2. If the sexual offender is enrolled, volunteering, employed, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual



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offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel or houseboat.

4. Any sexual offender who fails to report through an electronic reporting device or in person as required at the sheriff's office, who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence, who fails to report all electronic mail addresses and all Internet identifiers prior to use, or who knowingly provides false registration information by act or omission commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Paragraph (h) is added to subsection (1) of section 944.607, Florida Statutes, and paragraph (c) of subsection (4) and paragraphs (a) and (c) of subsection (13) of that section are amended, to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—



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

(h) "Electronic reporting device" has the same meaning as provided in s. 775.21.

(4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated shall register with the Department of Corrections within 3 business days after sentencing for a registrable offense and otherwise provide information as required by this subsection.

(c) A sexual offender shall report through an electronic reporting device or in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

(13) (a) A sexual offender must report through an electronic reporting device or in person each year during the month of the sexual offender's birthday and during the sixth month following the sexual offender's birth month to the sheriff's office in the county in which he or she resides or is otherwise located to reregister.

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if



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no permanent or temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); all home telephone numbers and cellular telephone numbers; date and place of any employment; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

2. If the sexual offender is enrolled, employed, volunteering, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel,



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live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel or houseboat.

4. Any sexual offender who fails to report through an electronic reporting device or in person as required at the sheriff's office, who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence, who fails to report all electronic mail addresses or Internet identifiers prior to use, or who knowingly provides false registration information by act or omission commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Present paragraphs (c), (d), and (e) of subsection (1) of section 985.4815, Florida Statutes, are redesignated as paragraphs (d), (e), and (f), respectively, a new paragraph (c) is added to that subsection, and paragraph (c) of subsection (4) and paragraphs (a) and (b) of subsection (13) are amended, to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

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

(c) "Electronic reporting device" has the same meaning as provided in s. 775.21.

(4) A sexual offender, as described in this section, who is under the supervision of the department but who is not committed shall register with the department within 3 business days after



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adjudication and disposition for a registrable offense and otherwise provide information as required by this subsection.

(c) A sexual offender shall report through an electronic reporting device or in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

(13) (a) A sexual offender must report through an electronic reporting device or in person each year during the month of the sexual offender's birthday and during every third month thereafter to the sheriff's office in the county in which he or she resides or is otherwise located to reregister.

(b) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; tattoos or other identifying marks; fingerprints; palm prints; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or out of state; passport information, if he or she has a passport, and, if he or she is an alien, information about documents establishing his or her immigration status; all home telephone numbers and cellular telephone numbers; all Internet identifiers; name and address of



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each school attended; date and place of any employment; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; and photograph. A post office box may not be provided in lieu of a physical residential address. The offender shall also provide information about any professional licenses he or she has.

2. If the sexual offender is enrolled, employed, volunteering, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

4. Any sexual offender who fails to report through an electronic reporting device or in person as required at the sheriff's office, who fails to respond to any address verification correspondence from the department within 3 weeks



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after the date of the correspondence, or who knowingly provides false registration information by act or omission commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

Section 5. Section 843.23, Florida Statutes, is created to read:

843.23 Tampering with an electronic monitoring device.—

(1) As used in this section, the term “electronic monitoring device” includes any device that is used to track the location of a person.

(2) It is unlawful for a person to intentionally and without authority:

(a) Remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or pursuant to an order by the Florida Commission on Offender Review; or

(b) Request, authorize, or solicit a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device required to be worn or used pursuant to a court order or pursuant to an order by the Florida Commission on Offender Review.

(3) A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsections (1) and (7) of section 948.11, Florida Statutes, are amended to read:

948.11 Electronic monitoring devices.—

(1) The Department of Corrections may, ~~at its discretion,~~





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electronically monitor an offender sentenced to community control when the court has imposed electronic monitoring as a condition of community control.

~~(7) A person who intentionally alters, tampers with, damages, or destroys any electronic monitoring equipment pursuant to court or commission order, unless such person is the owner of the equipment, or an agent of the owner, performing ordinary maintenance and repairs, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

Section 7. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (a) of subsection (4) of section 944.607, Florida Statutes, is reenacted to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

(4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated shall register with the Department of Corrections within 3 business days after sentencing for a registrable offense and otherwise provide information as required by this subsection.

(a) The sexual offender shall provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); all home telephone numbers and cellular telephone numbers; the make, model, color, vehicle identification number (VIN), and license tag number of



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all vehicles owned; permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is under supervision in this state, including any rural route address or post office box; if no permanent or temporary address, any transient residence within the state; and address, location or description, and dates of any current or known future temporary residence within the state or out of state. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has. The Department of Corrections shall verify the address of each sexual offender in the manner described in ss. 775.21 and 943.0435. The department shall report to the Department of Law Enforcement any failure by a sexual predator or sexual offender to comply with registration requirements.

Section 8. This act shall take effect October 1, 2016.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to electronic monitoring; amending ss.  
775.21, 943.0435, 944.607, and 985.4815, F.S.;  
defining the term "electronic reporting device";  
authorizing sexual offenders and sexual predators to  
comply with specified mandatory reporting requirements



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through an electronic reporting device; creating s.  
843.23, F.S.; defining the term "electronic monitoring  
device"; prohibiting a person from removing,  
destroying, altering, tampering with, damaging, or  
circumventing the operation of an electronic  
monitoring device being worn or used pursuant to any  
court order or an order by the Florida Commission on  
Offender Review; prohibiting the request,  
authorization, or solicitation of a person to perform  
such an act; providing criminal penalties; amending s.  
948.11, F.S.; specifying that the Department of  
Corrections may electronically monitor an offender  
sentenced to community control when the court has  
imposed electronic monitoring as a condition of  
community control; deleting a provision imposing  
criminal penalties on persons who intentionally alter,  
tamper with, damage, or destroy electronic monitoring  
equipment; reenacting s. 944.607(4)(a), F.S., relating  
to notification to the Department of Law Enforcement  
of information on sexual offenders, to incorporate the  
amendments made to ss. 775.21 and 943.0435, F.S., in  
references thereto; providing an effective date.

By the Committee on Criminal Justice; and Senator Simmons

591-02540-16

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A bill to be entitled  
An act relating to electronic monitoring devices;  
creating s. 843.23, F.S.; defining the term  
"electronic monitoring device"; prohibiting a person  
from removing, destroying, altering, tampering with,  
damaging, or circumventing the operation of an  
electronic monitoring device being worn or used  
pursuant to any court order or an order by the Florida  
Commission on Offender Review; prohibiting the  
request, authorization, or solicitation of a person to  
perform such an act; providing criminal penalties;  
amending s. 948.11, F.S.; specifying that the  
Department of Corrections may electronically monitor  
an offender sentenced to community control when the  
court has imposed electronic monitoring as a condition  
of community control; deleting a provision imposing  
criminal penalties on persons who intentionally alter,  
tamper with, damage, or destroy electronic monitoring  
equipment; providing an effective date.

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

Section 1. Section 843.23, Florida Statutes, is created to  
read:

843.23 Tampering with an electronic monitoring device.—

(1) As used in this section, the term "electronic  
monitoring device" includes any device that is used to track the  
location of a person.

(2) It is unlawful for a person to intentionally and  
without authority:

(a) Remove, destroy, alter, tamper with, damage, or circumvent  
the operation of an electronic monitoring device that must be

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33 worn or used by that person or another person pursuant to a  
34 court order or pursuant to an order by the Florida Commission on  
35 Offender Review; or

36 (b) Request, authorize, or solicit a person to remove,  
37 destroy, alter, tamper with, damage, or circumvent the operation  
38 of an electronic monitoring device required to be worn or used  
39 pursuant to a court order or pursuant to an order by the Florida  
40 Commission on Offender Review.

41 (3) A person who violates this section commits a felony of  
42 the third degree, punishable as provided in s. 775.082, s.  
43 775.083, or s. 775.084.

44 Section 2. Subsections (1) and (7) of section 948.11,  
45 Florida Statutes, are amended to read:

46 948.11 Electronic monitoring devices.—

47 (1) The Department of Corrections may, ~~at its discretion,~~  
48 electronically monitor an offender sentenced to community  
49 control when the court has imposed electronic monitoring as a  
50 condition of community control.

51 ~~(7) A person who intentionally alters, tampers with,~~  
52 ~~damages, or destroys any electronic monitoring equipment~~  
53 ~~pursuant to court or commission order, unless such person is the~~  
54 ~~owner of the equipment, or an agent of the owner, performing~~  
55 ~~ordinary maintenance and repairs, commits a felony of the third~~  
56 ~~degree, punishable as provided in s. 775.082, s. 775.083, or s.~~  
57 ~~775.084.~~

58 Section 3. This act shall take effect October 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Joe Negron, Chair  
Appropriations Subcommittee on Criminal and Civil Justice

**Subject:** Committee Agenda Request

**Date:** January 26, 2016

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I respectfully request that **Senate Bill 954**, relating to Electronic Monitoring Devices, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons".

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Senator David Simmons  
Florida Senate, District 10

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: PCS/CS/SB 1044 (808816)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee and Senator Brandes and others

SUBJECT: Forfeiture of Contraband

DATE: February 15, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	_____	_____	<u>FP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1044 amends the Florida Contraband Forfeiture Act to require that the owner of seized property be prosecuted and convicted of or plead guilty or nolo contendere to a criminal act, without regard to whether adjudication is withheld, before the civil forfeiture of the property becomes final. Until then, the state acquires provisional title to the property upon seizure.

In addition, the bill requires that the property owner be arrested before property may be seized under the act, unless the owner cannot be identified, there is probable cause to arrest an individual but he or she is a fugitive or dies before an arrest is made, or the property owner agrees to become an active confidential informant. Under these exceptions, a law enforcement agency may seize the property through a probable cause order issued by the court. (Currently, there is no requirement that the owner of the seized property be arrested or convicted of a criminal act before the property may be seized and forfeited.)

Under the bill, if after a diligent effort by the seizing agency, the owner of the seized property cannot be found after 90 days, the property is deemed a contraband article and forfeited pursuant to the provisions of the act. If the owner is found, the agency must return the property to the owner within five days after a court finding that the owner has a bona fide security interest, is an innocent owner, or has had the criminal charges dropped or dismissed.

The bill also amends current law to require that 70 percent of net proceeds from motor vehicle seizures associated with certain driving under the influence of alcohol or drug offenses first be applied to payment of court costs, fines, and fees associated with the offense and the remainder shall be deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services.

This bill has an indeterminate state fiscal impact and reduces revenues currently accruing to the General Revenue Fund. See Section V.

The bill is effective July 1, 2016.

## II. Present Situation:

The Florida Contraband Forfeiture Act, ss. 932.701-932.706, F.S., prescribes procedures and guidelines for law enforcement agencies to follow when seizing, forfeiting, and disposing of property under the act.<sup>1</sup> Currently, under s. 932.703, F.S., any contraband article<sup>2</sup>, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the provisions of the act.<sup>3</sup> All rights to, interest in, and title to contraband articles used in violation of the act immediately vest in the seizing law enforcement agency upon seizure.<sup>4</sup>

### Seizure Process

Personal property may be seized at the time of the violation or subsequent to the violation based upon a law enforcement officer's determination that probable cause exists to believe the property is being used in violation of the act. The person entitled to notice (the owner, entity, bona fide lienholder, or person in possession of the property)<sup>5</sup> must be given notice, at the time of seizure or within 5 days of the seizure by certified mail, of his or her right to have a court review such determination in a postseizure adversarial preliminary hearing.<sup>6</sup>

When a court review is desired, the person entitled to notice must request it in writing by certified mail. The agency must hold a hearing within 10 days (or as soon as practicable thereafter) after receiving the request. (Unlike personal property, seizure of real property may not occur until the person entitled to notice has the opportunity to attend a preseizure adversarial

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<sup>1</sup> The act provides for civil forfeiture, an action taken against the property or assets, also known as an action in rem. Civil forfeiture, unlike criminal forfeiture, does not require a nexus between the criminal activity of the property owner and the property. The constitutionality of the act was upheld by the Florida Supreme Court in *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991).

<sup>2</sup> "Contraband article" includes but is not limited to any real property or personal property which was used or attempted to be used as an "instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the act." Section 932.701(2)(a)5. and 6., F.S.

<sup>3</sup> Section 932.703(1), F.S.

<sup>4</sup> Section 932.703(1)(c), F.S.

<sup>5</sup> Interests of bona fide lienholders, property held jointly by a husband and wife, interests in property held jointly, and rental cars may not be forfeited under s. 932.703, F.S.

<sup>6</sup> The court review must occur within 15 days after the notice is received. Section 932.703(2), F.S.



hearing at which time the court determines whether or not probable cause exists to justify the seizure.)<sup>7</sup> The seizing agency must make a diligent effort to notify persons entitled to notice of the seizure.<sup>8</sup> If after reviewing the evidence at the adversarial preliminary hearing, the court finds probable cause that the property was used in violation of the act, it must authorize the seizure or continued seizure of the contraband article.<sup>9</sup>

### **Forfeiture Proceedings**

If the person entitled to notice does not request an adversarial preliminary hearing, the seizing law enforcement agency must promptly proceed against the contraband article. It does so by filing a complaint in the civil division of the circuit court within 45 days after the seizure, requesting the court to issue a judgment of forfeiture. The Florida Rules of Civil Procedure apply to forfeiture proceedings under the act.<sup>10</sup> The court must enter an order showing a finding of probable cause before a complaint can be served upon the claimant.<sup>11</sup> A claimant contesting the forfeiture has 20 days after receiving the complaint and the probable cause finding to file any responsive pleadings.<sup>12</sup>

Under the act, the civil forfeiture trial must be decided by a jury unless that right is waived by the claimant.<sup>13</sup> At trial, the seizing agency must prove that the contraband article was being used in violation of the act by clear and convincing evidence. Property may not be forfeited under the act unless the seizing agency shows by the preponderance of the evidence that the owner or any co-owner knew or should have known after reasonable inquiry, that the property was being used in criminal activity. Bona fide lienholders must have actual knowledge. The act also provides that it is an affirmative defense to forfeiture that the nexus between the property and the underlying violation was incidental or entirely accidental.<sup>14</sup>

The act also authorizes the claimant and the seizing law enforcement agency to settle the forfeiture action prior to the conclusion of the forfeiture proceeding. A settlement agreement must be reviewed by the court or a mediator (unless the claimant signs a written waiver). If the claimant is not represented by an attorney, the agreement must specify that the claimant has freely and voluntarily agreed to the settlement without the benefit of counsel.<sup>15</sup>

If the court orders that the property be forfeited to the seizing law enforcement agency, the final order of forfeiture perfects in the agency right, title, and interest in and to the property, subject only to the rights and interests of bona fide lienholders, and relates back to the date of seizure.<sup>16</sup>

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<sup>7</sup> The hearing must occur within 10 days of the filing of the lis pendens or as soon as practicable. Section 932.703(2)(b), F.S.

<sup>8</sup> Section 932.703(2), F.S.

<sup>9</sup> Section 932.703(2)(c), F.S.

<sup>10</sup> Section 932.701(2)(c) and (d), and 932.704(2), F.S.

<sup>11</sup> A “claimant” is any party who has proprietary interest in the seized property who has standing to challenge the forfeiture, including owners, registered owners, bona fide lienholders, and title-holders. Section 932.701(2)(h), F.S.

<sup>12</sup> Section 932.704(5), F.S.

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

<sup>14</sup> Section 932.703, F.S.

<sup>15</sup> Section 932.704, F.S.

<sup>16</sup> Section 932.704(8), F.S.

The act requires the seizing agency to pay claimants the reasonable loss of value of the property or loss of income when the claimant prevails. It prohibits the agency from assessing fees and costs against a successful claimant. The seizing agency is also required to pay reasonable attorney's fees and costs up to \$1,000 if the claimant prevails at the adversarial preliminary hearing.<sup>17</sup>

### **Guidelines and Training Procedures**

The act also requires the Florida Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, to develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the civil forfeiture law.<sup>18</sup> For instance, each agency that seizes property must periodically review its seizures, settlements, and forfeiture proceedings to determine whether they comply with the act and the adopted guidelines. The determination of whether an agency will file a forfeiture action must be the sole responsibility of the head of the agency or his or her designee. The determination of whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible.<sup>19</sup>

Section 932.706, F.S., requires the Criminal Justice Standards and Training Commission to develop a standardized course of training which is designed to develop proficiency in the seizure and forfeiture of property under the act. The curriculum must include racial and ethnic sensitivity, search and seizure case law, the use of drug-courier profiles, and the use of an order to stop based on a pretext.

### **Disposition of Forfeited Property**

Section 932.7055, F.S., provides for the disposition of liens and forfeited property under the act. The seizing agency may do any of the following when a final judgment of forfeiture is granted:

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.<sup>20</sup>

If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.<sup>21</sup>

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund and may be used to fund school resource officers, crime prevention, safe neighborhood, drug abuse education and prevention programs, or

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<sup>17</sup> Section 932.704(9) and (10), F.S.

<sup>18</sup> Section 932.704(11), F.S.

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

<sup>20</sup> Section 932.7055(1), F.S.

<sup>21</sup> Sections 932.7055(3) and (4), F.S.

other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for law enforcement vehicles, and providing matching funds to obtain federal grants. These proceeds and interest may not be used to meet normal operation expenses.<sup>22</sup>

Additionally, any local law enforcement agency that acquires at least \$15,000 under the act within a fiscal year must expend or donate no less than 15 percent of these proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program. The agency has discretion to determine which program receives the funds.<sup>23</sup>

An agency or organization, other than the seizing agency, that wishes to receive such funds shall apply to the sheriff or chief of police for an appropriation. If the agency or organization receives funding under the act, it must provide an accounting, indicating that the funds were only used for the above stated purposes.<sup>24</sup>

If the seizing agency is a local law enforcement agency, the proceeds are deposited into a special law enforcement trust fund established by the governing body of a county or municipality. The funds may be appropriated only to the sheriff's office by the board of county commissioners or to the police department by the governing body of the municipality when the sheriff or police chief has certified that the request for funds will be used in compliance with the act.<sup>25</sup>

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund, except that the following agencies have their own forfeiture trust fund:

- FDLE;
- Division of Alcoholic Beverages and Tobacco;
- Department of Highway Safety and Motor Vehicles;
- Fish and Wildlife Conservation Commission;
- State Attorney Offices;
- School Board Security Agencies;
- State University System Police Departments;
- Department of Agriculture and Consumer Services;
- Department of Military Affairs;
- Medicaid Fraud Control Unit of the Department of Legal Affairs;
- Division of State Fire Marshal of the Department of Financial Services; and
- Division of Insurance Fraud of the Department of Financial Services.<sup>26</sup>

A motor vehicle that is driven by a person under the influence of alcohol or drugs in violation of s. 316.193, F.S., is subject to seizure and forfeiture and to liens for recovering, towing, or storing vehicles, if, at the time of the offense, the person's driver license is suspended, revoked, or

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<sup>22</sup> Section 932.7055(5), F.S.

<sup>23</sup> Section 932.7055(5)(c)3., F.S.

<sup>24</sup> Section 932.7055(5)(c), F.S.

<sup>25</sup> Section 932.7055(5), F.S.

<sup>26</sup> Section 932.7055(6), F.S.

canceled as a result of a prior conviction for driving under the influence.<sup>27</sup> When the seizing agency obtains a final judgment granting forfeiture of a motor vehicle associated with that offense, 30 percent of the net proceeds from the sale of the motor vehicle are retained by the seizing law enforcement agency and 70 percent are deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program.<sup>28</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 932.703, F.S., to require that the owner of seized property be prosecuted and convicted of or plead guilty or nolo contendere to a criminal act, without regard to whether adjudication is withheld, before the civil forfeiture of the property becomes final. Final forfeiture occurs when title or other indicia of ownership passes to the state. Until then, the state acquires provisional title to the property upon seizure.

In addition, the bill requires the property owner be arrested before property may be seized under the act. (Currently, there is no requirement that the owner of seized property be arrested or convicted of a criminal act before the property may be seized and forfeited.)

Property may also be seized immediately in lieu of an arrest if the property owner 1) cannot be readily identified; 2) there is probable cause to arrest an individual but he or she is a fugitive or dies before an arrest is made; or 3) agrees with the state to become a confidential informant, actively participate in gathering criminal intelligence or investigative information for an active criminal investigation. If criminal charges are not brought against the property owner, the property must be returned to the owner at the end of the criminal investigation.

If a seizure is made based on one of these three exceptions, law enforcement shall, within 10 business days, apply to court for an order determining whether probable cause exists for the seizure of the property. If the court finds that probable cause exists for the seizure, the property shall be held until the issue of a determination of title is resolved pursuant to the act. Upon a finding of good cause shown, the court may order that the court order finding probable cause be sealed for as long as reasonably necessary to preserve the integrity of an active criminal investigation.

Under the bill, if after a diligent effort by the seizing agency, the owner of the seized property cannot be found after 90 days, the property is deemed a contraband article and forfeited pursuant to the provisions of the act. If the owner is found within 90 days, the agency will be required to return the property to the owner within 5 days after one of the following:

- A court finding that the owner has a bona fide security interest in the property;
- A court finding that the owner is an innocent owner;
- An acquittal or dismissal of the criminal charge against the owner that was the basis of the forfeiture proceedings; or
- A disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi.

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<sup>27</sup> Section 322.34(9)(a), F.S.

<sup>28</sup> Section 322.34(9)(c), F.S.

The bill also provides that the seizing agency is responsible for any damage, storage fee, and related cost applicable to the property.

The bill also modifies how proceeds from a seized motor vehicle, pursuant to s. 322.34(9)(c), F.S., (a motor vehicle driven by a person under the influence of alcohol or drugs whose drivers license is suspended, revoked or cancelled for a prior driving under the influence offense) may be distributed. Under the bill, seventy percent of the net proceeds from the seizure must first be applied to payment of court costs, fines, and fees remaining due which are associated with the offense. Any remaining balance of the proceeds must be deposited into general revenue to be used by regional workforce boards in providing transportation services, as directed in current law.

The bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Requiring an arrest and criminal conviction under PCS/CS/SB 1044 may result in a reduction of property being seized by and forfeited to law enforcement agencies.

C. Government Sector Impact:

This bill has an indeterminate state fiscal impact. The bill requires that seventy percent of the net proceeds from motor vehicle seizures under s. 322.34(9)(c), F.S., (a motor vehicle driven by a person under the influence of alcohol or drugs whose drivers license is suspended, revoked or cancelled for a prior driving under the influence offense) must first be applied to payment of court costs, fines, and fees which are associated with the offense rather than being deposited into general revenue to be used by regional workforce boards in providing transportation services. The bill, therefore, reduces revenues accruing to the

General Revenue Fund. Proceeds applied to court costs, fines, and fees will primarily benefit the clerks of the court and state trust funds.

In addition, the bill may reduce the number of seizures and forfeitures under the act because of the criminal nexus requirement thereby reducing revenue to seizing law enforcement agencies.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The Office of Program Policy Analysis and Government Accountability (OPPAGA) recently reviewed Florida's current civil asset forfeiture practices by local law enforcement agencies and released its findings in a report entitled *Civil Asset Forfeiture in Florida: Policies and Practices*.<sup>29</sup> Some of the findings in the report included the following:

- There is no current requirement for law enforcement agencies to report seizures and forfeitures under the act and without statewide information, the Legislature does not know the extent of civil asset forfeiture practices in Florida.<sup>30</sup>
- Vehicles and currency were the most commonly seized assets, related primarily to drug offenses.<sup>31</sup>
- An arrest was made in conjunction with most seizures during Fiscal Year 2013-2014.<sup>32</sup>
- Many assets were returned to the owners, either in whole or in part.<sup>33</sup>
- Sixteen percent of seizure actions were contested by an adversarial hearing request, and one percent resulted in a civil trial.<sup>34</sup>
- Responding agencies reported spending over \$12 million in forfeited assets during Fiscal Year 2013-2014.<sup>35</sup>

Also included in the report were the following options that could be considered by the Legislature when making changes to the Florida Contraband Forfeiture Act:

- Require law enforcement agencies to report seizure actions and forfeitures to the state at least annually.<sup>36</sup>

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<sup>29</sup> Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, Report No. 15-10 (November 2015), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1510rpt.pdf> (last visited Jan. 15, 2016).

<sup>30</sup> *Id.* at 11.

<sup>31</sup> *Id.* at 4.

<sup>32</sup> *Id.* at 5. Responding agencies gave the following examples of when an arrest is not possible to make at the time of seizure: an arrest is premature because the officer was unable to positively identify the owner of the cash and illegal drugs; an arrest is premature during an ongoing economic crime investigation but the seizure of currency is ripe; and an arrest is premature when owners of property subject to seizure are willing to give information on higher level crimes leading to later related arrests.

<sup>33</sup> *Id.* at 7 and 8.

<sup>34</sup> *Id.* at 7.

<sup>35</sup> *Id.* at 9. Responding agencies indicated they used forfeiture money primarily for supporting substance abuse and crime prevention programs, buying additional equipment, defraying costs of complex investigations, providing additional expertise, providing matching funds to obtain federal grants, and buying automatic external defibrillators. *Id.* at 10.

<sup>36</sup> Thirty-three states have some sort of reporting requirement. *Id.* at 11.

- Require a criminal conviction before forfeiture;<sup>37</sup>
- Increase the evidentiary standard of proof from clear and convincing to beyond a reasonable doubt;<sup>38</sup> and
- Restrict the use of civil asset forfeiture proceeds.<sup>39</sup>

The bill codifies the option of requiring a criminal conviction before final forfeiture.

## **VIII. Statutes Affected:**

This bill substantially amends section 932.703, Florida Statutes.

The bill makes technical and conforming changes to sections 322.34 and 403.413, Florida Statutes.

## **IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommend CS by Appropriations Subcommittee on Criminal and Civil Justice on February 11, 2016:**

- Adds exceptions in which law enforcement can immediately seize property in lieu of arrest.
- Requires law enforcement within ten days of seizure to apply to court for an order determining whether probable cause exists for the seizure of the property.
- Amends current law to require that 70 percent of net proceeds from seizures first be applied to payment of court costs, fines, and fees and the remainder shall be deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program.

**CS by Criminal Justice on January 25, 2016:**

- Requires that a property owner be arrested before the property may be seized, unless the owner and state agree that the property owner will become a confidential informant.
- Requires that the property be returned to the confidential informant if charges are not brought against him or her at the conclusion of the criminal investigation.
- Clarifies that forfeiture is final when the property owner is convicted of or pleads guilty or nolo contendere to a criminal offense, without regard to whether adjudication is withheld.

- B. **Amendments:**

None.

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<sup>37</sup> Several states, including Minnesota, Montana, Nevada, New Mexico, and North Carolina have this requirement. *Id.* at 12.

<sup>38</sup> Florida is one of 11 states that has a clear and convincing proof standard, which is higher than most other states. Nebraska, North Carolina, and Wisconsin use the criminal standard of proof, beyond a reasonable doubt. *Id.* at 12.

<sup>39</sup> *Id.* at 13.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/15/2016	.	
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Appropriations Subcommittee on Criminal and Civil Justice  
(Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (1) of section 932.701, Florida  
Statutes, is amended to read:

932.701 Short title; definitions.—

(1) Sections 932.701-932.7062 ~~932.706~~ shall be known and  
may be cited as the "Florida Contraband Forfeiture Act."

Section 2. Subsection (1) of section 932.703, Florida



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Statutes, is amended to read:

932.703 Forfeiture of contraband article; exceptions.—

(1)(a) Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of ~~any provision of~~ the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to ~~the provisions of~~ the Florida Contraband Forfeiture Act.

(b) Notwithstanding any other provision of the Florida Contraband Forfeiture Act, except ~~the provisions of~~ paragraph (a), contraband articles set forth in s. 932.701(2)(a)7. used in violation of ~~any provision of~~ the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, shall be seized and shall be forfeited subject to ~~the provisions of~~ the Florida Contraband Forfeiture Act.

(c) At the time of seizure or entry of a restraining order, the state acquires provisional title to the seized property. A forfeiture under the Florida Contraband Forfeiture Act is not final, and title or other indicia of ownership, other than provisional title, do not pass to the state or jurisdiction seeking forfeiture until the owner of the seized property is prosecuted and convicted of a criminal act that renders the property a contraband article. If, after 3 months, the seizing agency cannot find the owner of the seized property after a diligent effort, the seized property is deemed a contraband article and forfeited subject to s. 932.704. However, if the seizing agency finds the owner, the seizing agency shall return



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the property to the owner within 5 days after:

1. The court finding that the owner had a bona fide security interest;

2. The court finding that the owner was an innocent owner;

3. The acquittal or dismissal of the owner of the criminal charge that was the basis of the forfeiture proceedings; or

4. The disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi. The seizing agency is responsible for any damage, storage fee, and related cost applicable to the property ~~All rights to, interest in, and title to contraband articles used in violation of s. 932.702 shall immediately vest in the seizing law enforcement agency upon seizure.~~

(d) The seizing agency may not use the seized property for any purpose until the rights to, interest in, and title to the seized property are perfected in accordance with the Florida Contraband Forfeiture Act. This section does not prohibit use or operation necessary for reasonable maintenance of seized property. Reasonable efforts shall be made to maintain seized property in such a manner as to minimize loss of value.

Section 3. Subsections (7) and (11) of section 932.704, Florida Statutes, are amended to read:

932.704 Forfeiture proceedings.—

(7) Once property is seized pursuant to the Florida Contraband Forfeiture Act, regardless of whether the civil complaint has been filed, all settlements must be personally approved by the head of the law enforcement agency making the seizure. If the agency head is unavailable and a delay would adversely affect the settlement, approval may be given by a



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subordinate of the agency head who is designated to grant such authority. When the claimant and the seizing law enforcement agency agree to settle the forfeiture action after the civil complaint has been filed and before ~~prior to~~ the conclusion of the forfeiture proceeding, the settlement agreement shall be reviewed, unless such review is waived by the claimant in writing, by the court or a mediator or arbitrator agreed upon by the claimant and the seizing law enforcement agency. If the claimant is unrepresented, the settlement agreement must include a provision that the claimant has freely and voluntarily agreed to enter into the settlement without benefit of counsel.

(11) (a) The Department of Law Enforcement, in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, shall develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the Florida Contraband Forfeiture Act. At least annually, each state or local law enforcement agency that seizes property for the purpose of forfeiture shall ~~periodically~~ review such seizures ~~of assets made by the agency's law enforcement officers,~~ any settlements, and any forfeiture proceedings initiated by the law enforcement agency, ~~to determine whether they such seizures, settlements, and forfeitures~~ to determine whether they ~~such seizures, settlements, and forfeitures~~ comply with the Florida Contraband Forfeiture Act and the guidelines adopted under this subsection. If the review suggests deficiencies, the state or local law enforcement agency shall promptly take action to comply with the Florida Contraband Forfeiture Act.

(b) The determination as to ~~of~~ whether an agency will file a civil forfeiture action is ~~must be~~ the sole responsibility of



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the head of the agency or his or her designee.

(c) ~~(b)~~ The determination as to ~~if~~ whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible after a determination is made.

(d) The employment, salary, promotion, or other compensation of any law enforcement officer may not be dependent on the ability of the officer to meet a quota for seizures.

(e) A seizing agency shall adopt and implement written policies, procedures, and training to ensure compliance with all applicable legal requirements regarding seizing, maintaining, and forfeiting property under the Florida Contraband Forfeiture Act.

(f) When property is seized for forfeiture, the probable cause supporting the seizure must be promptly reviewed by supervisory personnel. The seizing agency's legal counsel must be notified as soon as possible of all seizures and shall conduct a review to determine whether there is legal sufficiency to proceed with a forfeiture action.

(g) Each seizing agency shall adopt and implement written policies and procedures promoting the prompt release of seized property as may be required by the act or by agency determination when there is no legitimate basis for holding seized property. To help ensure that property is not wrongfully held after seizure, each law enforcement agency must adopt written policies and procedures ensuring that all asserted claims of interest in seized property are promptly reviewed for potential validity.

(h) The settlement of any forfeiture action must be



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consistent with the Florida Contraband Forfeiture Act and the agency's policy.

(i) Law enforcement agency personnel involved in the seizure of property for forfeiture shall receive basic training and continuing education as required by the Florida Contraband Forfeiture Act. Each agency shall maintain records demonstrating each law enforcement officer's compliance with this requirement. Among other things, the training must address the legal aspects of forfeiture, including, but not limited to, search and seizure and other constitutional considerations.

Section 4. Paragraph (c) of subsection (5) of section 932.7055, Florida Statutes, is amended to read:

932.7055 Disposition of liens and forfeited property.—

(5)

(c) An agency or organization, other than the seizing agency, that wishes to receive such funds shall apply to the sheriff or chief of police for an appropriation and its application shall be accompanied by a written certification that the moneys will be used for an authorized purpose. Such requests for expenditures shall include a statement describing anticipated recurring costs for the agency for subsequent fiscal years. An agency or organization that receives money pursuant to this subsection shall provide an accounting for such moneys and shall furnish the same reports as an agency of the county or municipality that receives public funds. Such funds may be expended in accordance with the following procedures:

1. Such funds may be used only for school resource officer, crime prevention, safe neighborhood, drug abuse education, or drug prevention programs or such other law enforcement purposes



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as the board of county commissioners or governing body of the municipality deems appropriate.

2. Such funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency.

3. ~~After July 1, 1992, and during every fiscal year thereafter,~~ Any local law enforcement agency that acquires at least \$15,000 pursuant to the Florida Contraband Forfeiture Act within a fiscal year must expend or donate no less than 25 ~~15~~ percent of such proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program or programs ~~program(s)~~. The local law enforcement agency has the discretion to determine which program or programs ~~program(s)~~ will receive the designated proceeds.

Notwithstanding the drug abuse education, drug treatment, drug prevention, crime prevention, safe neighborhood, or school resource officer minimum expenditures or donations, the sheriff and the board of county commissioners or the chief of police and the governing body of the municipality may agree to expend or donate such funds over a period of years if the expenditure or donation of such minimum amount in any given fiscal year would exceed the needs of the county or municipality for such program or programs ~~program(s)~~. ~~Nothing in this section precludes~~ The minimum requirement for expenditure or donation of forfeiture proceeds ~~in excess of the minimum amounts~~ established in this subparagraph does not preclude expenditures or donations in excess of that amount ~~herein~~.

Section 5. Section 932.7061, Florida Statutes, is created



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to read:

932.7061 Reporting seized property for forfeiture.—

(1) Every law enforcement agency shall submit an annual report to the Department of Law Enforcement indicating whether the agency has seized or forfeited property under the Florida Contraband Forfeiture Act. A law enforcement agency receiving or expending forfeited property or proceeds from the sale of forfeited property in accordance with the Florida Contraband Forfeiture Act shall submit a completed annual report by October 10 documenting the receipts and expenditures. The report shall be submitted in an electronic form, maintained by the Department of Law Enforcement in consultation with the Office of Program Policy Analysis and Government Accountability, to the entity that has budgetary authority over such agency and to the Department of Law Enforcement. The annual report must, at a minimum, specify the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended.

(2) The Department of Law Enforcement shall submit an annual report to the Office of Program Policy Analysis and Government Accountability compiling the information and data in the annual reports submitted by the law enforcement agencies. The annual report shall also contain a list of law enforcement agencies that have failed to meet the reporting requirements and a summary of any action taken against the noncomplying agency by the office of Chief Financial Officer.

(3) Neither the law enforcement agency nor the entity having budgetary control over the law enforcement agency shall anticipate future forfeitures or proceeds therefrom in the





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adoption and approval of the budget for the law enforcement agency.

Section 6. Section 932.7062, Florida Statutes, is created to read:

932.7062 Penalty for noncompliance with reporting requirements.—A seizing agency that fails to comply with the reporting requirements in s. 932.7061 is subject to a civil fine of \$5,000 payable to the General Revenue Fund. However, such agency is not subject to the fine if, within 60 days after receipt of written notification from the Department of Law Enforcement of noncompliance with the reporting requirements of the Florida Contraband Forfeiture Act, the agency substantially complies with those requirements. The Department of Law Enforcement shall submit any substantial noncompliance to the office of Chief Financial Officer, which shall be responsible for the enforcement of this section.

Section 7. Paragraphs (a) and (c) of subsection (9) of section 322.34, Florida Statutes, are amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(9) (a) A motor vehicle that is driven by a person under the influence of alcohol or drugs in violation of s. 316.193 is subject to seizure and forfeiture under ss. 932.701-932.7062 ~~932.706~~ and is subject to liens for recovering, towing, or storing vehicles under s. 713.78 if, at the time of the offense, the person's driver license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

(c) Notwithstanding ~~s. 932.703(1)(c) or~~ s. 932.7055, when



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the seizing agency obtains a final judgment granting forfeiture of the motor vehicle under this section, 30 percent of the net proceeds from the sale of the motor vehicle shall be retained by the seizing law enforcement agency and 70 percent shall be deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program. In a forfeiture proceeding under this section, the court may consider the extent that the family of the owner has other public or private means of transportation.

Section 8. Subsection (4) of section 323.001, Florida Statutes, is amended to read:

323.001 Wrecker operator storage facilities; vehicle holds.—

(4) The requirements for a written hold apply when the following conditions are present:

(a) The officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act, ss. 932.701-932.7062 ~~932.706~~;

(b) The officer has probable cause to believe the vehicle should be seized and forfeited under chapter 379;

(c) The officer has probable cause to believe the vehicle was used as the means of committing a crime;

(d) The officer has probable cause to believe that the vehicle is itself evidence that tends to show that a crime has been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a crime has been committed;

(e) The officer has probable cause to believe the vehicle



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was involved in a traffic accident resulting in death or personal injury and should be sealed for investigation and collection of evidence by a vehicular homicide investigator;

(f) The vehicle is impounded or immobilized pursuant to s. 316.193 or s. 322.34; or

(g) The officer is complying with a court order.

Section 9. Paragraph (b) of subsection (3) of section 328.07, Florida Statutes, is amended to read:

328.07 Hull identification number required.—

(3)

(b) If any of the hull identification numbers required by the United States Coast Guard for a vessel manufactured after October 31, 1972, do not exist or have been altered, removed, destroyed, covered, or defaced or the real identity of the vessel cannot be determined, the vessel may be seized as contraband property by a law enforcement agency or the division, and shall be subject to forfeiture pursuant to ss. 932.701-932.7062 ~~932.706~~. Such vessel may not be sold or operated on the waters of the state unless the division receives a request from a law enforcement agency providing adequate documentation or is directed by written order of a court of competent jurisdiction to issue to the vessel a replacement hull identification number which shall thereafter be used for identification purposes. No vessel shall be forfeited under the Florida Contraband Forfeiture Act when the owner unknowingly, inadvertently, or neglectfully altered, removed, destroyed, covered, or defaced the vessel hull identification number.

Section 10. Paragraph (c) of subsection (2) of section 817.625, Florida Statutes, is amended to read:



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817.625 Use of scanning device or reencoder to defraud;  
penalties.—

(2)

(c) Any person who violates subparagraph (a)1. or  
subparagraph (a)2. shall also be subject to the provisions of  
ss. 932.701-932.7062 ~~932.706~~.

Section 11. For the purpose of incorporating the amendment  
made by this act to section 932.703, Florida Statutes, in a  
reference thereto, paragraph (e) of subsection (6) of section  
403.413, Florida Statutes, is reenacted to read:

403.413 Florida Litter Law.—

(6) PENALTIES; ENFORCEMENT.—

(e) A motor vehicle, vessel, aircraft, container, crane,  
winch, or machine used to dump litter that exceeds 500 pounds in  
weight or 100 cubic feet in volume is declared contraband and is  
subject to forfeiture in the same manner as provided in ss.  
932.703 and 932.704.

Section 12. For the purpose of incorporating the amendment  
made by this act to section 932.704, Florida Statutes, in a  
reference thereto, section 27.3451, Florida Statutes, is  
reenacted to read:

27.3451 State Attorney's Forfeiture and Investigative  
Support Trust Fund.—There is created for each of the several  
state attorneys a trust fund to be known as the State Attorney's  
Forfeiture and Investigative Support Trust Fund. Revenues  
received by a state attorney as a result of forfeiture  
proceedings, as provided under s. 932.704, shall be deposited in  
such trust fund and shall be used, when authorized by  
appropriation or action of the Executive Office of the Governor



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pursuant to s. 216.181(11), for the investigation of crime,  
prosecution of criminals, or other law enforcement purposes.

Section 13. For the purpose of incorporating the amendment  
made by this act to section 932.704, Florida Statutes, in a  
reference thereto, section 874.08, Florida Statutes, is  
reenacted to read:

874.08 Criminal gang activity and recruitment; forfeiture.—  
All profits, proceeds, and instrumentalities of criminal gang  
activity and all property used or intended or attempted to be  
used to facilitate the criminal activity of any criminal gang or  
of any criminal gang member; and all profits, proceeds, and  
instrumentalities of criminal gang recruitment and all property  
used or intended or attempted to be used to facilitate criminal  
gang recruitment are subject to seizure and forfeiture under the  
Florida Contraband Forfeiture Act, s. 932.704.

Section 14. This act shall take effect July 1, 2016.

===== T I T L E   A M E N D M E N T =====  
And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to contraband forfeiture; amending s.  
932.701, F.S.; revising the applicability of a short  
title; amending s. 932.703, F.S.; providing for the  
acquisition of the provisional title of seized  
property under certain circumstances; prohibiting a  
forfeiture under the Florida Contraband Forfeiture Act  
from being final until the owner of the seized



503286

property is prosecuted and convicted of a criminal act that renders the property a contraband article; providing that the property is deemed a contraband article and forfeited subject to forfeiture proceedings under certain circumstances; specifying circumstances under which the seizing law enforcement agency must return the property to the owner; deleting a provision vesting rights, interests, and title to contraband articles in the seizing law enforcement agency; amending s. 932.704, F.S.; requiring that specified persons approve a settlement once property has been seized; specifying when a settlement agreement must be reviewed; requiring each state or local law enforcement agency that seizes property for the purpose of forfeiture to perform a specified review at least annually; prohibiting certain compensation or benefit to any law enforcement officer from being dependent upon attaining a quota of seizures; requiring a seizing agency to adopt certain written policies, procedures, and training to ensure compliance; requiring that supervisory personnel review seizures to determine whether probable cause existed; requiring prompt notification of the seizing agency's legal counsel after a determination is made regarding seizure; requiring that the legal counsel conduct a specified review; requiring each seizing agency to adopt and implement specified written policies and procedures for the prompt release of seized property under certain circumstances; requiring



503286

that the settlement of forfeiture actions be consistent with certain mandates and with the seizing agency's policy; requiring specified training and the maintenance of related records; amending s. 932.7055, F.S.; increasing the minimum amount of forfeiture proceeds that certain law enforcement agencies must donate to certain programs; creating s. 932.7061, F.S.; requiring each state or local law enforcement agency that seizes property for the purpose of forfeiture to complete an annual report; requiring certain information to be included in the annual report; requiring the Department of Law Enforcement to make an annual report to the Office of Program Policy Analysis and Government Accountability compiling the information; prohibiting a law enforcement agency and an entity having budgetary control over the law enforcement agency from anticipating proceeds from forfeitures in their budgeting processes; creating s. 932.7062, F.S.; providing a monetary penalty for seizing agencies that fail to comply with reporting requirements; providing an exception; providing for enforcement; amending s. 322.24, F.S.; conforming cross-references; conforming a provision to changes made by the act; amending ss. 323.001, 328.07, and 817.625, F.S.; conforming cross-references; reenacting s. 403.413(6)(e), F.S., relating to forfeiture under the Florida Litter Law, to incorporate the amendment made to s. 932.703, F.S., in a reference thereto; reenacting ss. 27.3451 and 874.08, F.S., relating to



503286

417       the State Attorney's Forfeiture and Investigative  
418       Support Trust Fund, and criminal gang activity,  
419       recruitment, and forfeiture, respectively, to  
420       incorporate the amendment made to s. 932.704, F.S., in  
421       references thereto; providing an effective date.





892208

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/15/2016	.	
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Appropriations Subcommittee on Criminal and Civil Justice  
(Negron) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 114  
and insert:  
the seizing law enforcement agency. The remaining 70 percent of  
the proceeds shall first be applied to payment of court costs,  
fines, and fees remaining due, and any remaining balance of  
proceeds and 70 percent shall be

===== T I T L E   A M E N D M E N T =====



892208

11 And the title is amended as follows:  
12       Delete line 27  
13 and insert:  
14       agency; amending s. 322.34, F.S.; providing for  
15       payment of court costs, fines, and fees from proceeds  
16       of certain forfeitures; conforming a



396278

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
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Appropriations Subcommittee on Criminal and Civil Justice  
(Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 54 - 94  
and insert:

(c)1. At the time of seizure, the state acquires  
provisional title to the seized property. Property may not be  
seized under the Florida Contraband Forfeiture Act until an  
owner of such property is arrested for a criminal offense that  
renders the property a contraband article. However, property may  
be immediately seized if:



396278

11       a. The owner of the contraband article cannot be readily  
12 identified;

13       b. There is probable cause to arrest an individual, but he  
14 or she is a fugitive or dies before an arrest is made; or

15       c. The owner of property subject to seizure agrees to  
16 cooperate as a confidential informant in lieu of an arrest. The  
17 confidential informant status must be agreed upon between the  
18 seizing agency and the property owner, and the property owner  
19 must actively participate as a confidential informant in  
20 gathering criminal intelligence or investigative information for  
21 an active criminal investigation. The seizing agency may not use  
22 the threat of property seizure or forfeiture when offering the  
23 property owner the status of confidential informant in lieu of  
24 an arrest. If charges are not brought against the property  
25 owner, the property must be returned to the owner at the  
26 conclusion of the active criminal investigation or the cessation  
27 of the status of criminal informant. Final forfeiture of  
28 property may be included as a component of the agreement to  
29 serve as a confidential informant.

30       2. If a seizure is made under one of the exceptions  
31 specified in subparagraph 1., the law enforcement agency that  
32 seizes the contraband article, vessel, motor vehicle, aircraft,  
33 other personal property, or real property used in violation of  
34 the Florida Contraband Forfeiture Act shall, within 10 business  
35 days, apply to a court of competent jurisdiction for an order  
36 determining whether probable cause exists for the seizure of the  
37 property. The application for the probable cause determination  
38 must establish probable cause that the property that has been  
39 seized is subject to seizure under the Florida Contraband



396278

Forfeiture Act and may be filed by reliable electronic means. If the court finds that probable cause exists for the seizure, it shall enter a written order to that effect and order that the property be held until the issue of a determination of title is resolved pursuant to the procedures established in the Florida Contraband Forfeiture Act. Upon a finding of good cause shown, the court may order that the court order finding probable cause be sealed for as long as reasonably necessary to preserve the integrity of an active criminal investigation. If the court determines that probable cause does not exist for the seizure, any forfeiture hold, lien, lis pendens, or other civil encumbrance must be released.

3. If, after 90 days after the date of the initial seizure, the seizing agency cannot find the owner of the seized property after a diligent effort, the seized property is deemed a contraband article and forfeited subject to s. 932.704. However, if the seizing agency finds the owner within 90 days after the date of the initial seizure, the seizing agency shall return the property to the owner within 5 days after:

a. The court finding that the owner had a bona fide security interest;

b. The court finding that the owner was an innocent owner;

c. The acquittal or dismissal of the owner of the criminal charge that was the basis of the forfeiture proceedings; or

d. The disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi. The seizing agency is responsible for any damage, storage fee, and related cost applicable to the property.

4. A forfeiture under the Florida Contraband Forfeiture Act



396278

is not final, and title or other indicia of ownership, other than provisional title, does not pass to the state or jurisdiction seeking forfeiture until the owner of the seized property is prosecuted and convicted of or pleads guilty or nolo contendere to a criminal offense, without regard to whether adjudication is withheld, that renders the property a contraband article.

5. This paragraph is in addition to all other requirements and rights in the Florida Contraband Forfeiture Act and does not affect any other requirement or right set forth in this act. This paragraph does not affect any party's discovery obligations under the Florida Rules of Civil Procedure ~~All rights to, interest in, and~~

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 9 - 24  
and insert:

article; providing exceptions; prohibiting the seizing law enforcement agency from threatening a property owner with property seizure or forfeiture under certain circumstances; requiring a seizing law enforcement agency to follow specified procedures under certain circumstances; requiring a court to issue a written order finding probable cause under certain circumstances; authorizing a court to order that the written order of probable cause be sealed under certain circumstances; providing that the property is deemed a contraband article and forfeited



396278

98           subject to forfeiture proceedings under certain  
99           circumstances; requiring the return of property by the  
100          seizing law enforcement agency to the property owner  
101          under certain circumstances; prohibiting a forfeiture  
102          under the Florida Contraband Forfeiture Act from being  
103          final until the owner of the seized property is  
104          prosecuted and convicted of or pleads guilty or nolo  
105          contendere to a criminal offense that renders the  
106          property a contraband article; providing construction;  
107          deleting



895130

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
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	.	

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Appropriations Subcommittee on Criminal and Civil Justice  
(Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 114  
and insert:  
the seizing law enforcement agency. The remaining 70 percent of  
the proceeds shall first be applied to payment of court costs,  
fines, and fees remaining due, and any remaining balance of  
proceeds and 70 percent shall be

===== T I T L E   A M E N D M E N T =====





895130

11 And the title is amended as follows:  
12       Delete line 27  
13 and insert:  
14       agency; amending s. 322.34, F.S.; providing for  
15       payment of court costs, fines, and fees from proceeds  
16       of certain forfeitures; conforming a

**By** the Committee on Criminal Justice; and Senators Brandes, Negrón, and Clemens

591-02558-16

20161044c1

A bill to be entitled

An act relating to forfeiture of contraband; amending s. 932.703, F.S.; providing for the acquisition of the provisional title of seized property under certain circumstances; prohibiting the seizure of property under the Florida Contraband Forfeiture Act until the owner of such property is arrested for a criminal offense that renders the property a contraband article; providing an exception; prohibiting the seizing law enforcement agency from threatening a property owner with property seizure or forfeiture under certain circumstances; requiring the return of property by the seizing law enforcement agency to the property owner under certain circumstances; prohibiting a forfeiture under the Florida Contraband Forfeiture Act from being final until the owner of the seized property is prosecuted and convicted of or pleads guilty or nolo contendere to a criminal offense that renders the property a contraband article; providing that the property is deemed a contraband article and forfeited subject to forfeiture proceedings under certain circumstances; specifying circumstances under which the seizing law enforcement agency must return the property to the owner; deleting a provision vesting rights, interests, and title to contraband articles in the seizing law enforcement agency; amending s. 322.34, F.S.; conforming a provision to changes made by the act; reenacting s. 403.413(6)(e), F.S., relating to forfeiture under the Florida Litter Law, to incorporate the amendment made to s. 932.703, F.S., in a reference thereto; providing

591-02558-16

20161044c1

an effective date.

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

Section 1. Subsection (1) of section 932.703, Florida Statutes, is amended to read:

932.703 Forfeiture of contraband article; exceptions.—

(1)(a) Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of ~~any provision of~~ the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to ~~the provisions of~~ the Florida Contraband Forfeiture Act.

(b) Notwithstanding any other provision of the Florida Contraband Forfeiture Act, except ~~the provisions of~~ paragraph (a), contraband articles set forth in s. 932.701(2)(a)7. used in violation of ~~any provision of~~ the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, shall be seized and shall be forfeited subject to ~~the provisions of~~ the Florida Contraband Forfeiture Act.

(c) At the time of seizure or entry of a restraining order, the state acquires provisional title to the seized property. Property may not be seized under the Florida Contraband Forfeiture Act until the owner of such property is arrested for a criminal offense that renders the property a contraband article. However, property may be seized if the owner of the property is a confidential informant in lieu of an arrest. The

591-02558-16

20161044c1

61 confidential informant status must be agreed upon between the  
62 seizing agency and the property owner, and the property owner  
63 must actively participate as a confidential informant in  
64 gathering criminal intelligence or investigative information for  
65 an active criminal investigation. The seizing agency may not use  
66 the threat of property seizure or forfeiture when offering the  
67 property owner the status of confidential informant in lieu of  
68 an arrest. If charges are not brought against the property  
69 owner, the property must be returned to the owner at the  
70 conclusion of the active criminal investigation or the cessation  
71 of the status of criminal informant. Final forfeiture of  
72 property may be included as a component of the agreement to  
73 serve as a confidential informant. A forfeiture under the  
74 Florida Contraband Forfeiture Act is not final, and title or  
75 other indicia of ownership, other than provisional title, does  
76 not pass to the state or jurisdiction seeking forfeiture until  
77 the owner of the seized property is prosecuted and convicted of  
78 or pleads guilty or nolo contendere to a criminal offense,  
79 without regard to whether adjudication is withheld, that renders  
80 the property a contraband article. If, after 3 months, the  
81 seizing agency cannot find the owner of the seized property  
82 after a diligent effort, the seized property is deemed a  
83 contraband article and forfeited subject to s. 932.704. However,  
84 if the seizing agency finds the owner, the seizing agency shall  
85 return the property to the owner within 5 days after:

- 86 1. The court finding that the owner had a bona fide  
87 security interest;
- 88 2. The court finding that the owner was an innocent owner;
- 89 3. The acquittal or dismissal of the owner of the criminal

591-02558-16

20161044c1

charge that was the basis of the forfeiture proceedings; or

4. The disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi. The seizing agency is responsible for any damage, storage fee, and related cost applicable to the property ~~All rights to, interest in, and title to contraband articles used in violation of s. 932.702 shall immediately vest in the seizing law enforcement agency upon seizure.~~

(d) The seizing agency may not use the seized property for any purpose until the rights to, interest in, and title to the seized property are perfected in accordance with the Florida Contraband Forfeiture Act. This section does not prohibit use or operation necessary for reasonable maintenance of seized property. Reasonable efforts shall be made to maintain seized property in such a manner as to minimize loss of value.

Section 2. Paragraph (c) of subsection (9) of section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(9)

(c) Notwithstanding ~~s. 932.703(1)(c) or~~ s. 932.7055, when the seizing agency obtains a final judgment granting forfeiture of the motor vehicle under this section, 30 percent of the net proceeds from the sale of the motor vehicle shall be retained by the seizing law enforcement agency and 70 percent shall be deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program. In a forfeiture proceeding under this section, the court may consider the extent

591-02558-16

20161044c1

119 that the family of the owner has other public or private means  
120 of transportation.

121 Section 3. For the purpose of incorporating the amendment  
122 made by this act to section 932.703, Florida Statutes, in a  
123 reference thereto, paragraph (e) of subsection (6) of section  
124 403.413, Florida Statutes, is reenacted to read:

125 403.413 Florida Litter Law.—

126 (6) PENALTIES; ENFORCEMENT.—

127 (e) A motor vehicle, vessel, aircraft, container, crane,  
128 winch, or machine used to dump litter that exceeds 500 pounds in  
129 weight or 100 cubic feet in volume is declared contraband and is  
130 subject to forfeiture in the same manner as provided in ss.  
131 932.703 and 932.704.

132 Section 4. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Criminal and  
Civil Justice, *Vice Chair*  
Appropriations  
Health Policy  
Higher Education  
Judiciary  
Rules

### JOINT COMMITTEE:

Joint Legislative Budget Commission

### SENATOR ARTHENIA L. JOYNER

*Democratic Leader*  
19th District

January 20, 2016

Senator Joe Negron, Chair  
Senate Appropriations Subcommittee on Criminal and Civil Justice  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Negron:

This is to request that Senate Bill 122, Compensation of Victims of Wrongful Incarceration, be placed on the agenda for the Appropriations Subcommittee on Criminal and Civil Justice. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner  
State Senator, District 19

### REPLY TO:

☐ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277  
☐ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

SB 1044

*Bill Number (if applicable)*

Topic R/T Forfeiture of Contraband

*Amendment Barcode (if applicable)*

Name Sarrah Carroll

Job Title Lobbyist

Address 123 S. Adams

Phone 850-671-4401

*Street*

Tallahassee

FL

32301

Email carroll@sostrategy.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14

Meeting Date

1044

Bill Number (if applicable)

Topic

Forfeiture of Contraband

Amendment Barcode (if applicable)

Name

Pamela Burch Fort

Job Title

Address

104 S. Monroe St

Street

Phone

850/425-1344

Tallahassee

FL

32301

City

State

Zip

Email

TcgLobby@aol.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

ACLU of Florida

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

**2-11-16**

*Meeting Date*

**1044**

*Bill Number (if applicable)*

**Topic** Forfeiture of Contraband

*Amendment Barcode (if applicable)*

**Name** Catherine Baer

**Job Title** Chair

**Address** 1421 Woodgate Way

**Phone** \_\_\_\_\_

*Street*

Tallahassee

FL

32308

**Email** \_\_\_\_\_

*City*

*State*

*Zip*

**Speaking:** ☐ For ☐ Against ☐ Information

**Waive Speaking:** ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

**Representing** \_\_\_\_\_

**Appearing at request of Chair:** ☐ Yes ☒ No

**Lobbyist registered with Legislature:** ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/11/16

Meeting Date

1044

Bill Number (if applicable)

Topic Civil Forfeiture

Amendment Barcode (if applicable)

Name Justin Pearson

Job Title Florida Office Managing Attorney - Institute for Justice

Address 999 Brickell Ave., Suite 720

Phone (305) 721-1600

Street

Miami

FL

33131

City

State

Zip

Email JPearson@IJ.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Myself/Institute for Justice

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

2/11/2016

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1044

Bill Number (if applicable)

Topic Forfeiture of Contraband

Amendment Barcode (if applicable)

Name Chris Papy

Job Title Sergeant, Interim Police Legal Advisor

Address 234 E. 7th Avenue

Phone 850-891-4234

Street

Tallahassee FL 32303

City

State

Zip

Email christopher.papy@talgov.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

1044

*Bill Number (if applicable)*

Topic Forfeiture of Contraband

*Amendment Barcode (if applicable)*

Name Larry Eger

Job Title Public Defender, 12th Circuit

Address 2071 Ringling Blvd.

Phone 941.861.5500

*Street*

Sarasota

Florida

34237

Email egersrq@gmail.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

1044

Bill Number (if applicable)

Topic CIVIL ASSET PROTECTION

Amendment Barcode (if applicable)

Name SAL NUZZO

Job Title VP Policy

Address 100 N. Duval

Phone 838-322-9941

Street

TALL.

City

FL

State

32301

Zip

Email SNUZZO@JAMES MADISON INSTITUTE

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing THE JAMES MADISON INSTITUTE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

*Meeting Date*

1044

*Bill Number (if applicable)*

Topic Forfeiture of Contraband

*Amendment Barcode (if applicable)*

Name Mike Krehl

Job Title \_\_\_\_\_

Address 1375 Cypress Ave,

Phone (321) 253-3673

*Street*

Melbourne,

FL

32935

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Cannabis Action Network

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

1044

Bill Number (if applicable)

Topic Civil Forfeiture

Amendment Barcode (if applicable)

Name Tim Nungesser (Nun-Guess-er)

Job Title Legislative Director

Address 110 E. Jefferson St.

Phone 850-445-5367

Street

Tallahassee FL 32301

City

State

Zip

Email tim.nungesser@nfib.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing NFIB

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

S/S 1044

Bill Number (if applicable)

Topic Civil Forfeiture

Amendment Barcode (if applicable)

Name Ron Book

Job Title \_\_\_\_\_

Address 104 W. Jefferson

Phone 850 224-3427

Street

TLH

32301

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Drug Policy Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

1044

Bill Number (if applicable)

Topic Asset Forfeiture

Amendment Barcode (if applicable)

Name John Hallman

Job Title Legislative Affairs Director

Address P.O. Box 2349

Phone \_\_\_\_\_

Street

Bushnell

FL

33513

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Liberty First

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16  
Meeting Date

1044  
Bill Number (if applicable)

Topic Forfeiture

Amendment Barcode (if applicable)

Name Greg Pound

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr

Phone \_\_\_\_\_

Street

Largo Fla. 33773

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

2/11/14

Bill Number (if applicable)

1044

Topic Contraband Seizure

Amendment Barcode (if applicable)

Name Josephine Cannella-Krehl

Job Title Licensed Clinical Social Worker

Address 3784 Wentworth Way

Phone 850-653-6928

Street

Tallahassee

Fl.

32311

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing The best interest of Florida Residents

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: CS/SB 1086

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Prejudgment Interest

DATE: February 10, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Harkness/Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Pre-meeting</b>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1086 requires a court to award prejudgment interest on economic damages to a prevailing plaintiff in a personal injury action. If economic damages are recovered, the court must include interest in its final judgment on:

- Each component of economic damages, with the interest accruing from the date of the loss of an economic benefit or payment made by the plaintiff; and
- Costs, if awarded, with the interest computed on the costs beginning on the first day of the month immediately following the month in which costs were paid.

The applicable rate of interest is established by the Chief Financial Officer pursuant to s. 55.03, F.S. That rate is currently 4.75 percent per annum.

While the bill's impact cannot be definitively determined, the workload and fiscal impact on the courts is likely to be insignificant. *See* Section V.

The bill applies to all causes of action that accrue on or after the effective date of the act, July 1, 2016.

## II. Present Situation:

### Prejudgment Interest

Prejudgment interest is the interest on a judgment which is calculated from the date of the injury or loss until a final judgment is entered for the plaintiff. In contrast, post-judgment interest is interest on a judgment that is calculated from the date of the final judgment until the plaintiff collects the award from the defendant.

Under English common law, prejudgment interest was permitted for claims that were “liquidated” but not for claims that were “unliquidated.” A liquidated claim is a claim for an amount that can be determined or measured back to a fixed point in time. It is not speculative or intangible. An unliquidated claim, in contrast, is one that is based on intangible factors and is generally disputed until a jury determines the amount.<sup>1</sup> In personal injury law, examples of these types of damages include pain and suffering, mental anguish, loss of enjoyment of life, and permanent injury.<sup>2</sup>

In assessing prejudgment interest, a claim becomes liquidated when a verdict has the effect of fixing damages as of a prior date.<sup>3</sup>

Florida does not generally allow the award of prejudgment interest for plaintiffs in personal injury<sup>4</sup> and wrongful death claims, but does allow it in some tort areas.<sup>5</sup> The theory for denying prejudgment interest is that damages in personal injury cases are too speculative to liquidate before a final judgment is rendered. An exception to that rule is when a plaintiff can establish that he or she suffered the loss of a vested property right.<sup>6</sup>

One theory of prejudgment interest is that it is not awarded to penalize the losing party but to compensate the claimant for losing the use of the money between the date he or she was entitled to it and the date of the judgment.<sup>7</sup> Appellants who seek prejudgment interest assert that it promotes fairness by allowing a plaintiff to be fully compensated for his or her injury, including the time span that litigation took place, particularly if the litigation was protracted. Opponents assert that prejudgment interest provides over-compensation and encourages premature settlements.

---

<sup>1</sup> See generally *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212 (Fla. 1985), *Lumbermens Mutual Casualty Co. v. Percefull*, 653 So. 2d 389 (Fla. 1995), and *Amerace Corp. v. Stallings*, 823 So. 2d 110 (Fla. 2002).

<sup>2</sup> See Florida Standard Jury Instructions – Civil Cases, s. 501.2 Personal Injury and Property Damages: Elements, available at [http://www.floridasupremecourt.org/civ\\_jury\\_instructions/instructions.shtml#500](http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#500) (last visited February 8, 2016).

<sup>3</sup> *Argonaut Insurance Company, et al., v. May Plumbing Company, et al.*, 474 So. 2d 212 (Fla. 1985).

<sup>4</sup> *Parker v. Brinson Construction Company and Florida Industrial Commission*, 78 So. 2d 873 (1955).

<sup>5</sup> *Alvarado v. Rice*, 614 So. 2d 498, 500 (Fla. 1993). The Court held that a claimant in a personal injury action is entitled to prejudgment interest on past medical expenses when a trial court finds that the claimant had made actual, out-of-pocket payments on the medical bills at a date before the entry of judgment.

<sup>6</sup> *Amerace Corporation v. Stallings*, 823 So. 2d 110 (Fla. 2002).

<sup>7</sup> *Kearney v. Kearney*, 129 So. 3d 381, 391 (Fla. 1st DCA 2013) rehearing denied January 17, 2014.

## Economic Damages

Economic damages are damages that can be computed from records or documents. They generally include past and future medical bills, loss of past wages and future earning capacity, funeral expenses, and damage to someone's personal and real property.<sup>8</sup> Non-economic damages, which are not addressed in the bill, are the subjective intangible items which cannot be measured with certainty. Those items generally include physical pain and suffering, mental anguish, and the loss of enjoyment of life.

## Costs

If a plaintiff prevails in a personal injury action, he or she is entitled to recover some of the costs involved in the litigation. Pursuant to the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, the burden of proof is on the moving party to show that all requested costs were reasonably necessary either to defend or prosecute the case when the action was taken. The guidelines are advisory only and the taxation of costs is within the broad discretion of the court.<sup>9</sup>

### III. Effect of Proposed Changes:

This bill requires a court, in its final order in which a plaintiff recovers economic damages in a personal injury claim, to include interest on:

- Each component of economic damages, with the interest accruing from the date of the loss of an economic benefit or payment made by the plaintiff; and
- Costs, if awarded, with the interest computed on the costs beginning on the first day of the month immediately following the month in which costs were paid.

This award of costs does not create a right to costs where no right exists under current law.

The applicable rate of interest is established by the Chief Financial Officer pursuant to s. 55.03, F.S. The Chief Financial Officer is required to establish the rate of interest payable on judgments or decrees each quarter using a formula prescribed in statute. The Chief Financial Officer is then responsible for communicating that interest rate to the clerk of courts and chief judge of each judicial circuit for the upcoming quarter. The current quarterly interest rate is 4.75 percent.<sup>10</sup>

The bill takes effect July 1, 2016, and applies to all actions that accrue on or after that date.

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<sup>8</sup> See s. 768.81(1)(b), F.S., for a more detailed list.

<sup>9</sup> Fla. R. Civ. P., Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, at pp. 265-267. The costs that should be taxed generally include costs associated with certain depositions, documents and exhibits, expert witnesses, witnesses, court reporting costs other than for depositions, and reasonable charges incurred for requiring special magistrates, guardians ad litem, and attorneys ad litem. Litigation costs that may be taxed as costs include mediation fees and expenses, reasonable travel expenses, and electronic discovery expenses. Litigation costs that should not be taxed as costs include the cost of long distance telephone calls with witnesses, any expenses relating to consulting with non-testifying experts, cost incurred in connection with any matter which was not reasonably calculated to lead to the discovery of admissible evidence, the travel time of attorneys and experts, travel expenses of attorneys, and the cost of privilege review of documents, including electronically stored information. See the guidelines for more specific criteria, available at [http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/\\$FILE/Civil.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf) (last visited February 7, 2016).

<sup>10</sup> Division of Accounting and Auditing, Office of the Chief Financial Officer, *Judgment on Interest Rates*, <http://www.myfloridacfo.com/division/AA/Vendors/#.VPtaBk0cSUI> (last visited February 7, 2016).

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Plaintiffs who are successful in their claims and entitled to prejudgment interest will benefit financially from CS/SB 1086 by being permitted to receive prejudgment interest from the date of their loss or injury. Defendants may have an incentive to settle lawsuits to avoid the accrual of prejudgment interest.

**C. Government Sector Impact:**

The Office of the State Courts Administrator has not yet provided a Judicial Impact Statement for CS/SB 1086. However, in an analysis of a similar bill from 2015, the Office of the State Courts Administrator noted that the fiscal impact of the legislation could not be accurately determined due to the unavailability of data needed to establish the effects on judicial time and workload resulting from the bill's provisions.<sup>11</sup> However, it appears unlikely that the bill will result in significant workload to the court system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 55.035 of the Florida Statutes.

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<sup>11</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 794* (March 31, 2015) (on file with the Senate Committee on Judiciary).



**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on January 20, 2016:**

- The committee substitute removes the retroactive clause in the bill. The bill now applies only to causes of actions that accrue on or after the effective date of the bill, July 1, 2016.
- The committee substitute deletes the provision permitting the recovery of attorney fees by the prevailing plaintiff.

**B. Amendments:**

None.

By the Committee on Judiciary; and Senator Bradley

590-02353-16

20161086c1

1                   A bill to be entitled  
2           An act relating to prejudgment interest; creating s.  
3           55.035, F.S.; requiring a court to include interest on  
4           economic damages and costs in the final judgment of a  
5           negligence action as a result of a personal injury;  
6           specifying the date from which interest accrues;  
7           providing applicability; providing an effective date.

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

10  
11           Section 1. Section 55.035, Florida Statutes, is created to  
12   read:

13           55.035 Prejudgment interest.—In a negligence action in  
14   which a plaintiff recovers economic damages as the result of a  
15   personal injury, the court shall include in the final judgment  
16   interest on each component of economic damages. Such interest  
17   accrues from the date of the loss of an economic benefit or  
18   payment made by the plaintiff. If the plaintiff recovers costs,  
19   the court shall include in the final judgment interest on such  
20   costs beginning on the first day of the month immediately  
21   following the month in which costs were paid. The rate of  
22   interest applicable to this section is the rate established  
23   pursuant to s. 55.03.

24           Section 2. This act applies to causes of action which  
25   accrue on or after the effective date of the act.

26           Section 3. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Joe Negron, Chair  
Appropriations Subcommittee on Criminal and Civil Justice

**Subject:** Committee Agenda Request

**Date:** January 27, 2016

---

I respectfully request that **Senate Bill # 1086**, relating to Prejudgment Interest, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in dark ink, appearing to read "Rob Bradley", is written over a horizontal line.

Senator Rob Bradley  
Florida Senate, District 7

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

February 11, 2016

*Meeting Date*

1086

*Bill Number (if applicable)*

Topic Prejudgment Interest

*Amendment Barcode (if applicable)*

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 8502220170

*Street*

Tallahassee

FL

32301

Email William@fljustice.org

*City*

*State*

*Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

---

BILL: CS/SB 1256

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Alternative Sanctioning

DATE: February 10, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

CS/SB 1256 creates an alternative sanctioning program (“program”) for technical violations of probation. The bill defines “technical violation” as any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. The bill allows the chief judge of each judicial circuit, in consultation with the state attorney, public defender, and Department of Corrections, to establish an alternative sanctioning program and determine which technical violations will be eligible for alternative sanctioning.

An eligible probationer who commits a technical violation may choose to participate in the program and admit to the violation, comply with a probation officer’s recommended sanctions, and waive his or her right to a hearing on the violation. A probation officer’s recommended alternative sanction must be reviewed by the court, which may approve the sanction or remove the probationer from the program.

The bill has a positive indeterminate fiscal impact on state and local funds.

The bill has an effective date of July 1, 2016.

## II. Present Situation:

### Probation

Any person who is found guilty by a jury or the court sitting without a jury or who enters a plea of guilty or nolo contendere may be placed on probation regardless of whether adjudication is withheld.<sup>1</sup> The court determines the terms and conditions of probation. The standard conditions of probation that do not require oral pronouncement, include:

- Report to the probation and parole supervisors as directed;
- Permit such supervisors to visit him or her at his or her home or elsewhere;
- Work faithfully at suitable employment insofar as may be possible;
- Remain within a specified place;
- Live without violating any law;
- Make reparation or restitution to the aggrieved party;
- Repayment of debt to a county or municipal detention facility for medical care, treatment received;
- Payment of any fees due;
- Not associate with persons engaged in criminal activities; and
- Submit to random testing.<sup>2</sup>

When a defendant is placed on probation the Department of Corrections (“department”) provides immediate officer supervision. Private entities may not provide probationary or supervision services to felony or misdemeanor offenders sentenced or placed on probation or other supervision by the circuit court.<sup>3</sup>

Section 948.06, F.S., provides procedures regarding a violation of the terms and conditions required of a person on probation. Upon violation, the probationer is arrested and brought before the sentencing court. At the first hearing on the violation, the probationer is advised of the charge. If the probationer admits the charge, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.

If the probationer denies having violated the terms of the probation, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation violation. Unless dismissed, the court must conduct a hearing and determine whether the probationer has violated the terms of his or her probation. If the court finds that the probationer has violated, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.

If probation is revoked, the court must adjudicate the probationer guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed for the offense for which the probationer was placed on probation or into community control.

---

<sup>1</sup> Section 948.01(1) F.S.

<sup>2</sup> Section 948.03(1), F.S.

<sup>3</sup> Section 948.01(1)(a), F.S.

## Technical Violations

Section 948.06(1)(g), F.S., provides that the chief judge of each judicial circuit may direct the department to use a notification letter of a technical violation in lieu of a violation report when the alleged violation is not a new felony or misdemeanor.

During Fiscal Year 2014-2015, approximately 94,000 violation reports were submitted to the court due to probation violations. Of this number, 61,777 (or 66%) were technical violations. Because of overcrowded court dockets, it often takes weeks and multiple hearings for a probationer to be sentenced as the result of a violation of probation. If the probationer is charged with a technical violation, these hearings often result in the court reinstating or modifying the probation with additional sanctions imposed. If the probationer is held in jail pending a violation hearing, he or she may lose employment and be unable to pay victim restitution, attend treatment, or comply with supervision requirements.<sup>4</sup>

In an effort to improve the violation of probation process, the department's Office of Community Corrections developed the Alternative Sanctions Program to reduce recidivism for supervised probationers by utilizing collaborative efforts between courts, probation, and law enforcement. The program, created through administrative order in each circuit, allows a technical violation to be addressed immediately with the probationer through an administrative process. Circuit court judges in 12 counties within six judicial circuits have agreed to implement the Alternative Sanctions Program via administrative order, including Alachua, Brevard, Desoto, Flagler, Manatee, Palm Beach, Pinellas, Putnam, Sarasota, Seminole, St. Johns, and Volusia.<sup>5</sup>

### III. Effect of Proposed Changes:

The bill codifies current practice by creating an alternative sanctioning program ("program") for technical violations of probation. The bill defines technical violations as any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. The bill allows the chief judge of each judicial circuit, in consultation with the state attorney, public defender, and the department, to establish an alternative sanctioning program and determine which technical violations will be eligible for alternative sanctioning.

If an eligible offender on probation is alleged to have committed a technical violation, the offender may either waive participation in the program or elect to participate. By participating in the program, the offender admits to the violation, agrees to the probation officer's recommended sanction, and waives the right to:

- Be represented by legal counsel;
- Require the state to prove his or her guilt before a neutral and detached hearing body;
- Subpoena witnesses and present to a judge evidence in his or her defense;
- Confront and cross-examine adverse witnesses; and
- Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.

---

<sup>4</sup> Department of Corrections Legislative Bill Analysis 2016 SB 1256. (On file with the Florida Senate Criminal Justice Committee.)

<sup>5</sup> Id.

Before imposing the sanction, the probation officer must submit the recommended sanction and documentation of the offender's admission of violation and agreement with the sanction to the court. The court has the discretion to impose the recommended sanction or to direct the department to submit a violation report, affidavit, and warrant like a normal case not in the program. Any participation by the offender in the program is solely voluntary and the offender may elect to discontinue participation in the program as long as it is before the issuance of the court order imposing the recommended sanction. When an offender quits the program, the probation officer may submit a violation report, affidavit, and warrant to the court concerning the violation. Any prior admission by the offender may not be used as evidence in subsequent proceedings.

The chief judge, in order to establish the program, must issue an administrative order specifying eligibility, which technical violations will be eligible for program, which sanctions may be recommended by a probation officer, and the process for reporting violations of the program.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the department, alternative sanctioning programs may decrease expenditures by reducing law enforcement arrests, jail incarceration of offenders pending technical violation hearings, probation officer time spent at these violation hearings, and court personnel involved in the violation hearing process. The Criminal Justice Impact Conference from January 29, 2016, concluded that CS/SB 1256 has a negative indeterminate impact on prison beds meaning a positive indeterminate impact on state general revenue funds as well as a positive impact on local funds.



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 948.06 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on February 1, 2016:**

Makes a technical change by replacing the word “paragraph” for “section.”

**B. Amendments:**

None.

By the Committee on Criminal Justice; and Senator Brandes

591-02916-16

20161256c1

1 A bill to be entitled  
2 An act relating to alternative sanctioning; amending  
3 s. 948.06, F.S.; authorizing the chief judge of each  
4 judicial circuit, in consultation with specified  
5 entities, to establish an alternative sanctioning  
6 program; defining the term "technical violation";  
7 requiring the chief judge to issue an administrative  
8 order when creating an alternative sanctioning  
9 program; specifying requirements for the order;  
10 authorizing an offender who allegedly committed a  
11 technical violation of supervision to waive  
12 participation in or elect to participate in the  
13 program, admit to the violation, agree to comply with  
14 the recommended sanction, and agree to waive certain  
15 rights; requiring the probation officer to submit the  
16 recommended sanction and certain documentation to the  
17 court if the offender admits to committing the  
18 violation; authorizing the court to impose the  
19 recommended sanction or direct the Department of  
20 Corrections to submit a violation report, affidavit,  
21 and warrant to the court; specifying that an  
22 offender's participation in an alternative sanctioning  
23 program is voluntary; authorizing a probation officer  
24 to submit a violation report, affidavit, and warrant  
25 to the court in certain circumstances; providing an  
26 effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:

29  
30 Section 1. Paragraph (h) of subsection (1) of section  
31 948.06, Florida Statutes, is redesignated as paragraph (i), and  
32 a new paragraph (h) is added to that subsection, to read:

591-02916-16

20161256c1

33 948.06 Violation of probation or community control;  
34 revocation; modification; continuance; failure to pay  
35 restitution or cost of supervision.—

36 (1)

37 (h)1. The chief judge of each judicial circuit, in  
38 consultation with the state attorney, the public defender, and  
39 the department, may establish an alternative sanctioning program  
40 in which the department, after receiving court approval, may  
41 enforce specified sanctions for certain technical violations of  
42 supervision. For purposes of this paragraph, the term "technical  
43 violation" means any alleged violation of supervision that is  
44 not a new felony offense, misdemeanor offense, or criminal  
45 traffic offense.

46 2. To establish an alternative sanctioning program, the  
47 chief judge must issue an administrative order specifying:

48 a. Eligibility criteria.

49 b. The technical violations that are eligible for the  
50 program.

51 c. The sanctions that may be recommended by a probation  
52 officer for each technical violation.

53 d. The process for reporting technical violations through  
54 the alternative sanctioning program, including approved forms.

55 3. If an offender is alleged to have committed a technical  
56 violation of supervision that is eligible for the program, the  
57 offender may:

58 a. Waive participation in the alternative sanctioning  
59 program, in which case the probation officer may submit a  
60 violation report, affidavit, and warrant to the court in  
61 accordance with this section; or

591-02916-16

20161256c1

62       b. Elect to participate in the alternative sanctioning  
63 program after receiving written notice of an alleged technical  
64 violation and a disclosure of the evidence against the offender,  
65 admit to the technical violation, agree to comply with the  
66 probation officer's recommended sanction if subsequently ordered  
67 by the court, and agree to waive the right to:

68       (I) Be represented by legal counsel.

69       (II) Require the state to prove his or her guilt before a  
70 neutral and detached hearing body.

71       (III) Subpoena witnesses and present to a judge evidence in  
72 his or her defense.

73       (IV) Confront and cross-examine adverse witnesses.

74       (V) Receive a written statement from a factfinder as to the  
75 evidence relied on and the reasons for the sanction imposed.

76       4. If the offender admits to committing the technical  
77 violation and agrees with the probation officer's recommended  
78 sanction, the probation officer must, before imposing the  
79 sanction, submit the recommended sanction to the court as well  
80 as documentation reflecting the offender's admission to the  
81 technical violation and agreement with the recommended sanction.

82       5. The court may impose the recommended sanction or may  
83 direct the department to submit a violation report, affidavit,  
84 and warrant to the court in accordance with this section.

85       6. An offender's participation in an alternative  
86 sanctioning program is voluntary. The offender may elect to  
87 waive or discontinue participation in an alternative sanctioning  
88 program at any time before the issuance of a court order  
89 imposing the recommended sanction.

90       7. If an offender waives or discontinues participation in

591-02916-16

20161256c1

91 an alternative sanctioning program, the probation officer may  
92 submit a violation report, affidavit, and warrant to the court  
93 in accordance with this section. The offender's prior admission  
94 to the technical violation may not be used as evidence in  
95 subsequent proceedings.

96 Section 2. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Joe Negron, Chair  
Appropriations Subcommittee on Criminal and Civil Justice

**Subject:** Committee Agenda Request

**Date:** February 1, 2016

---

I respectfully request that **Senate Bill #1256**, relating to **Alternative Sanctioning**, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 22

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16.

Meeting Date

SB 1256.

Bill Number (if applicable)

Topic (Waive in support) SB 1256 Alternative Sanctioning.

Amendment Barcode (if applicable)

Name Jared Torres

Job Title Legislative Affairs Director

Address 501 S. Calhoun ST.

Phone 850-717-3045.

Street

Tallahassee,

FL

32399.

City

State

Zip

Email Torres.Jared@mail.fl.us.

State P.O. Box

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FL Department of Corrections (FDC).

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

1256

*Bill Number (if applicable)*

Topic Alternative Sanctioning

*Amendment Barcode (if applicable)*

Name Larry Eger

Job Title Public Defender, 12th Circuit

Address 2071 Ringling Blvd.

*Street*

Sarasota

*City*

Florida

*State*

34237

*Zip*

Phone 941.861.5500

Email egersrq@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: PCS/SB 1322 (105452)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senator Latvala

SUBJECT: Juvenile Detention Costs

DATE: February 15, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Sadberry	ACJ	<b>Recommend: Fav/CS</b>
2.			AP	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 1322 creates a new cost sharing methodology for calculating the shared county and state financial obligations for juvenile detention that reduces the amount that will be paid by counties that are not fiscally constrained (non-fiscally constrained counties) compared to current law. The bill requires non-fiscally constrained counties to pay a total of \$42.5 million for detention care costs in Fiscal Year 2016-2017, and requires the state to pay the remaining costs. In subsequent years, the bill requires each non-fiscally constrained county and the state to each pay 50 percent of the total costs of providing detention care in the county. The bill continues current law requiring the state to pay all costs for providing detention care for fiscally constrained counties and juveniles residing out of state.

The bill eliminates “final court disposition” as the demarcation between county and state financial obligations for juvenile detention, replacing it with a cost sharing relationship based on actual costs and county utilization.

The Department of Juvenile Justice (DJJ) indicates that the total required payments for non-fiscally constrained counties in Fiscal Year 2015-2016 is \$54.3 million. The bill’s provision for non-fiscally constrained counties to pay a total of \$42.5 million in shared detention costs for Fiscal Year 2016-2017 will make the counties responsible for paying \$11.8 million less than in Fiscal Year 2015-2016. The DJJ estimates that it will need an appropriation of \$8.8 million in general revenue funds above the amount appropriated for juvenile detention care in Senate Bill 2500, the Senate proposed 2016-2017 General Appropriations Bill, to offset the bill’s

reduction in the counties' payments for Fiscal Year 2016-2017. For Fiscal Year 2017-2018, when the total costs for detention care for non-fiscally constrained counties will be split equally between the state and those counties, the DJJ estimates that it will need an appropriation of \$6.2 million more in general revenue funds above the amount appropriated for juvenile detention care in SB 2500. The amount for subsequent years should be similar, with adjustments for variances in costs.

The bill takes effect upon becoming a law.

## **II. Present Situation:**

The DJJ operates a statewide secure detention system for youth who are charged with committing delinquent acts. The detention care process begins when the DJJ receives custody of a juvenile from a law enforcement agency which has taken the juvenile into custody:

- Upon assuming custody, the DJJ decides whether to place the juvenile in detention care as provided in s. 985.25, F.S., based upon an assessment of risk as provided in s. 985.245, F.S.
- If the DJJ places the juvenile in detention care, a court hearing must be held within 24 hours of the time that the juvenile was taken into custody. At the hearing, the court considers a number of factors to determine whether the juvenile should be kept in continued detention. Section 985.255, F.S., provides these factors, which include current offenses, prior history, legal status, and aggravating or mitigating factors.
- If the court orders the juvenile to be held in secure detention, the detention cannot extend beyond 48 hours unless the court holds another hearing and finds in writing that continued detention is necessary to protect the victim from injury.
- The juvenile may be held in detention until a disposition hearing is held to determine whether the juvenile committed a delinquent act and, if necessary, until the juvenile is sentenced.<sup>1</sup>
- A juvenile who is adjudicated delinquent may be kept in detention for a limited time while awaiting placement in a residential commitment program.<sup>2</sup>

The detention program provides 24-hour care and supervision to juveniles in physically secure facilities, with educational programming provided by individual school districts. The DJJ detention staff transports detained youth to and from court and residential commitment facilities.

Currently, the DJJ operates secure detention facilities in 21 counties with a total of more than 1,300 beds. During Fiscal Year 2014-2015, the DJJ served a total of 15,580 individual youth in secure detention facilities. Marion County, Polk County, and Seminole County operate their own detention centers.

In 2004, the Legislature enacted s. 985.686, F.S., requiring joint financial participation by the state and counties in the provision of juvenile detention. The statute made counties responsible

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<sup>1</sup> Section 985.26, F.S., provides that pre-hearing detention care is limited to 21 days unless the court has commenced an adjudicatory hearing in good faith. For certain serious offenses, the time may be extended to 30 days before an adjudicatory hearing is commenced. There are also provisions for continued detention beyond these limits to account for continuances granted by the court. In such cases, the court must hold a hearing at the end of every 72 hour period to determine whether continued detention is appropriate and whether further continuance of the hearing is needed.

<sup>2</sup> Sections 985.26 and 985.27, F.S., govern the length of time that a juvenile may be held in detention care after an adjudication of delinquency.

for pre-dispositional detention costs and the DJJ responsible for post-dispositional detention costs, costs for detention care in fiscally constrained counties,<sup>3</sup> and costs for out-of-state youth. Historically, the counties were held responsible for 74 percent of detention costs and the state was responsible for 26 percent. The DJJ's apportionment of costs has been a source of administrative litigation by counties.

In June 2013, the First District Court of Appeal (DCA) affirmed an administrative law judge's order invalidating rules that the DJJ had promulgated in 2010 to clarify the state and the counties' responsibilities. According to the order, the rules at issue shifted a greater responsibility for costs to the counties than was required by the relevant statute. The opinion had the effect of significantly decreasing the counties' fiscal responsibility and increasing the state's financial responsibility.<sup>4</sup>

Administrative petitions have been filed to contest reconciliations for fiscal years since 2008-2009. The DJJ initially entered into stipulations relating to Fiscal Years 2009-2010, 2010-2011, and 2011-2012. These stipulations included all detention after violations of probation as solely in the state's share of costs. However, the DJJ subsequently determined the statute required that counties should pay for the costs of new law violations of probation and the state would pay for the costs of other violations of probation. In May 2014, the DJJ promulgated new rules to implement its understanding of the sharing of costs in accordance with the statute.<sup>5</sup> The Florida Association of Counties and a number of individual counties filed administrative challenges to the new rule.<sup>6</sup> In April 2015, the Division of Administrative Hearings (DOAH) upheld the DJJ's interpretation of "final court disposition" and other significant sections of the proposed rule.<sup>7</sup> The decision is currently on appeal in the First DCA.<sup>8</sup>

In 2014 and 2015, a number of counties ceased to pay, or paid a reduced portion, of their share of the costs of detention costs due to their dispute concerning the DJJ's billing. The Implementing Bill for the Fiscal Year 2015-2016 General Appropriations Act included a requirement for the DJJ to notify the Department of Revenue (DOR) when counties don't pay their share of the costs, and for the DOR to transfer funds from the counties revenue sharing accounts to the DJJ to make up any shortfall.<sup>9</sup> Volusia County has not paid its Fiscal Year 2015-2016 share, and Manatee and Okaloosa counties have made partial payments. These counties have file

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<sup>3</sup> The term "fiscally constrained county" is currently defined to mean "a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1. Currently, 29 counties are considered fiscally constrained. Prior to 2014, the definition referred to a "rural area of critical economic concern" rather than a "rural area of opportunity," but included the same criteria.

<sup>4</sup> *Dep't of Juvenile Justice v. Okaloosa County*, 113 So.3d 1074 (Fla. 1<sup>st</sup> DCA 2013).

<sup>5</sup> Rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017, Florida Rules of Administrative Procedure.

<sup>6</sup> The petitioners were: Volusia County (Case No. 14-2799RP); Broward County (Case No. 14-2800RP); Orange County (Case No. 14-4512RP); and the Florida Association Of Counties and Alachua, Bay, Brevard, Charlotte, Collier, Escambia, Flagler, Hernando, Hillsborough, Lake, Lee, Leon, Manatee, Martin, Nassau, Okaloosa, Palm Beach, Pinellas, Santa Rosa, Sarasota, St. Johns, St. Lucie, and Walton counties (Case No. 14-2801RP). Duval County Jacksonville intervened in all the petitions.

<sup>7</sup> DOAH Final Order in Case Nos. 14-2799RP, 14-2800RP, 14-2801RP and 14-4512RP (April 22, 2015), available at <https://www.doah.state.fl.us/ROS/2014/14002799.pdf> (last visited February 8, 2016).

<sup>8</sup> *Volusia County v. Department of Juvenile Justice*, Case No. 1D15-2298 (Fla. 1<sup>st</sup> District Court of Appeal).

<sup>9</sup> Section 38 of ch. 2015-222, Laws of Florida.

administrative petition challenging the revenue recovery provision in the DOAH<sup>10</sup>, and a number of other counties have filed complaints in circuit court.<sup>11</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 985.686, F.S., relating to shared county and state responsibility for juvenile detention. It adds the term “total shared detention costs” and defines it to mean:

The amount of funds expended by the department for the costs of detention care for the prior fiscal year. This amount is including the most recent actual certify forward amounts minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state.

For Fiscal Year 2016-2017, the bill requires non-fiscally constrained counties to pay a total of \$42.5 million, with each county paying its percentage share of detention use. A county’s percentage share of that amount is determined by dividing the number of juvenile detention days for juveniles residing in that county in the most recently completed 12-month period by the total number of detention days for juveniles in all non-fiscally constrained counties during that time period. The bill requires that the DJJ calculate and provide each county with its percentage share by June 1, 2016. Each county is then required to pay its percentage share in 12 equal payments on the first of each month, beginning on July 1, 2016. The state is required to pay the remaining actual costs of detention care.

In Fiscal Year 2015-2016, non-fiscally constrained counties will pay a total of \$54.3 million annually. Thus, the bill will reduce the total payment for non-fiscally constrained counties by approximately \$11.8 million in Fiscal Year 2016-2017, as compared to what those counties will pay in Fiscal Year 2015-2016.

Beginning in Fiscal Year 2017-2018, the bill will require non-fiscally constrained counties to annually pay a total of 50 percent of total shared detention costs for the prior fiscal year. The bill requires the DJJ to provide each non-fiscally constrained county with its annual percentage share (based upon “the most recently completed 12-month period”) of total shared detention costs by June 1, 2017 for Fiscal Year 2017-2018 and each successive fiscal year thereafter. Beginning July 1, non-fiscally constrained counties must make payments in 12 equal installments to the DJJ on the first day of each month of the fiscal year.

The bill continues current law requiring the state to pay the costs of detention in fiscally constrained counties, and codifies current practice by which the state pays detention costs for juveniles who are not residents of Florida. The bill also requires the state to pay all costs of

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<sup>10</sup> The administrative petitions are Case No. 15-6458 (Okaloosa County and Manatee County) and Case No. 15-6459 (Volusia County) and are set for hearing on February 19, 2016.

<sup>11</sup> The following counties are plaintiffs in civil complaints that include challenges to the revenue recovery provision: Alachua, Bay, Charlotte, Collier, Hillsborough, Manatee, Marion, Martin, Nassau, Okaloosa, Polk, St. Lucie, and Walton. The cases were all filed in the Circuit Court for the Second Judicial Circuit in and for Leon County and have been consolidated into *Charlotte County, Florida et al. v. Daly*, Case No. 2014 CA 1885 (Fla. 2d Judicial Circuit).

detention care for juveniles housed in state detention centers in counties that provide their own detention care.

Finally, this section of the bill deletes a statutory provision that requires the DOR and the counties to provide technical assistance to the DJJ in order to develop the most cost effective means of collecting payments.

**Section 2** amends s. 985.6015(2), F.S., to remove references to predisposition juvenile detention.

**Section 3** amends s. 985.688(11), F.S., to remove references to preadjudication detention and preadjudication detention care.

**Section 4** provides that the bill will take effect upon becoming law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DJJ indicates that the total required payments for non-fiscally constrained counties in Fiscal Year 2015-2016 is \$54.3 million.

The bill's provision for non-fiscally constrained counties to pay a total of \$42.5 million in shared detention costs for Fiscal Year 2016-2017 will make the counties responsible for paying \$11.8 million less than in Fiscal Year 2015-2016. The DJJ estimates that it will need an appropriation of \$8.8 million in general revenue funds above the amount appropriated for juvenile detention care in Senate Bill 2500, the Senate 2016-2017

General Appropriations Bill, to be able to offset the bill's reduction in the counties' payments for Fiscal Year 2016-2017.

For Fiscal Year 2017-2018, when the total costs for detention care for non-fiscally constrained counties will be split equally between the state and those counties, the DJJ estimates that it will need an appropriation of \$6.2 million more in general revenue funds above the amount appropriated for juvenile detention care in SB 2500. The amount for subsequent years should be similar, with adjustments for variances in costs. The table below illustrates the current situation and the effect of the bill on cost sharing:

Effect of SB 1332 on Juvenile Detention Cost Sharing								
Fiscal Year	Estimated Total Costs (non-fiscally constrained counties)	State Contribution	State Percentage	Estimated Increase in State Contribution above Fiscal Year 2015-2016	Estimated new GR Needed above SB 2500 Funding	County Share	County Percentage	Difference in County Share as compared to Fiscal Year 2015-2016
2015-2016	\$91.5 mil	\$37.2 mil	40.70%	N/A	N/A	\$54.3 mil	59.30%	N/A
2016-2017	\$91.5 mil	\$49.0 mil	53.60%	\$11.8 mil	\$8.8 mil	\$42.5 mil	46.40%	(11.8 mil)
2017-2018	\$92.8 mil	\$46.4 mil	50.00%	\$ 9.2 mil	\$6.2 mil	\$46.4 mil	50.00%	(7.9 mil)

## VI. Technical Deficiencies:

- Consideration should be given to amending lines 32-33 to read: "This amount includes the amount of funds certified forward during that fiscal year, but does not include any funds expended or certified forward for detention care for juveniles residing in fiscally constrained counties."
- On line 48, the word "actual" should be deleted to be consistent with the wording on lines 66-67 pertaining to the state paying the remaining costs of detention care.
- On lines 42 and 57-58, consideration should be given to amending the phrase "the most recently completed 12-month period" to allow sufficient time for the department to obtain detention data and calculate each county's annual share of detention days. For example, if the notice is required by June 1, the phrase could be "the 12-month period that ended on the previous April 30."
- The bill implies that the DJJ will provide each county with the total shared detention costs, but does not specify a due date for doing so. For Fiscal Year 2017-2018 and thereafter, it is impractical for the DJJ to be able to provide each county with the total shared detention costs necessary for the county to pay the first installment of its annual percentage share of total shared detention costs on July 1 of each year. Total shared detention costs are based on costs for the prior fiscal year, which ends on the day before the payments are due. Therefore, consideration should be given to requiring that the DJJ provide the total shared detention costs by July 15 and that each county's first payment be due on August 1 of each year. However, this will require adjustment of the payment schedule for Fiscal Year 2016-2017 so that there is not a gap in the requirement to make a payment each month.
- On line 57, the word "in" included in the phrase "in the most recently" should be replaced by "for" to be consistent with the wording of the phrase on lines 41-42.
- On line 79, the word "in" before the word "counties" should be replaced by "who are from." Generally, a juvenile is detained in the state detention center that serves the county in which he or she is taken into custody. The state detention center may not be in the same county

where the child is taken into custody. It is the juvenile's county of residence, and not the county in which the state detention center is located, that determines whether the state pays all costs of detention care for the juvenile.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 985.686, and makes conforming amendments to sections 985.6015 and 985.688, of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 11, 2016:**

- Provides that non-fiscally constrained counties will pay a proportionate share of total shared detention costs for the prior fiscal year, rather than the prior calendar year.
- Provides that the percentage share of detention days will be based on the most recently completed 12-month period, rather than the prior calendar year.
- Adds conforming amendments to ss. 985.6015 and 985.688, F.S.

- B. **Amendments:**

None.



285226

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/15/2016	.	
	.	
	.	
	.	

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Appropriations Subcommittee on Criminal and Civil Justice  
(Evers) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (c) is added to subsection (2) of  
section 985.686, Florida Statutes, present subsections (9) and  
(11) of that section are redesignated as subsections (8) and  
(10), respectively, and subsections (3) through (7) and present  
subsections (8) and (10) of that section are amended, to read:

985.686 Shared county and state responsibility for juvenile





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detention.—

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

(c) "Total shared detention costs" means the amount of funds expended by the department for the costs of detention care in a fiscal year, minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state.

(3)(a) For the 2016-2017 fiscal year, each county that is not a fiscally constrained county shall pay to the department its annual percentage share of \$42.5 million. By June 1, 2016, the department shall calculate and provide to each such county its annual percentage share by dividing the total number of detention days for juveniles residing in that county for the most recently completed 12-month period by the total number of detention days for juveniles in all counties that are not fiscally constrained counties during the same period. Beginning July 1, 2016, each county shall pay to the department its annual percentage share of \$42.5 million, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining actual costs of detention care. This paragraph expires June 30, 2017.

(b) For the 2017-2018 fiscal year, and each fiscal year thereafter, each county that is not a fiscally constrained county shall pay its annual percentage share of 50 percent of the total shared detention costs for the prior calendar year. By June 1, 2017, and each year thereafter, the department shall calculate and provide to each such county its annual percentage share by dividing the total number of detention days for juveniles residing in that county in the most recently completed



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40 12-month period by the total number of detention days for  
41 juveniles in all counties that are not fiscally constrained  
42 counties during the same period. The annual percentage share of  
43 each county that is not a fiscally constrained county must be  
44 multiplied by 50 percent of the total shared detention cost to  
45 determine that county's share of detention costs. Beginning July  
46 1, each county shall pay to the department its share of  
47 detention costs, which shall be paid in 12 equal payments due on  
48 the first day of each month. The state shall pay the remaining  
49 costs of detention care ~~Each county shall pay the costs of~~  
50 ~~providing detention care, exclusive of the costs of any~~  
51 ~~preadjudicatory nonmedical educational or therapeutic services~~  
52 ~~and \$2.5 million provided for additional medical and mental~~  
53 ~~health care at the detention centers, for juveniles for the~~  
54 ~~period of time prior to final court disposition. The department~~  
55 ~~shall develop an accounts payable system to allocate costs that~~  
56 ~~are payable by the counties.~~

57 (4) ~~Notwithstanding subsection (3),~~ The state shall pay all  
58 costs of detention care for juveniles residing in ~~for which a~~  
59 fiscally constrained county and for juveniles residing out of  
60 state. The state shall pay all costs of detention care for  
61 juveniles housed in state detention centers in counties that  
62 provide their own detention care for juveniles ~~would otherwise~~  
63 ~~be billed.~~

64 ~~(a) By October 1, 2004, the department shall develop a~~  
65 ~~methodology for determining the amount of each fiscally~~  
66 ~~constrained county's costs of detention care for juveniles, for~~  
67 ~~the period of time prior to final court disposition, which must~~  
68 ~~be paid by the state. At a minimum, this methodology must~~



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~~consider the difference between the amount appropriated to the department for offsetting the costs associated with the assignment of juvenile pretrial detention expenses to the fiscally constrained county and the total estimated costs to the fiscally constrained county, for the fiscal year, of detention care for juveniles for the period of time prior to final court disposition.~~

~~(b) Subject to legislative appropriation and based on the methodology developed under paragraph (a), the department shall provide funding to offset the costs to fiscally constrained counties of detention care for juveniles for the period of time prior to final court disposition. If county matching funds are required by the department to eliminate the difference calculated under paragraph (a) or the difference between the actual costs of the fiscally constrained counties and the amount appropriated in small county grants for use in mitigating such costs, that match amount must be allocated proportionately among all fiscally constrained counties.~~

~~(5) Each county that is not a fiscally constrained county shall incorporate into its annual county budget sufficient funds to pay its annual percentage share of 50 percent of the total shared detention costs of detention care for juveniles who reside in that county for the period of time prior to final court disposition. This amount shall be based upon the prior use of secure detention for juveniles who are residents of that county, as calculated by the department. Each county shall pay the estimated costs at the beginning of each month. Any difference between the estimated costs and actual costs shall be reconciled at the end of the state fiscal year.~~



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(6) Funds paid by the counties to the department pursuant to this section must be deposited ~~Each county shall pay to the department for deposit into the Shared County/State Juvenile Detention Trust Fund its share of the county's total costs for juvenile detention, based upon calculations published by the department with input from the counties.~~

(7) The department ~~of Juvenile Justice~~ shall determine each quarter whether the counties ~~of this state~~ are remitting funds as required ~~to the department their share of the costs of detention as required by this section.~~

~~(8) The Department of Revenue and the counties shall provide technical assistance as necessary to the Department of Juvenile Justice in order to develop the most cost-effective means of collection.~~

~~(9)~~ ~~(10)~~ This section does not apply to a ~~any~~ county that provides detention care for preadjudicated juveniles or that contracts with another county to provide detention care for ~~preadjudicated~~ juveniles.

Section 2. Subsection (2) of section 985.6015, Florida Statutes, is amended to read:

985.6015 Shared County/State Juvenile Detention Trust Fund.—

(2) The fund is established for use as a depository for funds to be used for the costs of ~~predisposition~~ juvenile detention. Moneys credited to the trust fund shall consist of funds from the counties' share of the costs for ~~predisposition~~ juvenile detention.

Section 3. Paragraph (a) of subsection (11) of section 985.688, Florida Statutes, is amended to read:



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985.688 Administering county and municipal delinquency programs and facilities.—

(11) (a) Notwithstanding the provisions of this section, a county is in compliance with this section if:

1. The county provides the full cost for ~~preadjudication~~ detention for juveniles;

2. The county authorizes the county sheriff, any other county jail operator, or a contracted provider located inside or outside the county to provide ~~preadjudication~~ detention care for juveniles;

3. The county sheriff or other county jail operator is accredited by the Florida Corrections Accreditation Commission or American Correctional Association; and

4. The facility is inspected annually and meets the Florida Model Jail Standards.

Section 4. This act shall take effect upon becoming a law.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to juvenile detention costs; amending s. 985.686, F.S.; defining a term; revising the annual contributions by certain counties for the costs of detention care for juveniles; revising the methodology by which the Department of Juvenile Justice determines the percentage share for each county; requiring the state to pay all costs of detention care for juveniles



285226

156       residing out of state and for juveniles residing in  
157       state detention centers in counties that provide their  
158       own detention care for juveniles; deleting a  
159       requirement that the Department of Revenue and the  
160       counties provide certain technical assistance to the  
161       Department of Juvenile Justice; revising the  
162       applicability of specified provisions; amending ss.  
163       985.6015 and 985.688, F.S.; conforming provisions to  
164       changes made by the act; providing an effective date.



883106

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on Criminal and Civil Justice  
(Evers) recommended the following:

**Senate Substitute for Amendment (285226) (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (c) is added to subsection (2) of  
section 985.686, Florida Statutes, present subsections (9) and  
(11) of that section are redesignated as subsections (8) and  
(10), respectively, and subsections (3) through (7) and present  
subsections (8) and (10) of that section are amended, to read:



883106

985.686 Shared county and state responsibility for juvenile detention.—

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

(c) "Total shared detention costs" means the amount of funds expended by the department for the costs of detention care for the prior fiscal year. This amount is including the most recent actual certify forward amounts minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state.

(3)(a) For the 2016-2017 fiscal year, each county that is not a fiscally constrained county shall pay to the department its annual percentage share of \$42.5 million. By June 1, 2016, the department shall calculate and provide to each such county its annual percentage share by dividing the total number of detention days for juveniles residing in that county for the most recently completed 12-month period by the total number of detention days for juveniles in all counties that are not fiscally constrained counties during the same period. Beginning July 1, 2016, each county shall pay to the department its annual percentage share of \$42.5 million, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining actual costs of detention care. This paragraph expires June 30, 2017.

(b) For the 2017-2018 fiscal year, and each fiscal year thereafter, each county that is not a fiscally constrained county shall pay its annual percentage share of 50 percent of the total shared detention costs for the prior fiscal year. By June 1, 2017, and each year thereafter, the department shall calculate and provide to each such county its annual percentage





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share by dividing the total number of detention days for juveniles residing in that county in the most recently completed 12-month period by the total number of detention days for juveniles in all counties that are not fiscally constrained counties during the same period. The annual percentage share of each county that is not a fiscally constrained county must be multiplied by 50 percent of the total shared detention costs to determine that county's share of detention costs. Beginning July 1, each county shall pay to the department its share of detention costs, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining costs of detention care ~~Each county shall pay the costs of providing detention care, exclusive of the costs of any preadjudicatory nonmedical educational or therapeutic services and \$2.5 million provided for additional medical and mental health care at the detention centers, for juveniles for the period of time prior to final court disposition. The department shall develop an accounts payable system to allocate costs that are payable by the counties.~~

(4) ~~Notwithstanding subsection (3),~~ The state shall pay all costs of detention care for juveniles residing in ~~for which a~~ fiscally constrained county and for juveniles residing out of state. The state shall pay all costs of detention care for juveniles housed in state detention centers in counties that provide their own detention care for juveniles ~~would otherwise be billed.~~

~~(a) By October 1, 2004, the department shall develop a methodology for determining the amount of each fiscally constrained county's costs of detention care for juveniles, for~~



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~~the period of time prior to final court disposition, which must be paid by the state. At a minimum, this methodology must consider the difference between the amount appropriated to the department for offsetting the costs associated with the assignment of juvenile pretrial detention expenses to the fiscally constrained county and the total estimated costs to the fiscally constrained county, for the fiscal year, of detention care for juveniles for the period of time prior to final court disposition.~~

~~(b) Subject to legislative appropriation and based on the methodology developed under paragraph (a), the department shall provide funding to offset the costs to fiscally constrained counties of detention care for juveniles for the period of time prior to final court disposition. If county matching funds are required by the department to eliminate the difference calculated under paragraph (a) or the difference between the actual costs of the fiscally constrained counties and the amount appropriated in small county grants for use in mitigating such costs, that match amount must be allocated proportionately among all fiscally constrained counties.~~

~~(5) Each county that is not a fiscally constrained county shall incorporate into its annual county budget sufficient funds to pay its annual percentage share of 50 percent of the total shared detention costs of detention care for juveniles who reside in that county for the period of time prior to final court disposition. This amount shall be based upon the prior use of secure detention for juveniles who are residents of that county, as calculated by the department. Each county shall pay the estimated costs at the beginning of each month. Any~~



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~~difference between the estimated costs and actual costs shall be reconciled at the end of the state fiscal year.~~

(6) Funds paid by the counties to the department pursuant to this section must be deposited ~~Each county shall pay to the department for deposit into the Shared County/State Juvenile Detention Trust Fund its share of the county's total costs for juvenile detention, based upon calculations published by the department with input from the counties.~~

~~(7) The department of Juvenile Justice shall determine each quarter whether the counties of this state are remitting funds as required to the department their share of the costs of detention as required by this section.~~

~~(8) The Department of Revenue and the counties shall provide technical assistance as necessary to the Department of Juvenile Justice in order to develop the most cost-effective means of collection.~~

(9) ~~(10)~~ This section does not apply to a ~~any~~ county that provides detention care for ~~preadjudicated~~ juveniles or that contracts with another county to provide detention care for ~~preadjudicated~~ juveniles.

Section 2. Subsection (2) of section 985.6015, Florida Statutes, is amended to read:

985.6015 Shared County/State Juvenile Detention Trust Fund.—

(2) The fund is established for use as a depository for funds to be used for the costs of ~~pre-disposition~~ juvenile detention. Moneys credited to the trust fund shall consist of funds from the counties' share of the costs for ~~pre-disposition~~ juvenile detention.



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Section 3. Paragraph (a) of subsection (11) of section 985.688, Florida Statutes, is amended to read:

985.688 Administering county and municipal delinquency programs and facilities.—

(11) (a) Notwithstanding the provisions of this section, a county is in compliance with this section if:

1. The county provides the full cost for ~~preadjudication~~ detention for juveniles;

2. The county authorizes the county sheriff, any other county jail operator, or a contracted provider located inside or outside the county to provide ~~preadjudication~~ detention care for juveniles;

3. The county sheriff or other county jail operator is accredited by the Florida Corrections Accreditation Commission or American Correctional Association; and

4. The facility is inspected annually and meets the Florida Model Jail Standards.

Section 4. This act shall take effect upon becoming a law.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to juvenile detention costs; amending s. 985.686, F.S.; defining a term; revising the annual contributions by certain counties for the costs of detention care for juveniles; revising the methodology



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by which the Department of Juvenile Justice determines the percentage share for each county; requiring the state to pay all costs of detention care for juveniles residing out of state and for juveniles residing in state detention centers in counties that provide their own detention care for juveniles; deleting a requirement that the Department of Revenue and the counties provide certain technical assistance to the Department of Juvenile Justice; revising the applicability of specified provisions; amending ss. 985.6015 and 985.688, F.S.; conforming provisions to changes made by the act; providing an effective date.

By Senator Latvala

20-01641C-16

20161322\_\_

A bill to be entitled  
An act relating to juvenile detention costs; amending  
s. 985.686, F.S.; defining a term; revising the annual  
contributions by certain counties for the costs of  
detention care for juveniles; revising the methodology  
by which the Department of Juvenile Justice determines  
the percentage share for each county; requiring the  
state to pay all costs of detention care for juveniles  
residing out of state and for certain postdisposition  
detention care; deleting a requirement that the  
Department of Revenue and the counties provide certain  
technical assistance to the Department of Juvenile  
Justice; revising the applicability of specified  
provisions; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (2) of  
section 985.686, Florida Statutes, present subsections (9) and  
(11) of that section are redesignated as subsections (8) and  
(10), respectively, and subsections (3) through (7) and present  
subsections (8) and (10) of that section are amended, to read:  
985.686 Shared county and state responsibility for juvenile  
detention.—  
(2) As used in this section, the term:  
(c) "Total shared detention costs" means the amount of  
funds expended by the department for the costs of detention care  
in a calendar year, minus any funds it expends on detention care  
for juveniles residing in fiscally constrained counties or out  
of state and for postdisposition detention care in those  
counties that provide their own predisposition detention care  
for juveniles.

20-01641C-16

20161322\_\_

33       (3) (a) For the 2016-2017 fiscal year, each county that is  
34 not a fiscally constrained county shall pay to the department  
35 its annual percentage share of \$42.5 million. By June 1, 2016,  
36 the department shall calculate and provide to each such county  
37 its annual percentage share by dividing the total number of  
38 detention days for juveniles residing in that county in the  
39 prior calendar year by the total number of detention days for  
40 juveniles in all counties that are not fiscally constrained  
41 counties in the prior calendar year. Beginning July 1, 2016,  
42 each county shall pay to the department its annual percentage  
43 share of \$42.5 million, which shall be paid in 12 equal payments  
44 due on the first day of each month. The state shall pay the  
45 remaining actual costs of detention care. This paragraph expires  
46 June 30, 2017.

47       (b) For the 2017-2018 fiscal year, and each fiscal year  
48 thereafter, each county that is not a fiscally constrained  
49 county shall pay its annual percentage share of 50 percent of  
50 the total shared detention costs for the prior calendar year. By  
51 February 1, 2017, and each year thereafter, the department shall  
52 calculate and provide to each such county its annual percentage  
53 share by dividing the total number of detention days for  
54 juveniles residing in that county in the prior calendar year by  
55 the total number of detention days for juveniles in all counties  
56 that are not fiscally constrained counties in the prior calendar  
57 year. The annual percentage share of each county that is not a  
58 fiscally constrained county must be multiplied by 50 percent of  
59 the total shared detention cost for the prior calendar year to  
60 determine that county's share of detention costs. Beginning July  
61 1, each county shall pay to the department its share of

20-01641C-16

20161322\_\_

62 detention costs for the prior calendar year, which shall be paid  
63 in 12 equal payments due on the first day of each month. The  
64 state shall pay the remaining actual costs of detention care  
65 ~~Each county shall pay the costs of providing detention care,~~  
66 ~~exclusive of the costs of any preadjudicatory nonmedical~~  
67 ~~educational or therapeutic services and \$2.5 million provided~~  
68 ~~for additional medical and mental health care at the detention~~  
69 ~~centers, for juveniles for the period of time prior to final~~  
70 ~~court disposition. The department shall develop an accounts~~  
71 ~~payable system to allocate costs that are payable by the~~  
72 ~~counties.~~

73 (4) ~~Notwithstanding subsection (3),~~ The state shall pay all  
74 costs of detention care for juveniles residing in ~~for which a~~  
75 fiscally constrained county and for juveniles residing out of  
76 state. The state shall pay all costs of postdisposition  
77 detention care for those counties that provide their own  
78 predisposition detention care for juveniles ~~would otherwise be~~  
79 ~~billed.~~

80 ~~(a) By October 1, 2004, the department shall develop a~~  
81 ~~methodology for determining the amount of each fiscally~~  
82 ~~constrained county's costs of detention care for juveniles, for~~  
83 ~~the period of time prior to final court disposition, which must~~  
84 ~~be paid by the state. At a minimum, this methodology must~~  
85 ~~consider the difference between the amount appropriated to the~~  
86 ~~department for offsetting the costs associated with the~~  
87 ~~assignment of juvenile pretrial detention expenses to the~~  
88 ~~fiscally constrained county and the total estimated costs to the~~  
89 ~~fiscally constrained county, for the fiscal year, of detention~~  
90 ~~care for juveniles for the period of time prior to final court~~



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20161322\_\_

91 ~~disposition.~~

92 ~~(b) Subject to legislative appropriation and based on the~~  
93 ~~methodology developed under paragraph (a), the department shall~~  
94 ~~provide funding to offset the costs to fiscally constrained~~  
95 ~~counties of detention care for juveniles for the period of time~~  
96 ~~prior to final court disposition. If county matching funds are~~  
97 ~~required by the department to eliminate the difference~~  
98 ~~calculated under paragraph (a) or the difference between the~~  
99 ~~actual costs of the fiscally constrained counties and the amount~~  
100 ~~appropriated in small county grants for use in mitigating such~~  
101 ~~costs, that match amount must be allocated proportionately among~~  
102 ~~all fiscally constrained counties.~~

103 ~~(5) Each county that is not a fiscally constrained county~~  
104 ~~shall incorporate into its annual county budget sufficient funds~~  
105 ~~to pay its annual percentage share of 50 percent of the total~~  
106 ~~shared detention costs for the prior calendar of detention care~~  
107 ~~for juveniles who reside in that county for the period of time~~  
108 ~~prior to final court disposition. This amount shall be based~~  
109 ~~upon the prior use of secure detention for juveniles who are~~  
110 ~~residents of that county, as calculated by the department. Each~~  
111 ~~county shall pay the estimated costs at the beginning of each~~  
112 ~~month. Any difference between the estimated costs and actual~~  
113 ~~costs shall be reconciled at the end of the state fiscal year.~~

114 ~~(6) Funds paid by the counties to the department pursuant~~  
115 ~~to this section must be deposited Each county shall pay to the~~  
116 ~~department for deposit into the Shared County/State Juvenile~~  
117 ~~Detention Trust Fund its share of the county's total costs for~~  
118 ~~juvenile detention, based upon calculations published by the~~  
119 ~~department with input from the counties.~~

20-01641C-16

20161322\_\_

120       (7) The department ~~of Juvenile Justice~~ shall determine each  
121 quarter whether the counties ~~of this state~~ are remitting funds  
122 as required ~~to the department their share of the costs of~~  
123 ~~detention as required~~ by this section.

124       ~~(8) The Department of Revenue and the counties shall~~  
125 ~~provide technical assistance as necessary to the Department of~~  
126 ~~Juvenile Justice in order to develop the most cost-effective~~  
127 ~~means of collection.~~

128       (9) ~~(10)~~ This section does not apply to a ~~any~~ county that  
129 provides detention care for preadjudicated juveniles or that  
130 contracts with another county to provide predisposition  
131 detention care for ~~preadjudicated~~ juveniles.

132       Section 2. This act shall take effect upon becoming a law.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development, *Chair*  
Appropriations  
Commerce and Tourism  
Governmental Oversight and Accountability  
Regulated Industries  
Rules

**SENATOR JACK LATVALA**  
20th District

January 21, 2016

The Honorable Joe Negron, Chair  
Appropriations Subcommittee on Criminal and Civil Justice  
201 The Capitol  
404 South Monroe Street  
Tallahassee, FL 32399-1100

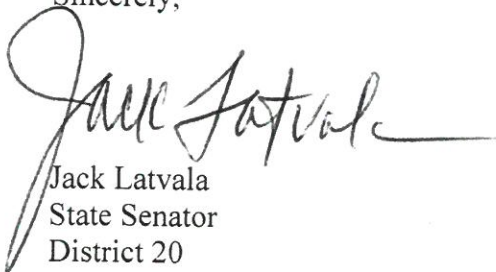
Dear Chairman Negron:

I respectfully request consideration of Senate Bill 1322/Juvenile Justice Cost Recovery at your earliest convenience.

This bill will streamline the contributions from the state to counties for the costs of detention care for juveniles. Additionally, the bill would require the state to pay for costs of detention care for juveniles residing out of state and for certain postdisposition detention care. Finally, the bill would delete a requirement that the Department of Revenue and the counties provide certain technical assistance to the Department of Juvenile Justice.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

  
Jack Latvala  
State Senator  
District 20

Cc: **Tim Sadberry, Staff Director**; Michelle Sanders, Administrative Assistant

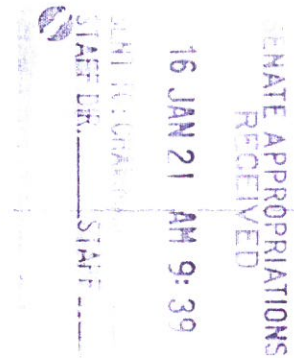
**REPLY TO:**

- ☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- ☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16  
Meeting Date

SB 1322  
Bill Number (if applicable)  
883106  
Amendment Barcode (if applicable)

Topic Juvenile Detention Costs

Name Lisa Hurley

Job Title Legislative Director

Address 100 S Monroe

Street

City

Tallahassee FL 32301

State

Zip

Phone 922.4300

Email lhurley@flcourts.gov

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FL Assoc of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

1322

Bill Number (if applicable)

Topic DJJ

Amendment Barcode (if applicable)

Name Kelley Teague

Job Title Legislative Affairs Director

Address 201 S Rosalind Ave

Phone \_\_\_\_\_

Street

Orlando

FL

City

State

32801

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Orange County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

SB 1322

Bill Number (if applicable)

Topic Support the DWI bill

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title Attorney

Address 215 So Monroe Street

Phone 850-999-4100

Street

Tallahassee FL 32301

City

State

Zip

Email m.edenfield@dcawm.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Pinellas County, Charlotte County + Manatee County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

SB 1322

Bill Number (if applicable)

Topic DJJ

Amendment Barcode (if applicable)

Name BRIAN HAMMAN

Job Title COUNTY COMMISSIONER - LEE

Address County Courthouse

Street

Phone (239) 533-2226

FORT MYERS, FL 33901

City

State

Zip

Email DIST4@LEEgov.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing LEE County, FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

9B1322

Bill Number (if applicable)

Topic

Juvenile Detention Costs

Amendment Barcode (if applicable)

Name

Lisa Hurley

Job Title

legislative Director, FL Assoc of Counties

Address

Street

100 S. Monroe St

Phone

922.4300

City

Tallahassee FL

State

Zip

32301

Email

lhurley@fl-counties.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

FL Assoc. of Counties

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

1322

Bill Number (if applicable)

Topic JUVENILE DETENTION COSTS

Amendment Barcode (if applicable)

Name TODD BONLARRON

Job Title LEGISLATIVE AFFAIRS DIRECTOR

Address 301 N. OLIVE AVE.  
Street

Phone (561) 355-3451

WEST PALM BEACH FL 33401  
City State Zip

Email tbonlarr@pbegov.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing PALM BEACH COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

SB1322

Bill Number (if applicable)

Topic

Juvenile Detention Costs

Amendment Barcode (if applicable)

Name

Doug Smith, Commissioner

Job Title

Comm. Martin County

Address

100 S. Monroe St

Phone

9024300

Street

Tallahassee, FL

32301

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Martin County

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

2B1322

Bill Number (if applicable)

Topic

Juvenile Detention Costs

Amendment Barcode (if applicable)

Name

Nick Maddox, Commissioner

Job Title

Comm. Leon County

Address

100 S. Monroe St

Phone

922.4300

Street

Email

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Leon County

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

SB1300

Bill Number (if applicable)

Topic Juvenile Detention Costs

Amendment Barcode (if applicable)

Name Jim Taylor

Job Title Legislative Director

Address 100 S. Monroe St

Street

Phone 904.4340

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Hillsborough County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16  
Meeting Date

SB 1322  
Bill Number (if applicable)

Topic Juvenile Detention

Amendment Barcode (if applicable)

Name Tom GRIFFIN

Job Title The Firearm Group

Address \_\_\_\_\_  
Street

Phone 561-891-7122

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing City of Jacksonville / Duval County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

SR 1322

Bill Number (if applicable)

Topic Juvenile Detention

Amendment Barcode (if applicable)

Name Tom Griffin

Job Title The Florentine Group

Address

Street

Phone 561-491-7122

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Alachua County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 11 2016

Meeting Date

SB 1322

Bill Number (if applicable)

Topic Juvenile Detention Costs

Amendment Barcode (if applicable)

Name Albert Balido

Job Title \_\_\_\_\_

Address 201 W Park Avenue Ste 100

Street

Phone (866) 960-5939

Tallahassee

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Indian River County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.11.16

Meeting Date

1322

Bill Number (if applicable)

Topic DJJ Cost Share

Amendment Barcode (if applicable)

Name Sarah Busk

Job Title \_\_\_\_\_

Address 215 S Monroe St. #602

Phone 850.222.8900

Street

Tallahassee

City

State

FL

Zip

Email sjb@cardenas

partners.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Okaloosa County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16  
Meeting Date

1322  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Nicole Fogarty

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Street

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City State Zip

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing St. Lucie County Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

FEB. 11, 2016  
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1322  
Bill Number (if applicable)

Topic JUVENILE DETENTION COSTS

Amendment Barcode (if applicable)

Name Robert Lewis

Job Title DIRECTOR, INTERGOVERNMENTAL

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City State Zip

Email rlewis@scga.net

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

SB 1322

Bill Number (if applicable)

Topic JUVENILE DETENTION COSTS

Amendment Barcode (if applicable)

Name JEFFREY SHARKEY

Job Title PRES, CAPITOL ALLIANCE GROUP

Address 100 E. College Ave

Phone 850 224 1060

Street

Tallah

City

FL

State

32301

Zip

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing LEON COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

Meeting Date

1322

Bill Number (if applicable)

Topic

Juvenile Detention Costs

Amendment Barcode (if applicable)

Name

Eddy Labrador

Job Title

Director, Intergovernmental Affairs

Address

115 S. Andrews Avenue, Rm 426

Phone

954-824-1155

Street

Fort Lauderdale

FL

33301

City

State

Zip

Email

elabrador@broward.org

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

Broward County

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: PCS/CS/SB 1528 (460300)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Regulated Industries Committee and Senator Simpson

SUBJECT: Illicit Drugs

DATE: February 15, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Caldwell</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

PCS/CS/SB 1528 amends the schedule of controlled substances in s. 893.03, F.S., to describe, by core structure, the following synthetic controlled substances: synthetic cannabinoids; substituted cathinones; substituted phenethylamines; N-benzyl Phenethylamine compounds; substituted tryptamines; and substituted phenylcyclohexylamines. According to the Office of the Attorney General, the class descriptions define these groups of substances by specific core structure to limit the effect that possible alterations to these substances may have to remove a synthetic or designer drug from the list of controlled substances. Each class description includes examples of compounds that are covered by the class description. The criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill:

- Revises the definition of the term “substantially similar” for the purpose of determining whether a substance is an analog to a controlled substance. The bill defines the term according to the chemical structure of the substance instead of according to its physiological effect. The bill also provides additional factors for determining whether a substance is an analog of a controlled substance to include comparisons to the accepted methods of marketing, distribution, and sales of the substance.
- Revises the chemical terms for existing controlled substances by correcting errors in existing substance listings and deleting double entries. According to the Office of the Attorney

General, the chemical terms in these provisions were reviewed by chemists and the revisions in this bill are based on their recommendations.

- Creates a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver, certain unlawful controlled substance in, on, or near an assisted living facility. The noncriminal penalty is a \$500 fine and 100 hours of community service in addition to any other penalty.
- Creates a third degree felony for a person 18 years of age or older who delivers certain illegal controlled substances to a person under the age of 18, who uses or hires a person under the age of 18 in the sale or delivery of such substance, or who uses a person under the age of 18 to assist in avoiding detection for specified violations.
- Creates a second degree felony for actual or constructive possession of a Schedule V controlled substance unless the controlled substance was lawfully obtained from a medical practitioner or pursuant to a valid prescription or order of a medical practitioner while acting in the course of his or her professional practice.
- Provides that a place or premises that has been used on two or more occasions within a six-month period as a site of a violation of ch. 499, F.S., may be declared a public nuisance and abated.
- Includes misbranded drugs in the listing of paraphernalia that are deemed to be contraband and subject to civil forfeiture.

The Criminal Justice Impact Conference has determined that the bill will have a positive indeterminate impact on the prison population, meaning that it will increase the prison population by an amount that cannot be quantified. The Department of Legal Affairs expects that any impact of the bill on criminal justice costs, such as increased costs to the Florida Department of Law Enforcement (FDLE) due to requirements to analyze the newly-scheduled drugs, would be short-lived because the market for the drugs will dry up shortly after they become illegal.

The bill provides an effective date of July 1, 2016.

## **II. Present Situation:**

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The schedules are as follows:

- A Schedule I substance has a high potential for abuse<sup>1</sup> and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples: heroin and methaqualone.<sup>2</sup>
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples: cocaine and morphine.<sup>3</sup>

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<sup>1</sup> “Potential for abuse” means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being: (a) Used in amounts that create a hazard to the user’s health or the safety of the community; (b) Diverted from legal channels and distributed through illegal channels; or (c) Taken on the user’s own initiative rather than on the basis of professional medical advice. s. 893.02(20), F.S.

<sup>2</sup> Section 893.03(1), F.S.

<sup>3</sup> Section 893.03(2), F.S.

- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples: lysergic acid; ketamine; and some anabolic steroids.<sup>4</sup>
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples: alprazolam; diazepam; and phenobarbital.<sup>5</sup>
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples: low dosage levels of codeine; certain stimulants; and certain narcotic compounds.<sup>6</sup>

A substance is a “controlled substance” if it is listed in any of the five schedules in s. 893.03, F.S. The particular scheduling determines penalties, i.e. which penalties may be imposed for unlawful possession, sale, manufacture, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc.

The sale, manufacture, and delivery of a controlled substance listed in s. 893.03(1)(c), F.S., (Schedule I(c)), as well as the possession with intent to sell, manufacture, or deliver such substance, is considered a third degree felony.<sup>7</sup> However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.<sup>8</sup> For example, selling a controlled substance listed in Schedule I(c) within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.<sup>9</sup> Other prohibited activities include bringing a controlled substance listed in Schedule I(c) into the state and the purchase or possession with intent to purchase such a controlled substance, which are all third degree felonies.<sup>10</sup>

## Synthetic Drugs

Synthetic drugs mimic the effects of controlled substances. Synthetic drugs are also known as “new or novel psychoactive substances,” or “designer drugs.” Synthetic drugs are used to circumvent existing prohibitions on controlled substances. According to the Office of the

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<sup>4</sup> Section 893.03(3), F.S.

<sup>5</sup> Section 893.03(4), F.S.

<sup>6</sup> Section 893.03(5), F.S.

<sup>7</sup> Section 893.13(9), F.S., provides that the provisions of s. 893.13(1)-(8), F.S., are not applicable to the delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in certain classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties. *See also* s. 893.13(1)(a)2., F.S. A third degree felony is punishable by up to five years in state prison, a fine of up to \$5,000, or both. ss. 775.082 and 775.083, F.S.

<sup>8</sup> Section 893.13(1)(c)-(f) and (h), F.S.

<sup>9</sup> Section 893.13(1)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both.

<sup>10</sup> Section 893.13(5)(b) and (2)(a)2., F.S.

Attorney General, the increasing number of synthetic drug variants available and the higher toxicity of the new variants poses an increasing public health threat.

Concerned about the use of synthetic drugs in Broward County, the State Attorney took the issue to the grand jury. On December 30, 2015, the 17<sup>th</sup> Judicial Circuit State Attorney's Office released a grand jury report. The report examined the extent of the problem of synthetic drugs in Broward County and made several recommendations, including a recommendation for legislation to address the problem.

The grand jury report attributed more than 60 recent deaths to "Flakka."<sup>11</sup> According to information provided by the Attorney General's Office and the grand jury report, synthetic drugs are typically manufactured in pharmaceutical factories in China or Southeast Asia and are often sold through the internet.

Controlled substance "analogs" are new substances that are not controlled under ch. 893, F.S., but which have a "potential for abuse" and are manufactured, distributed, possessed, and used as substitutes for controlled substances.<sup>12</sup> Controlled substance analogs are treated, for purposes of drug abuse prevention and control, as a controlled substance in Schedule I of s. 893.03, F.S. Section 893.0356(3), F.S., defines the term "potential for abuse" in relation to properties as a central nervous system stimulant, depressant, or hallucinogen. The definition also requires that the substance create a substantial likelihood of being:

- (a) Used in amounts that create a hazard to the user's health or the safety of the community;
- (b) Diverted from legal channels and distributed through illegal channels; or
- (c) Taken on the user's own initiative rather than on the basis of professional medical advice.

Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.

Section 893.0356(3), F.S., provides that the potential for abuse is proven by showing "that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances."

When a new synthetic drug is initially introduced, it may not necessarily be controlled or illegal under state or federal law. The Florida Attorney General may adopt emergency rules to add the new synthetic drug to the controlled substance schedule.<sup>13</sup> The Legislature then can amend the

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<sup>11</sup> See *Interim Report of the Broward County Grand Jury, July through December Term, 2015, Synthetic Drug Investigation*, December 30, 2015. A copy of the report is available at:

<http://www.bbhcfllorida.org/sites/default/files/Signed%20Final%20Report-GJ%20Syn%20Drug%20Investigation.pdf> (last visited February 4, 2016).

<sup>12</sup> Section 893.0356, F.S.

<sup>13</sup> See ss. 893.035 and 893.0356, F.S.



controlled substances schedule to incorporate the new synthetic drug. Since 2011, 136 chemical compounds commonly used to produce synthetic drugs have been added to the schedule of controlled substances, including alpha-PVP, which is the main ingredient in the synthetic form of cathinone drug popularly known as “Flakka.”<sup>14</sup>

According to the Office of the Attorney General, the core synthetic drugs of concern in Florida fall into the following categories or classifications:<sup>15</sup>

- Synthetic cannabinoids, such as “K2” or “Spice”, which produce a high similar to cannabis;
- Substituted cathinones, commonly sold as “bath salts,” which are central nervous system stimulants with stimulant properties related to cathinone, the psychoactive substance found in the shrub *Catha edulis* (khat) and produce pharmacological effects similar to methamphetamine, amphetamines, cocaine, Khat, LSD, and MDMA (Substituted Cathinones are central nervous system stimulants with no medicinal application and a tendency for dependence);
- Substituted phenethylamines, which mimic the effects of stimulants and/or hallucinogens, including amphetamine, methamphetamine, and MDMA;
- N-benzyl Phenethylamines, which are derivatives of the phenethylamine molecule by substitution that significantly increases the potency of the molecule, and are a potent hallucinogen and alternative to LSD;
- Substituted tryptamines, which are hallucinogenic substances; and
- Substituted phenylcyclohexylamines, which are comparable to PCP intoxication and results in behavioral/psychological effects from neurologic and physiologic abnormalities, stupor, or light or deep coma.

There are other potential classifications of drugs,<sup>16</sup> but according to the Office of the Attorney General, these classifications describe the top designer drugs of concern in Florida.

### **Approaches to Synthetic Drug Enforcement<sup>17</sup>**

Three states, the District of Columbia, and the federal government schedule synthetic cannabinoids using the “neurochemical approach.” This approach schedules the substances according to the effect they have on the brain rather than through either the listing of specific

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<sup>14</sup> See *Attorney General Pam Bondi News Release*, January 5, 2016, available at: <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/0C7B568A9CF4695385257F31005F4485> (last visited February 4, 2016).

<sup>15</sup> The following information is derived from the Summary Bill Analysis provided by the Florida Office of the Attorney General. A copy is on file with the Senate Regulated Industries Committee.

<sup>16</sup> These include: adamantoylindoles, adamantoylindazoles, benzoylindoles, cyclohexylphenols, cyclopropanoylindoles, naphthoylindoles, naphthoylnaphthalenes, naphthoylpyrroles, naphthylmethylindenes, naphthylmethylinindoles, phenylacetylindoles, quinolinylindolecarboxylates, tetramethylcyclopropanoylindoles, and tetramethylcyclopropane-thiazole carboxamides. See National Alliance for Model State Drug Laws, *Neurochemical Approach to Scheduling Novel Psychoactive Substances in the United States*, 2015. A copy is available at: <http://www.namsdl.org/library/FF633AB8-AA08-77FD-6A4EB68D8CD0DE20> (last visited February 4, 2016).

<sup>17</sup> For more information on how the federal government and other states and jurisdictions have addressed the issue of synthetic drug enforcement, see Gray, Heather, *Overview of Novel Psychoactive Substances and State Responses*, October 2014 at <http://www.wardwebsites.net/conference2014/presentations/gray.pdf> (last visited February 4, 2016).

substances or through the use of class definitions.<sup>18</sup> The advantage of scheduling cannabinoids using the neurochemical approach is that states may not need to continually update the schedules of substances each time a new drug is created or introduced. However, there is uncertainty in determining the proof required to obtain a conviction under this method.<sup>19</sup>

Some states use an “analogue approach” to identify synthetic drugs. Under an analogue approach, prosecutors must prove that a substance is both substantially similar structurally to a Schedule I or II controlled substance and that it has either substantially similar effect on the body or that the person represents or intends the substance to have a substantially similar effect on the body as the controlled substance.<sup>20</sup> The advantage of using the analogue approach is that it covers every substance so long as it is structurally similar to a Schedule I or II substance. However, the analogue approach does not provide clear guidance on what constitutes “substantially similar.”<sup>21</sup>

Many states use these class definitions to schedule synthetic drugs or specify each novel psychoactive substance individually in the controlled substance schedule by its specific chemical structure or trade/street name. The vast majority of states in the United States use one of these two scheduling approaches or both in combination. The advantage of scheduling substances by class definition is that a prosecutor only needs to prove that the substance falls within a particular class. A prosecutor does not necessarily have to prove its structural similarity to another substance or its effect on the body. Most states also include specific substances as examples of the particular class in the definition. The principal disadvantage to scheduling synthetic drugs through a classification approach is that if a substance does not fall within a particular named class and is not otherwise specifically listed, the substance is “legal” until it is particularly scheduled, although the state or federal analogue statute could fill the void until the substance is scheduled.<sup>22</sup>

Among the recommendations in its report, the Broward County Grand Jury recommended that the Legislature adopt a classification system to include synthetic drugs within the existing provisions of s. 893.13, F.S.<sup>23</sup>

### **Chapter 499 - Florida Drug and Cosmetic Act**

The Florida Drug and Cosmetic Act in ch. 499, F.S., consists of three parts that cover drugs, devices, cosmetics, and household products; ether; and medical gas. Section 499.003(18), F.S., defines the term drug to mean an article that is:

- (a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic

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<sup>18</sup> National Alliance for Model State Drug Laws, *Neurochemical Approach to Scheduling Novel Psychoactive Substances in the United States*, 2015. A copy is available at: <http://www.namsdl.org/library/FF633AB8-AA08-77FD-6A4EB68D8CD0DE20> (last visited February 4, 2016).

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

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

<sup>21</sup> *Id.*

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

<sup>23</sup> See note 11.

Pharmacopoeia of the United States, or any supplement to any of those publications;

(b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals;

(c) Intended to affect the structure or any function of the body of humans or other animals; or

(d) Intended for use as a component of any article specified in paragraph (a), paragraph (b), or paragraph (c), and includes active pharmaceutical ingredients, but does not include devices or their nondrug components, parts, or accessories. For purposes of this paragraph, an “active pharmaceutical ingredient” includes any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or other animals.

Section 499.005, F.S., specifies prohibited acts, including the manufacture, repackaging, sale, delivery, or holding or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded or has otherwise been rendered unfit for human or animal use.

Section 499.0051, F.S., provides criminal acts and criminal penalties under ch. 499, F.S., including the knowing sale or transfer of a prescription drug to an unauthorized person in a wholesale transaction (second degree felony); the knowing sale or delivery, or possession with intent to sell, contraband prescription drugs (second degree felony); and knowing trafficking in contraband prescription drugs (first degree felony).<sup>24</sup>

### **III. Effect of Proposed Changes:**

#### **Controlled Substances**

The bill amends s. 893.02, F.S., to define and revise definitions for chemical terms used in ch. 893, F.S., including “cannabinoid receptor agonist,” “homologue,” “nitrogen-heterocyclic analog,” and “positional isomer.”

The bill amends s. 893.03, F.S., to describe, by core structure, the following synthetic controlled substances:

- Synthetic cannabinoids;
- Substituted cathinones;
- Substituted phenethylamines;
- N-benzyl phenethylamine compounds;
- Substituted tryptamines; and

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<sup>24</sup> Section 499.003(11), F.S., defines a contraband prescription drug as follows: “any adulterated drug, as defined in s. 499.006, any counterfeit drug, as defined in this section, and also means any prescription drug for which a pedigree paper does not exist, or for which the pedigree paper in existence has been forged, counterfeited, falsely created, or contains any altered, false, or misrepresented matter.”

- Substituted phenylcyclohexylamines.

According to the Office of the Attorney General, the class descriptions define these groups of substances by specific core structure to limit the effect that possible alterations to these substances may have in regards to remaining subject to the prohibitions in ch. 893, F.S. Each class description includes examples of compounds that are covered by the class description. The criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill amends s. 893.0356(3), F.S., to revise the definition of the term “substantially similar” to relate to the chemical structure of the substance. A substance is substantially similar to a controlled substance if it has a single difference in the structural formula that substitutes one atom or functional group for another, including, but not limited to, one halogen for another halogen, one hydrogen for a halogen or vice versa, an alkyl group added or deleted as a side chain to or from a molecule, or an alkyl group added or deleted from a side chain of a molecule.

The bill also amends s. 893.0356(4)(j), F.S., to provide additional factors for determining whether a substance is an analog of a controlled substance, including comparisons to the accepted methods of marketing, distribution, and sales of the substance.

The bill also amends ss. 893.03, 893.033, and 893.135, F.S., to revise the chemical terms for existing substances by correcting errors in existing substance listings and deleting double entries. According to the Office of the Attorney General, the chemical terms in these provisions were reviewed by chemists and the revisions in this bill are based on their recommendations.

### **Prohibitions**

The bill amends s. 893.13(1)(h), F.S., to create a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver, any unlawful controlled substance in, on, or near an assisted living facility. The noncriminal penalty is a \$500 fine and 100 hours of community service and is in addition to any other lawful penalty for the offense. This noncriminal penalty refers to the remaining controlled substances listed in s. 893.03, F.S., that are not specifically listed in the paragraph.

The bill amends s. 893.13(4)(c), F.S., to create a felony of the third degree for a person 18 years of age or older who delivers any illegal controlled substance to a person younger than 18 years of age, who uses or hires a person younger than 18 years of age in the sale or delivery of such substance, or who uses a person younger than 18 years of age to assist in avoiding detection for specified violations. This criminal violation refers to the remaining controlled substances listed in s. 893.03, F.S., that are not specifically listed in the subsection.

The bill amends s. 921.0022, F.S., to revise the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony

offender whose offense was committed on or after October 1, 1998. The bill revises the chart to include a violation of s. 893.13(4)(c), F.S., as a “Level 3” violation.<sup>25</sup>

The bill amends s. 893.13(6)(d), F.S., to create a felony of the second degree for actual or constructive possession of a Schedule V controlled substance unless the controlled substance was lawfully obtained from a practitioner<sup>26</sup> or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice.

**The bill amends s. 895.02(1)(a)9., F.S., to specify that crimes in s. 499.0051, F.S., relating to misbranded drugs are included in the definition of “racketeering activity.” Nuisance Violations**

The bill amends s. 893.0138(2), F.S., to provide that a place or premises that has been used on two or more occasions within a six-month period as a site of a violation of ch. 499, F.S., may be declared a public nuisance and abated.

**Drug Paraphernalia**

The bill amends s. 893.145, F.S., to include misbranded drugs in the listing of paraphernalia that is deemed to be contraband and subject to civil forfeiture.

**Effective Date**

The bill provides an effective date of July 1, 2016.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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<sup>25</sup> The offense severity ranking chart in s. 921.0022, F.S., has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense.

<sup>26</sup> Section 893.02(21), F.S., defines the term “practitioner” to mean “a physician licensed pursuant to chapter 458, a dentist licensed pursuant to chapter 466, a veterinarian licensed pursuant to chapter 474, an osteopathic physician licensed pursuant to chapter 459, a naturopath licensed pursuant to chapter 462, a certified optometrist licensed pursuant to chapter 463, or a podiatric physician licensed pursuant to chapter 461, provided such practitioner holds a valid federal controlled substance registry number.”

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Office of the Attorney General and the Florida Department of Law Enforcement anticipate that the FDLE's Crime Laboratory workload may experience an initial increase in costs associated with the testing of confiscated substances. However, the agencies further anticipate that the increase will be short-lived as the market for the substances is disrupted.

The Criminal Justice Impact Conference determined that CS/SB 1528, as filed, will have a positive indeterminate impact on the prison population, meaning that it will increase the prison population by an amount that cannot be quantified. PCS/CS/SB 1528 likely would have a similar impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 893.02, 893.03, 893.033, 893.0356, 893.13, 893.135, 893.138, 893.145, 895.02, and 921.0022.

This bill reenacts the following sections of the Florida Statutes: 39.01, 316.193, 322.2616, 327.35, 440.102, 456.44, 458.326, 458.3265, 459.0137, 463.0055, 465.0276, 499.0121, 499.029, 782.04, 787.06, 817.563, 831.31, 893.0301, 893.035, 893.05, 893.055, 893.07, 893.12, 893.138, 944.474, 893.149, 397.451, 435.07, 772.12, 775.084, 810.02, 812.014, 831.311, 893.1351, 893.15, 903.133, 921.187, 893.147, 16.56, 655.50, 896.101, and 905.34.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice  
on February 11, 2016:**

- The committee substitute includes technical amendments to the description of the chemical properties of certain synthetic cannabinoids.

**CS by Regulated Industries on January 27, 2016:**

The committee substitute does not amend ss. 561.29 and 569.003, F.S., to require the division to suspend an alcoholic beverage license for one year upon a finding a person has been convicted of a violation of ch. 499, F.S.

**B. Amendments:**

None.



657954

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
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Appropriations Subcommittee on Criminal and Civil Justice  
(Hutson) recommended the following:

**Senate Amendment**

Delete lines 637 - 638  
and insert:  
structure with substitution at either or both the 3-position or  
9-position, with or without substitution at the 1-position





717368

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
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	.	
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Appropriations Subcommittee on Criminal and Civil Justice  
(Hutson) recommended the following:

**Senate Amendment**

Delete line 969  
and insert:  
between either two core rings, or linkage between a core ring  
and group structure, with or without the

By the Committee on Regulated Industries; and Senator Simpson

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A bill to be entitled

An act relating to illicit drugs; amending s. 893.02, F.S.; defining terms; deleting a definition; revising definitions; amending s. 893.03, F.S.; providing that class designation is a way to reference scheduled controlled substances; adding, deleting, and revising the list of Schedule I controlled substances; revising the list of Schedule III anabolic steroids; amending s. 893.033, F.S.; adding, deleting, and revising the list of precursor and essential chemicals; amending s. 893.0356, F.S.; defining the term "substantially similar"; deleting the term "potential for abuse"; requiring that a controlled substance analog be treated as the highest scheduled controlled substance of which it is an analog; amending s. 893.13, F.S.; creating a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver any unlawful controlled substance in, on, or near an assisted living facility; creating a criminal penalty for a person 18 years of age or older who delivers to a person younger than 18 years of age any illegal controlled substance, who uses or hires a person younger than 18 years of age in the sale or delivery of such substance, or who uses a person younger than 18 years of age to assist in avoiding detection for specified violations; deleting a criminal penalty for possession of a certain amount of specified controlled substances; deleting certain exclusions to the definition of the term "cannabis"; creating a criminal penalty for possession of specified controlled substances; correcting a cross-reference; amending s.

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893.135, F.S.; revising a dosage unit to include a gelatin capsule for the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance; amending s. 893.138, F.S.; authorizing a place or premises that has been used on two or more occasions for specified violations within a certain time period to be declared a public nuisance; amending s. 893.145, F.S.; revising the definition of the term "drug paraphernalia"; amending s. 895.02, F.S.; revising the definition of the term "racketeering activity"; amending s. 921.0022, F.S.; adding an adult delivering controlled substances to a minor, using or hiring a minor to sell controlled substances, or using a minor to avoid detection or apprehension to level 3 of the offense severity ranking chart of the Criminal Punishment Code; making technical changes; reenacting ss. 39.01(30)(a) and (g), 316.193(5), 322.2616(2)(c), 327.35(5), 440.102(11)(b), 456.44(2), 458.326(3), 458.3265(1)(e), 459.0137(1)(e), 463.0055(4)(a), 465.0276(1)(b), 499.0121(14) and (15)(a), 499.029(3)(a), 782.04(1) and (4), 787.06(2)(a), 817.563(1), 831.31, 893.0301, 893.035(7)(a), 893.05(1), 893.055(1)(b), 893.07(5)(b), 893.12(2)(b), (c), and (d), and 944.474(2), F.S., to incorporate the amendment made to s. 893.03, F.S., in references thereto; reenacting s. 893.149(4), F.S., to incorporate the amendment made to s. 893.033, F.S., in a reference thereto; reenacting ss. 397.451(4)(b),

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435.07(2), 772.12(2), 775.084(1)(a), 810.02(3),  
812.014(2), 831.311(1), 893.1351(1), 893.138(3),  
893.15, 903.133, and 921.187(1)(l), F.S., to  
incorporate the amendment made to s. 893.13, F.S., in  
references thereto; reenacting ss. 893.12(2)(a) and  
893.147(6)(a), F.S., to incorporate the amendment made  
to s. 893.145, F.S., in references thereto; reenacting  
ss. 16.56(1)(a), 655.50(3)(g), 896.101(2)(g), and  
905.34, F.S., to incorporate the amendment made to s.  
895.02, F.S., in references thereto; providing an  
effective date.

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

Section 1. Subsections (2), (11), and (16) of section  
893.02, Florida Statutes, are amended, new subsections (17) and  
(20) are added to that section, present subsections (17), (18),  
(19), (20), (21), (22), and (23) of that section are  
redesignated as subsections (18), (19), (21), (22), (23), (24),  
and (25), respectively, and subsections (4) and (14) are  
republished, to read:

893.02 Definitions.—The following words and phrases as used  
in this chapter shall have the following meanings, unless the  
context otherwise requires:

(2) "Cannabinoid receptor agonist" means a chemical  
compound or substance that, according to scientific or medical  
research, study, testing, or analysis demonstrates the presence  
of binding activity at one or more of the CB1 or CB2 cell  
membrane receptors located within the human body ~~"Analog" or~~

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91 ~~"chemical analog" means a structural derivative of a parent~~  
92 ~~compound that is a controlled substance.~~

93 (4) "Controlled substance" means any substance named or  
94 described in Schedules I-V of s. 893.03. Laws controlling the  
95 manufacture, distribution, preparation, dispensing, or  
96 administration of such substances are drug abuse laws.

97 (11) "Homologue" means a chemical compound in a series in  
98 which each compound differs by one or more repeating hydrocarbon  
99 functional group units at any single point within the compound  
100 ~~alkyl functional groups on an alkyl side chain.~~

101 (14) "Listed chemical" means any precursor chemical or  
102 essential chemical named or described in s. 893.033.

103 (16) "Mixture" means any physical combination of two or  
104 more substances, including, but not limited to, a blend, an  
105 aggregation, a suspension, an emulsion, a solution, or a dosage  
106 unit, whether or not such combination can be separated into its  
107 components by physical means, whether mechanical or thermal.

108 (17) "Nitrogen-heterocyclic analog" means an analog of a  
109 controlled substance which has a single carbon atom in a cyclic  
110 structure of a compound replaced by a nitrogen atom.

111 (20) "Positional isomer" means any substance that possesses  
112 the same molecular formula and core structure and that has the  
113 same functional group or substituent as those found in the  
114 respective controlled substance, attached at any positions on  
115 the core structure, but in such manner that no new chemical  
116 functionalities are created and no existing chemical  
117 functionalities are destroyed relative to the respective  
118 controlled substance. Rearrangements of alkyl moieties within or  
119 between functional groups or substituents, or divisions or

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120 combinations of alkyl moieties, which do not create new chemical  
121 functionalities or destroy existing chemical functionalities,  
122 are allowed and include resulting compounds that are positional  
123 isomers. As used in this definition, the term "core structure"  
124 means the parent molecule that is the common basis for the class  
125 that includes, but is not limited to, tryptamine,  
126 phenethylamine, or ergoline. Examples of rearrangements  
127 resulting in creation or destruction of chemical  
128 functionalities, and therefore resulting in compounds that are  
129 not positional isomers, include, but are not limited to, ethoxy  
130 to alpha-hydroxyethyl, hydroxy and methyl to methoxy, or the  
131 repositioning of a phenolic or alcoholic hydroxy group to create  
132 a hydroxyamine. Examples of rearrangements resulting in  
133 compounds that would be positional isomers, include, but are not  
134 limited to, tert-butyl to sec-butyl, methoxy and ethyl to  
135 isopropoxy, N,N-diethyl to N-methyl-N-propyl, or alpha-  
136 methylamino to N-methylamino.

137 Section 2. Section 893.03, Florida Statutes, is amended to  
138 read:

139 893.03 Standards and schedules.—The substances enumerated  
140 in this section are controlled by this chapter. The controlled  
141 substances listed or to be listed in Schedules I, II, III, IV,  
142 and V are included by whatever official, common, usual,  
143 chemical, ~~or~~ trade name, or class designated. The provisions of  
144 this section shall not be construed to include within any of the  
145 schedules contained in this section any excluded drugs listed  
146 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
147 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
148 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted

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Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

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

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

1. Acetyl-alpha-methylfentanyl.
2. Acetylmethadol.
3. Allylprodine.
4. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM) .
5. Alphamethadol.
6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).
7. Alpha-methylthiofentanyl.
8. Alphameprodine.
9. Benzethidine.
10. Benzylfentanyl.
11. Betacetylmethadol.
12. Beta-hydroxyfentanyl.

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- 178 13. Beta-hydroxy-3-methylfentanyl.  
179 14. Betameprodine.  
180 15. Betamethadol.  
181 16. Betaprodine.  
182 17. Clonitazene.  
183 18. Dextromoramide.  
184 19. Diampromide.  
185 20. Diethylthiambutene.  
186 21. Difenoxin.  
187 22. Dimenoxadol.  
188 23. Dimepheptanol.  
189 24. Dimethylthiambutene.  
190 25. Dioxaphetyl butyrate.  
191 26. Dipipanone.  
192 27. Ethylmethylthiambutene.  
193 28. Etonitazene.  
194 29. Etoxeridine.  
195 30. Flunitrazepam.  
196 31. Furethidine.  
197 32. Hydroxypethidine.  
198 33. Ketobemidone.  
199 34. Levomoramide.  
200 35. Levophenacymorphan.  
201 36. Desmethylprodine (1-Methyl-4-Phenyl-4-  
202 Propionoxypiperidine) ~~(MPPP)~~.  
203 37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-  
204 piperidyl]-N-phenylpropanamide).  
205 38. 3-Methylthiofentanyl.  
206 39. Morpheridine.



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- 207 40. Noracymethadol.  
208 41. Norlevorphanol.  
209 42. Normethadone.  
210 43. Norpipanone.  
211 44. Para-Fluorofentanyl.  
212 45. Phenadoxone.  
213 46. Phenampromide.  
214 47. Phenomorphan.  
215 48. Phenoperidine.  
216 49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-  
217 Acetyloxypiperidine) ~~(PEPAP)~~.  
218 50. Piritramide.  
219 51. Proheptazine.  
220 52. Properidine.  
221 53. Propiram.  
222 54. Racemoramide.  
223 55. Thenylfentanyl.  
224 56. Thiofentanyl.  
225 57. Tilidine.  
226 58. Trimeperidine.  
227 59. Acetylfentanyl.  
228 60. Butyrylfentanyl.  
229 61. Beta-Hydroxythiofentanyl.

230 (b) Unless specifically excepted or unless listed in  
231 another schedule, any of the following substances, their salts,  
232 isomers, and salts of isomers, whenever the existence of such  
233 salts, isomers, and salts of isomers is possible within the  
234 specific chemical designation:

- 235 1. Acetorphine.

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2. Acetyldihydrocodeine.
3. Benzylmorphine.
4. Codeine methylbromide.
5. Codeine-N-Oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Drotebanol.
10. Etorphine (except hydrochloride salt).
11. Heroin.
12. Hydromorphenol.
13. Methyldesorphine.
14. Methyldihydromorphine.
15. Monoacetylmorphine.
16. Morphine methylbromide.
17. Morphine methylsulfonate.
18. Morphine-N-Oxide.
19. Myrophine.
20. Nicocodine.
21. Nicomorphine.
22. Normorphine.
23. Pholcodine.
24. Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of their salts, isomers, including optical, positional, or geometric isomers, homologues, nitrogen-heterocyclic analogs, esters, ethers, and

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salts of isomers, homologues, nitrogen-heterocyclic analogs,  
esters, or ethers, if the existence of such salts, isomers, and  
salts of isomers is possible within the specific chemical  
designation or class description:

1. Alpha-Ethyltryptamine.
2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-oxazoline)  
~~(4-methylaminorex)~~.
3. Aminorex (2-Amino-5-phenyl-2-oxazoline) ~~(Aminorex)~~.
4. DOB (4-Bromo-2,5-dimethoxyamphetamine).
5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
6. Bufotenine.
7. Cannabis.
8. Cathinone.
9. DET (Diethyltryptamine).
10. 2,5-Dimethoxyamphetamine.
11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine) ~~2,5-Dimethoxy-~~  
~~4-ethylamphetamine (DOET)~~.
12. DMT (Dimethyltryptamine).
13. PCE (N-Ethyl-1-phenylcyclohexylamine) ~~(PCE)~~ (Ethylamine  
analog of phencyclidine).
14. JB-318 (N-Ethyl-3-piperidyl benzilate).
15. N-Ethylamphetamine.
16. Fenethylamine.
17. 3,4-Methylenedioxy-N-hydroxyamphetamine ~~N-Hydroxy-3,4-~~  
~~methylenedioxyamphetamine~~.
18. Ibogaine.
19. LSD (Lysergic acid diethylamide) ~~(LSD)~~.
20. Mescaline.
21. Methcathinone.

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- 294 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 295 23. PMA (4-Methoxyamphetamine).
- 296 24. PMMA (4-Methoxymethamphetamine).
- 297 25. DOM (4-Methyl-2,5-dimethoxyamphetamine).
- 298 26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
- 299 27. MDA (3,4-Methylenedioxyamphetamine).
- 300 28. JB-336 (N-Methyl-3-piperidyl benzilate).
- 301 29. N,N-Dimethylamphetamine.
- 302 30. Parahexyl.
- 303 31. Peyote.
- 304 32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) ~~(PCPY)~~
- 305 (Pyrrolidine analog of phencyclidine).
- 306 33. Psilocybin.
- 307 34. Psilocyn.
- 308 35. *Salvia divinorum*, except for any drug product approved
- 309 by the United States Food and Drug Administration which contains
- 310 *Salvia divinorum* or its isomers, esters, ethers, salts, and
- 311 salts of isomers, esters, and ethers, if the existence of such
- 312 isomers, esters, ethers, and salts is possible within the
- 313 specific chemical designation.
- 314 36. Salvinorin A, except for any drug product approved by
- 315 the United States Food and Drug Administration which contains
- 316 Salvinorin A or its isomers, esters, ethers, salts, and salts of
- 317 isomers, esters, and ethers, if the existence of such isomers,
- 318 esters, ethers, and salts is possible within the specific
- 319 chemical designation.
- 320 ~~37. Tetrahydrocannabinols.~~
- 321 37. Xylazine.
- 322 38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) ~~(TCP)~~

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(Thiophene analog of phencyclidine).

39. 3,4,5-Trimethoxyamphetamine.

40. Methylone (3,4-Methylenedioxymethcathinone).

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

42. Methylmethcathinone.

43. Methoxymethcathinone.

44. Fluoromethcathinone.

45. Methylethcathinone.

46. CP 47,497 (2-~~(1R,3S)~~-3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol), ~~also known as CP 47,497~~ and its dimethyloctyl (C8) homologue.

47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol], ~~also known as HU-210~~.

48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole), ~~also known as JWH-018~~.

49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole), ~~also known as JWH-073~~.

50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole), ~~also known as JWH-200~~.

51. BZP (Benzylpiperazine).

52. Fluorophenylpiperazine.

53. Methylphenylpiperazine.

54. Chlorophenylpiperazine.

55. Methoxyphenylpiperazine.

56. DBZP (1,4-Dibenzylpiperazine).

57. TFMPP (~~3~~-Trifluoromethylphenylpiperazine).

58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).

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352       59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).  
 353       60. 5-Hydroxy-N-methyltryptamine.  
 354       61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).  
 355       62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).  
 356       63. Methyltryptamine.  
 357       64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).  
 358       65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).  
 359       66. Tyramine (4-Hydroxyphenethylamine).  
 360       67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).  
 361       68. DiPT (N,N-Diisopropyltryptamine).  
 362       69. DPT (N,N-Dipropyltryptamine).  
 363       70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).  
 364       71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine) ~~N,N-~~  
 365 ~~Diallyl-5-Methoxytryptamine.~~  
 366       72. DOI (4-Iodo-2,5-dimethoxyamphetamine).  
 367       73. DOC (4-Chloro-2,5-dimethoxyamphetamine).  
 368       74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).  
 369       75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine)  
 370 ~~2,5-Dimethoxy-4-isopropylthiophenethylamine).~~  
 371       76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).  
 372       77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine) ~~2,5-~~  
 373 ~~Dimethoxy-4-methylthiophenethylamine).~~  
 374       78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine) ~~2,5-~~  
 375 ~~Dimethoxy-4-ethylthiophenethylamine).~~  
 376       79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine)  
 377 ~~2,5-Dimethoxy-4-(n)-propylthiophenethylamine).~~  
 378       80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).  
 379       81. Butylone (3,4-Methylenedioxy-alpha-  
 380 methylaminobutyrophenone) ~~beta-keto-N-~~

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381 ~~methylenedioxylpropylamine).~~

382 82. Ethcathinone.

383 83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).

384 84. Naphyrone (Naphthylpyrovalerone).

385 85. Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone)

386 ~~N,N-Dimethyl-3,4-methylenedioxycathinone.~~

387 86. 3,4-Methylenedioxy-N,N-diethylcathinone ~~N,N-Diethyl-~~  
388 ~~3,4-methylenedioxycathinone.~~

389 87. 3,4-Methylenedioxy-propiofenone.

390 88. 3,4-Methylenedioxy-alpha-bromopropiofenone ~~2-Bromo-~~  
391 ~~3,4-Methylenedioxypropiofenone.~~

392 89. 3,4-Methylenedioxy-propiofenone-2-oxime.

393 90. 3,4-Methylenedioxy-N-acetylcathinone ~~N-Acetyl-3,4-~~  
394 ~~methylenedioxycathinone.~~

395 91. 3,4-Methylenedioxy-N-acetylmethcathinone ~~N-Acetyl-N-~~  
396 ~~Methyl-3,4-Methylenedioxycathinone.~~

397 92. 3,4-Methylenedioxy-N-acetylethcathinone ~~N-Acetyl-N-~~  
398 ~~Ethyl-3,4-Methylenedioxycathinone.~~

399 93. Bromomethcathinone.

400 94. Buphedrone (alpha-Methylamino-butyrophenone).

401 95. Eutylone (3,4-Methylenedioxy-alpha-  
402 ethylaminobutyrophenone) ~~beta-Keto-~~  
403 ~~Ethylbenzodioxylbutanamine).~~

404 96. Dimethylcathinone.

405 97. Dimethylmethcathinone.

406 98. Pentylone (3,4-Methylenedioxy-alpha-  
407 methyaminovalerophenone) ~~(beta-Keto-~~  
408 ~~Methylbenzodioxylpentanamine).~~

409 99. MDPPP (3,4-Methylenedioxy-alpha-

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pyrrolidinopropiophenone) ~~(MDPPP) 3,4-Methylenedioxy-alpha-~~  
pyrrolidinopropiophenone.

100. MDPBP (3,4-Methylenedioxy-alpha-  
pyrrolidinobutyrophenone) ~~(MDPBP) 3,4-Methylenedioxy-alpha-~~  
~~pyrrolidinobutyrophenone.~~

101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone)  
~~(MOPPP).~~

102. MPHP (Methyl-alpha-pyrrolidinohexanophenone) ~~Methyl-~~  
~~alpha-pyrrolidinohexiophenone (MPHP).~~

103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP  
(Benocyclidine) Benocyclidine (BCP) or  
~~benzothiophenylcyclohexylpiperidine (BTCP).~~

104. F-MABP (Fluoromethylaminobutyrophenone) ~~(F-MABP).~~

105. MeO-PBP (Methoxypyrrolidinobutyrophenone) ~~(MeO-PBP).~~

106. Et-PBP (Ethyl-pyrrolidinobutyrophenone) ~~(Et-PBP).~~

107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone) ~~(3-~~  
~~Me-4-MeO-MCAT).~~

108. Me-EABP (Methylethylaminobutyrophenone) ~~(Me-EABP).~~

109. Etizolam Methylamino-butyrophenone ~~(MABP).~~

110. PPP (Pyrrolidinopropiophenone) ~~(PPP).~~

111. PBP (Pyrrolidinobutyrophenone) ~~Pyrrolidinobutyrophenone~~  
~~(PBP).~~

112. PVP (Pyrrolidinovalerophenone) or  
(Pyrrolidinopentiophenone) ~~(PVP).~~

113. MPPP (Methyl-alpha-pyrrolidinopropiophenone) ~~(MPPP).~~

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

115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole) 2-  
~~Methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone).~~

116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole) ~~Naphthalen-1-~~



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439 ~~yl-(1-hexylindol-3-yl)methanone).~~

440 117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

441 118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole) ~~Naphthalen-1-~~  
442 ~~yl-(1-propyl-1H-indol-3-yl)methanone).~~

443 119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole) ~~4-~~  
444 ~~methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone).~~

445 120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

446 121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-  
447 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene) ~~((6aR,10aR)-3-~~  
448 ~~(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-~~  
449 ~~dibenzo[b,d]pyran)).~~

450 122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole) ~~3-~~  
451 ~~(naphthalen-1-ylmethyl)-1-pentyl-1H-indole).~~

452 123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

453 124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole) ~~2-~~  
454 ~~(2-chlorophenyl)-1-(1-pentylindol-3-yl)ethanone).~~

455 125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole) ~~4-~~  
456 ~~ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone).~~

457 126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole) ~~2-~~  
458 ~~(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone).~~

459 127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole) ~~2-~~  
460 ~~(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)ethanone).~~

461 128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).

462 129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).

463 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-  
464 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-  
465 ol).

466 131. HU-308 ([ (1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-methyloctan-  
467 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]

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methanol).

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

133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene)  
~~Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone~~).

134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide).

135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide).

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

137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole) ~~1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone~~).

138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole) ~~1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl)methanone~~).

139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole) ~~(4-methoxyphenyl)-(1-pentyl-1H-indol-3-yl)methanone~~).

140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole) ~~1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenylethanone)~~).

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

142. WIN55,212-3 ([ (3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

143. Pentedrone (alpha-Methylaminovalerophenone) ~~2-~~

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~~(methylamino)-1-phenyl-1-pentanone).~~

144. Fluoroamphetamine.

145. Fluoromethamphetamine.

146. Methoxetamine.

147. Methiopropamine.

148. 4-Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone) ~~2-Methylamino-1-(4-methylphenyl)butan-1-one).~~

149. APB ((2-Aminopropyl)benzofuran).

150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).

151. UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole) ~~(1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylecyclopropyl)methanone).~~

152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole) ~~(1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylecyclopropyl)methanone).~~

153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole) ~~(1-(5-chloropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylecyclopropyl)methanone).~~

154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide) ~~1-pentyl-N-tricyclo[3.3.1.1<sup>3,7</sup>]dec-1-yl-1H-indazole-3-carboxamide).~~

155. AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole) ~~(2-iodophenyl)[1-[(1-methyl-2-piperidinyl)methyl]-1H-indol-3-yl]-methanone).~~

156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide) ~~1-(5-fluoropentyl)-N-tricyclo[3.3.1.1<sup>3,7</sup>]dec-1-yl-1H-indole-3-carboxamide).~~

157. URB-597 ((3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-

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cyclohexylcarbamate).

158. URB-602 ([1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester).

159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one).

160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine) ~~2-(2,5-Dimethoxy-4-methylphenyl)ethanamine~~).

161. 2C-H (2,5-Dimethoxyphenethylamine) ~~2-(2,5-Dimethoxyphenyl)ethanamine~~).

162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine) ~~2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine~~).

163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine) ~~2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine~~).

164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine) ~~4-iodo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine~~).

165. MDMA (3,4-Methylenedioxymethamphetamine) ~~(MDMA)~~.

166. PB-22 (8-Quinoliny 1-pentylindole-3-carboxylate) ~~1-pentyl-8-quinoliny 1-ester-1H-indole-3-carboxylic acid~~).

167. 5-Fluoro PB-22 (8-Quinoliny 1-(fluoropentyl)indole-3-carboxylate) ~~8-quinoliny 1-ester-1-(5-fluoropentyl)-1H-indole-3-carboxylic acid~~).

168. BB-22 (8-Quinoliny 1-(cyclohexylmethyl)indole-3-carboxylate) ~~1-(cyclohexylmethyl)-8-quinoliny 1-ester-1H-indole-3-carboxylic acid~~).

169. 5-Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide) ~~N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide~~).

170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

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~~pentylindazole-3-carboxamide) N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide).~~

171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide) ~~N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide).~~

172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide) ~~N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide).~~

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

174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine) ~~4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).~~

175. 25C-G-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine) ~~4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).~~

176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide) ~~: N-[1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide.~~

177. FUB-PB-22 (8-Quinoliny 1-(4-fluorobenzyl)indole-3-carboxylate) ~~: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate.~~

178. Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide) ~~: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide.~~

179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide) ~~: Methyl-2-(1-~~

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~~(fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate.~~

180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole)-  
~~[1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone.~~

181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-  
1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).

182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-  
(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-  
hexahydrobenzo[c]chromen-1-ol).

183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-  
(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-  
hexahydrobenzo[c]chromen-1-ol).

184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-  
6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9  
diol).

185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-  
dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-  
tetrahydro-6aH-benzo[c]chromen-1-ol).

186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-  
6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).

187. MAPB ((2-Methylaminopropyl)benzofuran).

188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).

189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).

190. Synthetic Cannabinoids. Unless specifically excepted  
or unless listed in another schedule or contained within a  
pharmaceutical product approved by the United States Food and  
Drug Administration, any material, compound, mixture, or  
preparation that contains any quantity of a synthetic  
cannabinoid found to be in any of the following chemical class  
descriptions, or homologues, nitrogen-heterocyclic analogs,

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isomers (including optical, positional, or geometric), esters, ethers, salts, and salts of homologues, nitrogen-heterocyclic analogs, isomers, esters, or ethers, whenever the existence of such homologues, nitrogen-heterocyclic analogs, isomers, esters, ethers, salts, and salts of isomers, esters, or ethers is possible within the specific chemical class or designation. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or the compounds of these structures shall be included under this subparagraph, regardless of their specific numerical designation of atomic positions covered, if it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

a. Tetrahydrocannabinols. Any tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis*, the synthetic equivalents of the substances contained in the plant or in the resinous extracts of the genus *Cannabis*, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, including, but not limited to, Delta 9 tetrahydrocannabinols and their optical isomers, Delta 8 tetrahydrocannabinols and their optical isomers, Delta 6a,10a tetrahydrocannabinols and their optical isomers, or any compound containing a tetrahydrobenzo[c]chromene structure with substitution at the 3-position or substitution at the 9-position, with or without substitution at the 1-position with hydroxyl or alkoxy groups, including, but not limited to:

(I) Tetrahydrocannabinol.

(II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-

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

(III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-(2,3-dimethylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(X) Parahexyl.

b. Naphthoylindoles, Naphthoylindazoles, Naphthoylcarbazoles, Naphthylmethylinindoles, Naphthylmethylinindazoles, and Naphthylmethylocarbazoles. Any compound containing a naphthoylindole, naphthoylindazole, naphthoylcarbazole, naphthylmethylinindole, naphthylmethylinindazole, or naphthylmethylocarbazole structure, with or without substitution on the indole, indazole, or carbazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

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

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



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671 naphthoyl)indole).

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

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

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

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

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

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

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

679 (X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).

680 (XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).

681 (XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).

682 (XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).

683 (XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-  
684 naphthoyl)indole).

685 (XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).

686 (XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

687 (XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-  
688 naphthoyl)indole).

689 (XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-naphthoyl)indole).

690 (XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).

691 (XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).

692 (XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).

693 (XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-  
694 naphthylmethyl]indole).

695 (XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-  
696 naphthoyl)indole).

697 (XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-  
698 naphthoyl)indole).

699 (XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)

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indole).

(XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).

(XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).

(XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).

(XXVIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).

(XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).

(XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-naphthoyl)indole).

(XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-naphthoyl)indole).

(XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).

(XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-naphthoyl)indole).

(XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-naphthoyl)indole).

(XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).

(XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).

(XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-naphthoyl)indole).

(XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-naphthoyl)indole).

(XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).

(XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-naphthoyl)carbazole).

c. Naphthoylpyrroles. Any compound containing a naphthoylpyrrole structure, with or without substitution on the pyrrole ring to any extent, whether or not substituted on the

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

(I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).

(II) JWH-031 (1-Hexyl-3-(1-naphthoyl)pyrrole).

(III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-naphthoyl)pyrrole).

(VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-naphthoyl)pyrrole).

(X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-naphthoyl)pyrrole).

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

e. Phenylacetylindoles and Phenylacetylindazoles. Any compound containing a phenylacetylindole or phenylacetylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).

(II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

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(III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).

(IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).

(V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).

(VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).

(VII) Cannabipiperidiethanone.

(VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).

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

(I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol).

(II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8) homologue).

(III) CP-55,940 (2-(3-Hydroxy-5-propanol-cyclohexyl)-5-(2-methyloctan-2-yl)phenol).

g. Benzoylindoles and Benzoylindazoles. Any compound containing a benzoylindole or benzoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).

(II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).

(III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodo-5-nitrobenzoyl)indole).

(IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-(4-methoxybenzoyl)indole).

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787 (V) AM-2233 (1-[ (N-Methyl-2-piperidinyl)methyl]-3-(2-  
788 iodobenzoyl)indole).

789 (VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).

790 (VII) RCS-4 C4 homologue (1-Butyl-3-(4-  
791 methoxybenzoyl)indole).

792 (VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-  
793 3-(4-methoxybenzoyl)indole).

794 h. Tetramethylcyclopropanoylindoles and  
795 Tetramethylcyclopropanoylindazoles. Any compound containing a  
796 tetramethylcyclopropanoylindole or  
797 tetramethylcyclopropanoylindazole structure, with or without  
798 substitution on the indole or indazole ring to any extent,  
799 whether or not substituted on the tetramethylcyclopropyl group  
800 to any extent, including, but not limited to:

801 (I) UR-144 (1-Pentyl-3-(2,2,3,3-  
802 tetramethylcyclopropanoyl)indole).

803 (II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-  
804 tetramethylcyclopropanoyl)indole).

805 (III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-  
806 tetramethylcyclopropanoyl)indole).

807 (IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-  
808 tetramethylcyclopropanoyl)indole).

809 (V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-  
810 tetramethylcyclopropanoyl)indole).

811 (VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-  
812 tetramethylcyclopropanoyl)indole).

813 (VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-  
814 tetramethylcyclopropanoyl)indole).

815 (VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-

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816 tetramethylcyclopropanoyl)indazole).

817 (IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-  
818 tetramethylcyclopropanoyl)indole).

819 (X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-  
820 tetramethylcyclopropanoyl)indole).

821 i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole  
822 carboxamides, and Adamantylindazole carboxamides. Any compound  
823 containing an adamantoyl indole, adamantoyl indazole, adamantyl  
824 indole carboxamide, or adamantyl indazole carboxamide structure,  
825 with or without substitution on the indole or indazole ring to  
826 any extent, whether or not substituted on the adamantyl ring to  
827 any extent, including, but not limited to:

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

829 (II) Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-  
830 3-carboxamide).

831 (III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-  
832 carboxamide).

833 (IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-  
834 adamantoyl)indole).

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

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

837 (VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-  
838 adamantoyl)indole).

839 j. Quinolinylindolecarboxylates,  
840 Quinolinylindazolecarboxylates, Quinolinylindolecarboxamides,  
841 and Quinolinylindazolecarboxamides. Any compound containing a  
842 quinolinylindole carboxylate, quinolinylindazole carboxylate,  
843 isoquinolinylindole carboxylate, isoquinolinylindazole  
844 carboxylate, quinolinylindole carboxamide, quinolinylindazole

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carboxamide, isoquinoliny lindole carboxamide, or  
isoquinoliny lindazole carboxamide structure, with or without  
substitution on the indole or indazole ring to any extent,  
whether or not substituted on the quinoline or isoquinoline ring  
to any extent, including, but not limited to:

(I) PB-22 (8-Quinoliny 1-penty lindole-3-carboxylate).

(II) Fluoro PB-22 (8-Quinoliny 1-(fluoropenty) indole-3-  
carboxylate).

(III) BB-22 (8-Quinoliny 1-(cyclohexylmethyl) indole-3-  
carboxylate).

(IV) FUB-PB-22 (8-Quinoliny 1-(4-fluorobenzyl) indole-3-  
carboxylate).

(V) NPB-22 (8-Quinoliny 1-penty lindazole-3-carboxylate).

(VI) Fluoro NPB-22 (8-Quinoliny 1-(fluoropenty) indazole-  
3-carboxylate).

(VII) FUB-NPB-22 (8-Quinoliny 1-(4-fluorobenzyl) indazole-  
3-carboxylate).

(VIII) THJ (8-Quinoliny 1-penty lindazole-3-carboxamide).

(IX) Fluoro THJ (8-Quinoliny 1-(fluoropenty) indazole-3-  
carboxamide).

k. Naphthyl indole carboxylates and  
Naphthyl indazole carboxylates. Any compound containing a  
naphthyl indole carboxylate or naphthyl indazole carboxylate  
structure, with or without substitution on the indole or  
indazole ring to any extent, whether or not substituted on the  
naphthyl ring to any extent, including, but not limited to:

(I) NM-2201 (1-Naphthalenyl 1-(5-fluoropenty) indole-3-  
carboxylate).

(II) SDB-005 (1-Naphthalenyl 1-penty lindazole-3-

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874 carboxylate).

875 (III) Fluoro SDB-005 (1-Naphthalenyl 1-  
876 (fluoropentyl)indazole-3-carboxylate).

877 (IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-  
878 carboxylate).

879 (V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-  
880 carboxylate).

881 1. Naphthylindole carboxamides and Naphthylindazole  
882 carboxamides. Any compound containing a naphthylindole  
883 carboxamide or naphthylindazole carboxamide structure, with or  
884 without substitution on the indole or indazole ring to any  
885 extent, whether or not substituted on the naphthyl ring to any  
886 extent, including, but not limited to:

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

888 (II) Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-  
889 3-carboxamide).

890 (III) Chloro-NNEI (N-Naphthalen-1-yl 1-(chloropentyl)  
891 indole-3-carboxamide).

892 (IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-  
893 carboxamide).

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

896 m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl  
897 indazole carboxamides, Alkylcarbonyl indole carboxylates, and  
898 Alkylcarbonyl indazole carboxylates. Any compound containing an  
899 alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl,  
900 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-  
901 phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an  
902 indole carboxamide, indazole carboxamide, indole carboxylate, or



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indazole carboxylate, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the alkylcarbonyl group to any extent, including, but not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

(XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-

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932 pentylindazole-3-carboxamide).

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

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

937 (XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-  
938 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

939 (XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-  
940 2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

941 (XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-  
942 2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).

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

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

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

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

951 (XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-  
952 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

953 n. Cumylindolecarboxamides and Cumylindazolecarboxamides.

954 Any compound containing a N-(2-phenylpropan-2-yl) indole  
955 carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide  
956 structure, with or without substitution on the indole or  
957 indazole ring to any extent, whether or not substituted on the  
958 phenyl ring of the cumyl group to any extent, including, but not  
959 limited to:

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

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carboxamide).

(II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

o. Other Synthetic Cannabinoids. Any material, compound, mixture, or preparation that contains any quantity of a Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

(I) With or without modification or replacement of a carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage between two core ring or group structures with or without the addition of a carbon or replacement of a carbon;

(II) With or without replacement of a core ring or group structure, whether or not substituted on the ring or group structures to any extent; and

(III) Is a cannabinoid receptor agonist, unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and Drug Administration.

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

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

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

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990 c. Any compound containing a 2-amino-1-thiophene-1-  
991 propanone structure,

992  
993 whether or not the compound is further modified:

994 (I) With or without substitution on the ring system to any  
995 extent with alkyl, alkylthio, thio, fused alkylenedioxy, alkoxy,  
996 haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused  
997 dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide  
998 substituents;

999 (II) With or without substitution at the 3-propanone  
1000 position with an alkyl substituent or removal of the methyl  
1001 group at the 3-propanone position;

1002 (III) With or without substitution at the 2-amino nitrogen  
1003 atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or  
1004 not further substituted in the ring system; or

1005 (IV) With or without inclusion of the 2-amino nitrogen atom  
1006 in a cyclic structure, including, but not limited to:

1007 (A) Methcathinone.

1008 (B) Ethcathinone.

1009 (C) Methylone (3,4-Methylenedioxy-methcathinone).

1010 (D) 2,3-Methylenedioxy-methcathinone.

1011 (E) MDPV (3,4-Methylenedioxy-pyrovalerone).

1012 (F) Methylmethcathinone.

1013 (G) Methoxymethcathinone.

1014 (H) Fluoromethcathinone.

1015 (I) Methylethcathinone.

1016 (J) Butylone (3,4-Methylenedioxy-alpha-  
1017 methylaminobutyrophenone).

1018 (K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).

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1019 (L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).  
 1020 (M) Naphyrone (Naphthylpyrovalerone).  
 1021 (N) Bromomethcathinone.  
 1022 (O) Buphedrone (alpha-Methylaminobutyrophenone).  
 1023 (P) Eutylone (3,4-Methylenedioxy-alpha-  
 1024 ethylaminobutyrophenone).  
 1025 (Q) Dimethylcathinone.  
 1026 (R) Dimethylmethcathinone.  
 1027 (S) Pentylone (3,4-Methylenedioxy-alpha-  
 1028 methylaninovalerophenone).  
 1029 (T) Pentedrone (alpha-Methylaninovalerophenone).  
 1030 (U) MDP PP (3,4-Methylenedioxy-alpha-  
 1031 pyrrolidinopropiophenone).  
 1032 (V) MDPBP (3,4-Methylenedioxy-alpha-  
 1033 pyrrolidinobutyrophenone).  
 1034 (W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).  
 1035 (X) PPP (Pyrrolidinopropiophenone).  
 1036 (Y) PVP (Pyrrolidinovalerophenone) or  
 1037 (Pyrrolidinopentiophenone).  
 1038 (Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).  
 1039 (AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).  
 1040 (BB) F-MABP (Fluoromethylaminobutyrophenone).  
 1041 (CC) Me-EABP (Methylethylaminobutyrophenone).  
 1042 (DD) PBP (Pyrrolidinobutyrophenone).  
 1043 (EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).  
 1044 (FF) Et-PBP (Ethylpyrrolidinobutyrophenone).  
 1045 (GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).  
 1046 (HH) Dimethylone (3,4-Methylenedioxy-N,N-  
 1047 dimethylcathinone).

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(II) 3,4-Methylenedioxy-N,N-diethylcathinone.  
(JJ) 3,4-Methylenedioxy-N-acetylcathinone.  
(KK) 3,4-Methylenedioxy-N-acetylmethcathinone.  
(LL) 3,4-Methylenedioxy-N-acetylethcathinone.  
(MM) Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone).  
(NN) Methyl-alpha-methylaminohexanophenone.  
(OO) N-Ethyl-N-methylcathinone.  
(PP) PHP (Pyrrolidinohexanophenone).  
(QQ) PV8 (Pyrrolidinoheptanophenone).  
(RR) Chloromethcathinone.  
(SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.  
192. Substituted Phenethylamines. Unless specifically  
excepted or unless listed in another schedule, or contained  
within a pharmaceutical product approved by the United States  
Food and Drug Administration, any material, compound, mixture,  
or preparation, including its salts, isomers, esters, or ethers,  
and salts of isomers, esters, or ethers, whenever the existence  
of such salts is possible within any of the following specific  
chemical designations, any compound containing a phenethylamine  
structure, without a beta-keto group, and without a benzyl group  
attached to the amine group, whether or not the compound is  
further modified with or without substitution on the phenyl ring  
to any extent with alkyl, alkylthio, nitro, alkoxy, thio,  
halide, fused alkylenedioxy, fused furan, fused benzofuran,  
fused dihydrofuran, or fused tetrahydropyran substituents,  
whether or not further substituted on a ring to any extent, with  
or without substitution at the alpha or beta position by any  
alkyl substituent, with or without substitution at the nitrogen

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atom, and with or without inclusion of the 2-amino nitrogen atom  
in a cyclic structure, including, but not limited to:

- a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
- b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
- d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
- f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
- g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
- h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
- j. 2C-H (2,5-Dimethoxyphenethylamine).
- k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
- l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).
- m. MDMA (3,4-Methylenedioxyamphetamine).
- n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).
- o. MDA (3,4-Methylenedioxyamphetamine).
- p. 2,5-Dimethoxyamphetamine.
- q. Fluoroamphetamine.
- r. Fluoromethamphetamine.
- s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
- t. DOB (4-Bromo-2,5-dimethoxyamphetamine).
- u. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).
- w. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- x. DOM (4-Methyl-2,5-dimethoxyamphetamine).
- y. PMA (4-Methoxyamphetamine).
- z. N-Ethylamphetamine.

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1106 aa. N-Hydroxy-3,4-methylenedioxyamphetamine.  
1107 bb. 5-Methoxy-3,4-methylenedioxyamphetamine.  
1108 cc. PMMA (4-Methoxymethamphetamine).  
1109 dd. N,N-Dimethylamphetamine.  
1110 ee. 3,4,5-Trimethoxyamphetamine.  
1111 ff. 4-APB (4-(2-Aminopropyl)benzofuran).  
1112 gg. 5-APB (5-(2-Aminopropyl)benzofuran).  
1113 hh. 6-APB (6-(2-Aminopropyl)benzofuran).  
1114 ii. 7-APB (7-(2-Aminopropyl)benzofuran).  
1115 jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).  
1116 kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).  
1117 ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).  
1118 mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).  
1119 nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).  
1120 oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).  
1121 pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).  
1122 qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).  
1123 rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).  
1124 ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-  
1125 dihydrobenzofuran),

1126  
1127 which does not include phenethylamine, mescaline as described in  
1128 subparagraph (1)(c)20., substituted cathinones as described in  
1129 subparagraph (1)(c)191., N-Benzyl phenethylamine compounds as  
1130 described in subparagraph (1)(c)193., or methamphetamine as  
1131 described in subparagraph (2)(c)4.

1132 193. N-Benzyl Phenethylamine Compounds. Unless specifically  
1133 excepted or unless listed in another schedule, or contained  
1134 within a pharmaceutical product approved by the United States



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Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure without a beta-keto group, with substitution on the nitrogen atom of the amino group with a benzyl substituent, with or without substitution on the phenyl or benzyl ring to any extent with alkyl, alkoxy, thio, alkylthio, halide, fused alkylenedioxy, fused furan, fused benzofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha position by any alkyl substituent, including, but not limited to:

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

b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-

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methylenedioxybenzyl)]phenethylamine).

i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

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

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

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

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

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

which does not include substituted cathinones as described in subparagraph (1)(c)191.

194. Substituted Tryptamines. Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and

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Drug Administration, any material, compound, mixture, or preparation containing a 2-(1H-indol-3-yl)ethanamine, for example tryptamine, structure with or without mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups, or by inclusion of the amino nitrogen atom in a cyclic structure, whether or not substituted at the alpha position with an alkyl group, whether or not substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, including, but not limited to:

- a. Alpha-Ethyltryptamine.
- b. Bufotenine.
- c. DET (Diethyltryptamine).
- d. DMT (Dimethyltryptamine).
- e. MET (N-Methyl-N-ethyltryptamine).
- f. DALT (N,N-Diallyltryptamine).
- g. EiPT (N-Ethyl-N-isopropyltryptamine).
- h. MiPT (N-Methyl-N-isopropyltryptamine).
- i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
- j. 5-Hydroxy-N-methyltryptamine.
- k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
- l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
- m. Methyltryptamine.
- n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
- o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
- p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
- q. DiPT (N,N-Diisopropyltryptamine).
- r. DPT (N,N-Dipropyltryptamine).
- s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
- t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).

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- 1222 u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).
- 1223 v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).
- 1224 w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).
- 1225 x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).
- 1226 y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-
- 1227 isopropyltryptamine).
- 1228 z. Methyl-alpha-ethyltryptamine.
- 1229 aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),

1230

1231 which does not include tryptamine, psilocyn as described in

1232 subparagraph (1)(c)34., or psilocybin as described in

1233 subparagraph (1)(c)33.

1234 195. Substituted Phenylcyclohexylamines. Unless

1235 specifically excepted or unless listed in another schedule, or

1236 contained within a pharmaceutical product approved by the United

1237 States Food and Drug Administration, any material, compound,

1238 mixture, or preparation containing a phenylcyclohexylamine

1239 structure, with or without any substitution on the phenyl ring,

1240 any substitution on the cyclohexyl ring, any replacement of the

1241 phenyl ring with a thiophenyl or benzothiophenyl ring, with or

1242 without substitution on the amine with alkyl, dialkyl, or alkoxy

1243 substitutents, inclusion of the nitrogen in a cyclic structure,

1244 or any combination of the above, including, but not limited to:

- 1245 a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP
- 1246 (Benocyclidine).
- 1247 b. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog
- 1248 of phencyclidine).
- 1249 c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine
- 1250 analog of phencyclidine).

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- 1251 d. PCPr (Phenylcyclohexylpropylamine).
- 1252 e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) (Thiophene
- 1253 analog of phencyclidine).
- 1254 f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).
- 1255 g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).
- 1256 h. Methoxetamine.
- 1257 i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).
- 1258 j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).
- 1259 k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).
- 1260 l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).
- 1261 m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).
- 1262 n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).
- 1263 o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).
- 1264 p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).
- 1265 q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).
- 1266 r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).

1267 (d) Unless specifically excepted or unless listed in

1268 another schedule, any material, compound, mixture, or

1269 preparation that ~~which~~ contains any quantity of the following

1270 substances, including any of its salts, isomers, optical

1271 isomers, salts of their isomers, and salts of these optical

1272 isomers whenever the existence of such isomers and salts is

1273 possible within the specific chemical designation:

- 1274 1. 1,4-Butanediol.
- 1275 2. Gamma-butyrolactone (GBL).
- 1276 3. Gamma-hydroxybutyric acid (GHB).
- 1277 4. Methaqualone.
- 1278 5. Mecloqualone.

1279 (2) SCHEDULE II.—A substance in Schedule II has a high

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potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. The following substances are controlled in Schedule II:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis:

1. Opium and any salt, compound, derivative, or preparation of opium, except nalmeferine or isoquinoline alkaloids of opium, including, but not limited to the following:

- a. Raw opium.
- b. Opium extracts.
- c. Opium fluid extracts.
- d. Powdered opium.
- e. Granulated opium.
- f. Tincture of opium.
- g. Codeine.
- h. Ethylmorphine.
- i. Etorphine hydrochloride.
- j. Hydrocodone.
- k. Hydromorphone.
- l. Levo-alpha-acetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
- m. Metopon (methyldihydromorphinone).
- n. Morphine.
- o. Oxycodone.

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p. Oxymorphone.

q. Thebaine.

2. Any salt, compound, derivative, or preparation of a substance which is chemically equivalent to or identical with any of the substances referred to in subparagraph 1., except that these substances shall not include the isoquinoline alkaloids of opium.

3. Any part of the plant of the species *Papaver somniferum*, L.

4. Cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine.

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

1. Alfentanil.

2. Alphaprodine.

3. Anileridine.

4. Bezitramide.

5. Bulk propoxyphene (nondosage forms).

6. Carfentanil.

7. Dihydrocodeine.

8. Diphenoxylate.

9. Fentanyl.

10. Isomethadone.

11. Levomethorphan.

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12. Levorphanol.
13. Metazocine.
14. Methadone.
15. Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenylbutane.
16. Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.
17. Nabilone.
18. Pethidine (meperidine).
19. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
20. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
21. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
22. Phenazocine.
23. Phencyclidine.
24. 1-Phenylcyclohexylamine.
25. Piminodine.
26. 1-Piperidinocyclohexanecarbonitrile.
27. Racemethorphan.
28. Racemorphan.
29. Sufentanil.
- (c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, optical isomers, salts of their isomers, and salts of their optical isomers:
1. Amobarbital.



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2. Amphetamine.

3. Glutethimide.

4. Methamphetamine.

5. Methylphenidate.

6. Pentobarbital.

7. Phenmetrazine.

8. Phenylacetone.

9. Secobarbital.

(3) SCHEDULE III.—A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. The following substances are controlled in Schedule III:

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant or stimulant effect on the nervous system:

1. Any substance which contains any quantity of a derivative of barbituric acid, including thiobarbituric acid, or any salt of a derivative of barbituric acid or thiobarbituric acid, including, but not limited to, butabarbital and butalbital.

2. Benzphetamine.

3. Chlorhexadol.

4. Chlorphentermine.

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1396 5. Clortermine.

1397 6. Lysergic acid.

1398 7. Lysergic acid amide.

1399 8. Methyprylon.

1400 9. Phendimetrazine.

1401 10. Sulfondiethylmethane.

1402 11. Sulfonethylmethane.

1403 12. Sulfonmethane.

1404 13. Tiletamine and zolazepam or any salt thereof.

1405 (b) Nalorphine.

1406 (c) Unless specifically excepted or unless listed in  
1407 another schedule, any material, compound, mixture, or  
1408 preparation containing limited quantities of any of the  
1409 following controlled substances or any salts thereof:

1410 1. Not more than 1.8 grams of codeine per 100 milliliters  
1411 or not more than 90 milligrams per dosage unit, with an equal or  
1412 greater quantity of an isoquinoline alkaloid of opium.

1413 2. Not more than 1.8 grams of codeine per 100 milliliters  
1414 or not more than 90 milligrams per dosage unit, with recognized  
1415 therapeutic amounts of one or more active ingredients which are  
1416 not controlled substances.

1417 3. Not more than 300 milligrams of hydrocodone per 100  
1418 milliliters or not more than 15 milligrams per dosage unit, with  
1419 a fourfold or greater quantity of an isoquinoline alkaloid of  
1420 opium.

1421 4. Not more than 300 milligrams of hydrocodone per 100  
1422 milliliters or not more than 15 milligrams per dosage unit, with  
1423 recognized therapeutic amounts of one or more active ingredients  
1424 that are not controlled substances.

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5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

7. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

For purposes of charging a person with a violation of s. 893.135 involving any controlled substance described in subparagraph 3. or subparagraph 4., the controlled substance is a Schedule III controlled substance pursuant to this paragraph but the weight of the controlled substance per milliliters or per dosage unit is not relevant to the charging of a violation of s. 893.135. The weight of the controlled substance shall be determined pursuant to s. 893.135(6).

(d) Anabolic steroids.

1. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth and includes:

- a. Androsterone.
- b. Androsterone acetate.
- c. Boldenone.

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1454 d. Boldenone acetate.  
1455 e. Boldenone benzoate.  
1456 f. Boldenone undecylenate.  
1457 g. Chlorotestosterone (Clostebol) ~~(4-chlorotestosterone)~~.  
1458 ~~h. Clostebol.~~  
1459 ~~h.i.~~ Dehydrochlormethyltestosterone.  
1460 ~~i.j.~~ Dihydrotestosterone (Stanolone) ~~(4-~~  
1461 ~~dihydrotestosterone)~~.  
1462 ~~j.k.~~ Drostanolone.  
1463 ~~k.l.~~ Ethylestrenol.  
1464 ~~l.m.~~ Fluoxymesterone.  
1465 ~~m.n.~~ Formebolone (Formebolone).  
1466 ~~n.o.~~ Mesterolone.  
1467 ~~o.p.~~ Methandrostenolone (Methandienone).  
1468 ~~p.q.~~ Methandranone.  
1469 ~~q.r.~~ Methandriol.  
1470 ~~s. Methandrostenolone.~~  
1471 ~~r.t.~~ Methenolone.  
1472 ~~s.u.~~ Methyltestosterone.  
1473 ~~t.v.~~ Mibolerone.  
1474 ~~u.w.~~ Nortestosterone (Nandrolone).  
1475 ~~v.x.~~ Norethandrolone.  
1476 ~~y. Nortestosterone.~~  
1477 ~~w.z.~~ Nortestosterone decanoate.  
1478 ~~x.aa.~~ Nortestosterone phenylpropionate.  
1479 ~~y.bb.~~ Nortestosterone propionate.  
1480 ~~z.cc.~~ Oxandrolone.  
1481 ~~aa.dd.~~ Oxymesterone.  
1482 ~~bb.ee.~~ Oxymetholone.

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~~ff.~~ ~~Stanolone.~~  
~~cc.~~~~gg.~~ Stanozolol.  
~~dd.~~~~hh.~~ Testolactone.  
~~ee.~~~~ii.~~ Testosterone.  
~~ff.~~~~jj.~~ Testosterone acetate.  
~~gg.~~~~kk.~~ Testosterone benzoate.  
~~hh.~~~~ll.~~ Testosterone cypionate.  
~~ii.~~~~mm.~~ Testosterone decanoate.  
~~jj.~~~~nn.~~ Testosterone enanthate.  
~~kk.~~~~oo.~~ Testosterone isocaproate.  
~~ll.~~~~pp.~~ Testosterone oleate.  
~~mm.~~~~qq.~~ Testosterone phenylpropionate.  
~~nn.~~~~rr.~~ Testosterone propionate.  
~~oo.~~~~ss.~~ Testosterone undecanoate.  
~~pp.~~~~tt.~~ Trenbolone.  
~~qq.~~~~uu.~~ Trenbolone acetate.  
~~rr.~~~~vv.~~ Any salt, ester, or isomer of a drug or substance  
described or listed in this subparagraph if that salt, ester, or  
isomer promotes muscle growth.

2. The term does not include an anabolic steroid that is  
expressly intended for administration through implants to cattle  
or other nonhuman species and that has been approved by the  
United States Secretary of Health and Human Services for such  
administration. However, any person who prescribes, dispenses,  
or distributes such a steroid for human use is considered to  
have prescribed, dispensed, or distributed an anabolic steroid  
within the meaning of this paragraph.

(e) Ketamine, including any isomers, esters, ethers, salts,  
and salts of isomers, esters, and ethers, whenever the existence

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of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(f) Dronabinol (synthetic THC) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration.

(g) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under s. 505 of the Federal Food, Drug, and Cosmetic Act.

(4) SCHEDULE IV.—A substance in Schedule IV has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, are controlled in Schedule IV:

(a) Alprazolam.

(b) Barbitol.

(c) Bromazepam.

(d) Camazepam.

(e) Cathine.

(f) Chloral betaine.

(g) Chloral hydrate.

(h) Chlordiazepoxide.

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1541 (i) Clobazam.  
1542 (j) Clonazepam.  
1543 (k) Clorazepate.  
1544 (l) Clotiazepam.  
1545 (m) Cloxazolam.  
1546 (n) Delorazepam.  
1547 (o) Propoxyphene (dosage forms).  
1548 (p) Diazepam.  
1549 (q) Diethylpropion.  
1550 (r) Estazolam.  
1551 (s) Ethchlorvynol.  
1552 (t) Ethinamate.  
1553 (u) Ethyl loflazepate.  
1554 (v) Fencamfamin.  
1555 (w) Fenfluramine.  
1556 (x) Fenproporex.  
1557 (y) Fludiazepam.  
1558 (z) Flurazepam.  
1559 (aa) Halazepam.  
1560 (bb) Haloxazolam.  
1561 (cc) Ketazolam.  
1562 (dd) Loprazolam.  
1563 (ee) Lorazepam.  
1564 (ff) Lormetazepam.  
1565 (gg) Mazindol.  
1566 (hh) Mebutamate.  
1567 (ii) Medazepam.  
1568 (jj) Mefenorex.  
1569 (kk) Meprobamate.

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1570 (ll) Methohexital.  
1571 (mm) Methylphenobarbital.  
1572 (nn) Midazolam.  
1573 (oo) Nimetazepam.  
1574 (pp) Nitrazepam.  
1575 (qq) Nordiazepam.  
1576 (rr) Oxazepam.  
1577 (ss) Oxazolam.  
1578 (tt) Paraldehyde.  
1579 (uu) Pemoline.  
1580 (vv) Pentazocine.  
1581 (ww) Phenobarbital.  
1582 (xx) Phentermine.  
1583 (yy) Pinazepam.  
1584 (zz) Pipradrol.  
1585 (aaa) Prazepam.  
1586 (bbb) Propylhexedrine, excluding any patent or proprietary  
1587 preparation containing propylhexedrine, unless otherwise  
1588 provided by federal law.  
1589 (ccc) Quazepam.  
1590 (ddd) Tetrazepam.  
1591 (eee) SPA[(-)-1 dimethylamino-1, 2  
1592 diphenylethane].  
1593 (fff) Temazepam.  
1594 (ggg) Triazolam.  
1595 (hhh) Not more than 1 milligram of difenoxin and not less  
1596 than 25 micrograms of atropine sulfate per dosage unit.  
1597 (iii) Butorphanol tartrate.  
1598 (jjj) Carisoprodol.



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(5) SCHEDULE V.—A substance, compound, mixture, or preparation of a substance in Schedule V has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of such compound, mixture, or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV.

(a) Substances controlled in Schedule V include any compound, mixture, or preparation containing any of the following limited quantities of controlled substances, which shall include one or more active medicinal ingredients which are not controlled substances in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the controlled substance alone:

1. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

2. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

3. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

4. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

5. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts: Buprenorphine.

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(c) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

Section 3. Section 893.033, Florida Statutes, is amended to read:

893.033 Listed chemicals.—The chemicals listed in this section are included by whatever official, common, usual, chemical, or trade name designated.

(1) PRECURSOR CHEMICALS.—The term “listed precursor chemical” means a chemical that may be used in manufacturing a controlled substance in violation of this chapter and is critical to the creation of the controlled substance, and such term includes any salt, optical isomer, or salt of an optical isomer, whenever the existence of such salt, optical isomer, or salt of optical isomer is possible within the specific chemical designation. The following are “listed precursor chemicals”:

- (a) Anthranilic acid.
- (b) Benzaldehyde.
- (c) Benzyl cyanide.
- (d) Chloroephedrine.
- (e) Chloropseudoephedrine.
- (f) Ephedrine.
- (g) Ergonovine.
- (h) Ergotamine.
- (i) Ergocristine.
- ~~(i) Hydriodic acid.~~

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1657 (j) Ethylamine.  
1658 (k) Iodine tincture above 2.2 percent.  
1659 (l)~~(k)~~ Isosafrole.  
1660 (m)~~(l)~~ Methylamine.  
1661 (n)~~(m)~~ 3, 4-Methylenedioxyphenyl-2-propanone.  
1662 (o)~~(n)~~ N-Acetylanthranilic acid.  
1663 (p)~~(o)~~ N-Ethylephedrine.  
1664 (q)~~(p)~~ N-Ethylpseudoephedrine.  
1665 (r)~~(q)~~ N-Methylephedrine.  
1666 (s)~~(r)~~ N-Methylpseudoephedrine.  
1667 (t) ANPP (4-Anilino-N-phenethyl-4-piperidine).  
1668 (u) NPP (N-Phenethyl-4-piperidone).  
1669 (v)~~(s)~~ Nitroethane.  
1670 (w)~~(t)~~ Norpseudoephedrine.  
1671 (x)~~(u)~~ Phenylacetic acid.  
1672 (y)~~(v)~~ Phenylpropanolamine.  
1673 (z)~~(w)~~ Piperidine.  
1674 (aa)~~(x)~~ Piperonal.  
1675 (bb)~~(y)~~ Propionic anhydride.  
1676 (cc)~~(z)~~ Pseudoephedrine.  
1677 (dd)~~(aa)~~ Safrole.

1678 (2) ESSENTIAL CHEMICALS.—The term “listed essential  
1679 chemical” means a chemical that may be used as a solvent,  
1680 reagent, or catalyst in manufacturing a controlled substance in  
1681 violation of this chapter. The following are “listed essential  
1682 chemicals”:

1683 (a) Acetic anhydride.  
1684 (b) Acetone.  
1685 (c) Ammonium salts, including, but not limited to, nitrate,

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sulfate, phosphate, or chloride.

(d)~~(e)~~ Anhydrous ammonia.

(e) Benzoquinone.

(f)~~(d)~~ Benzyl chloride.

(g)~~(e)~~ 2-Butanone.

(h)~~(f)~~ Ethyl ether.

(i) Formic acid.

(j)~~(g)~~ Hydrochloric acid ~~gas~~.

(k)~~(h)~~ Hydriodic acid.

(l)~~(i)~~ Iodine.

(m) Lithium.

(n) Organic solvents, including, but not limited to,  
Coleman Fuel, camping fuel, ether, toluene, or lighter fluid.

(o) Organic cosolvents, including, but not limited to,  
glycerol, propylene glycol, or polyethylene glycol.

(p) Potassium dichromate.

(q)~~(j)~~ Potassium permanganate.

(r) Sodium.

(s) Sodium dichromate.

(t) Sodium borohydride.

(u) Sodium cyanoborohydride.

(v) Sodium hydroxide.

(w) Sulfuric acid.

~~(k) Toluene.~~

Section 4. Subsections (3) and (5) of section 893.0356,  
Florida Statutes, are amended, paragraph (j) is added to  
subsection (4) of that section, and paragraph (a) of subsection  
(2) of that section is republished, to read:

893.0356 Control of new substances; findings of fact;

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1715 "controlled substance analog" defined.—

1716 (2)(a) As used in this section, "controlled substance  
1717 analog" means a substance which, due to its chemical structure  
1718 and potential for abuse, meets the following criteria:

1719 1. Is substantially similar to that of a controlled  
1720 substance listed in Schedule I or Schedule II of s. 893.03; and

1721 2. Has a stimulant, depressant, or hallucinogenic effect on  
1722 the central nervous system or is represented or intended to have  
1723 a stimulant, depressant, or hallucinogenic effect on the central  
1724 nervous system substantially similar to or greater than that of  
1725 a controlled substance listed in Schedule I or Schedule II of s.  
1726 893.03.

1727 (3) As used in this section, the term "substantially  
1728 similar," as the term applies to the chemical structure of a  
1729 substance, means that the chemical structure of the substance  
1730 compared to the structure of a controlled substance has a single  
1731 difference in the structural formula that substitutes one atom  
1732 or functional group for another, including, but not limited to,  
1733 one halogen for another halogen, one hydrogen for a halogen or  
1734 vice versa, an alkyl group added or deleted as a side chain to  
1735 or from a molecule, or an alkyl group added or deleted from a  
1736 side chain of a molecule. "potential for abuse" in this section  
1737 ~~means that a substance has properties as a central nervous~~  
1738 ~~system stimulant or depressant or a hallucinogen that create a~~  
1739 ~~substantial likelihood of its being:~~

1740 ~~(a) Used in amounts that create a hazard to the user's~~  
1741 ~~health or the safety of the community;~~

1742 ~~(b) Diverted from legal channels and distributed through~~  
1743 ~~illegal channels; or~~

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~~(c) Taken on the user's own initiative rather than on the basis of professional medical advice.~~

~~Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.~~

(4) The following factors shall be relevant to a finding that a substance is a controlled substance analog within the purview of this section:

(j) Comparisons to the accepted methods of marketing, distribution, and sales of the substance and that which the substance is purported to be, including, but not limited to:

1. The difference in price at which the substance is sold and the price at which the substance it is purported to be or advertised as is normally sold;

2. The difference in how the substance is imported, manufactured, or distributed compared to how the substance it is purported to be or advertised as is normally imported, manufactured, or distributed;

3. The difference in the appearance of the substance in overall finished dosage form compared to the substance it is purported to be or advertised as normally appears in overall finished dosage form; and

4. The difference in how the substance is labeled for sale, packaged for sale, or the method of sale, including, but not limited to, the placement of the substance in an area commonly

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viewable to the public for purchase consideration compared to how the substance it is purported to be or advertised as is normally labeled for sale, packaged for sale, or sold to the public.

(5) A controlled substance analog shall, for purposes of drug abuse prevention and control, be treated as the highest scheduled ~~a controlled substance of which it is a controlled substance analog to~~ in ~~Schedule I~~ of s. 893.03.

Section 5. Subsections (1), (4), and (6), and paragraph (d) of subsection (8) of section 893.13, Florida Statutes, are amended, and subsection (2), paragraphs (a) and (b) of subsection (5), and paragraph (a) of subsection (7) of that section are republished, to read:

893.13 Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. A person who violates this provision with respect to:

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

2. A controlled substance named or described in 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) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable

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as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, a person may not sell or deliver in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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



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402.302.

2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

(d) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private college, university, or other postsecondary educational institution. A person who violates this paragraph with respect to:

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

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2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

(e) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171. A person who violates this paragraph with respect to:

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

2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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other penalty prescribed by law.

(f) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. As used in this section, the term "real property comprising a public housing facility" means real property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. A person who violates this paragraph with respect to:

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

2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

(g) Except as authorized by this chapter, a person may not manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033 in violation of s. 893.149 and with intent to manufacture methamphetamine or phencyclidine. If a person violates this paragraph and:

1. The commission or attempted commission of the crime

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occurs in a structure or conveyance where any child younger than 16 years of age is present, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 5 calendar years.

2. The commission of the crime causes any child younger than 16 years of age to suffer great bodily harm, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 10 calendar years.

(h) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. A person who violates this paragraph with respect to:

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

2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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1947 other penalty prescribed by law.

1948 (2)(a) Except as authorized by this chapter and chapter  
1949 499, a person may not purchase, or possess with intent to  
1950 purchase, a controlled substance. A person who violates this  
1951 provision with respect to:

1952 1. A controlled substance named or described in s.  
1953 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.  
1954 commits a felony of the second degree, punishable as provided in  
1955 s. 775.082, s. 775.083, or s. 775.084.

1956 2. A controlled substance named or described in s.  
1957 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
1958 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
1959 the third degree, punishable as provided in s. 775.082, s.  
1960 775.083, or s. 775.084.

1961 3. A controlled substance named or described in s.  
1962 893.03(5) commits a misdemeanor of the first degree, punishable  
1963 as provided in s. 775.082 or s. 775.083.

1964 (b) Except as provided in this chapter, a person may not  
1965 purchase more than 10 grams of any substance named or described  
1966 in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any  
1967 mixture containing any such substance. A person who violates  
1968 this paragraph commits a felony of the first degree, punishable  
1969 as provided in s. 775.082, s. 775.083, or s. 775.084.

1970 (4) Except as authorized by this chapter, a person 18 years  
1971 of age or older may not deliver any controlled substance to a  
1972 person younger than 18 years of age, use or hire a person  
1973 younger than 18 years of age as an agent or employee in the sale  
1974 or delivery of such a substance, or use such person to assist in  
1975 avoiding detection or apprehension for a violation of this

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chapter. A person who violates this paragraph ~~provision~~ with respect to:

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

(b) A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any other controlled substance, except as lawfully sold, manufactured, or delivered, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Imposition of sentence may not be suspended or deferred, and the person so convicted may not be placed on probation.

(5) A person may not bring into this state any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency. A person who violates this provision with respect to:

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

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

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(2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6)(a) A person may not be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. A person who violates this provision commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is the possession of 20 grams or less of cannabis, as defined in this chapter, ~~or 3 grams or less of a controlled substance described in s. 893.03(1)(c)46., 50., 114., 142., 151., 159., or 166., 173.,~~ the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. As used in this subsection, the term "cannabis" does not include the resin extracted from the plants of the genus *Cannabis*, or any compound manufacture, salt, derivative, mixture, or preparation of such resin, ~~and a controlled substance described in s. 893.03(1)(c)46., 50., 114., 142., 151., 159., or 166., 173. does not include the substance in a powdered form.~~

(c) Except as provided in this chapter, a person may not possess more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable

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as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the offense is possession of a controlled substance named or described in s. 893.03(5), the person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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

(7) (a) A person may not:

1. Distribute or dispense a controlled substance in violation of this chapter.

2. Refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter.

3. Refuse entry into any premises for any inspection or refuse to allow any inspection authorized by this chapter.

4. Distribute a controlled substance named or described in s. 893.03(1) or (2) except pursuant to an order form as required by s. 893.06.

5. Keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

6. Use to his or her own personal advantage, or reveal, any information obtained in enforcement of this chapter except in a



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prosecution or administrative hearing for a violation of this chapter.

7. Possess a prescription form unless it has been signed by the practitioner whose name appears printed thereon and completed. This subparagraph does not apply if the person in possession of the form is the practitioner whose name appears printed thereon, an agent or employee of that practitioner, a pharmacist, or a supplier of prescription forms who is authorized by that practitioner to possess those forms.

8. Withhold information from a practitioner from whom the person seeks to obtain a controlled substance or a prescription for a controlled substance that the person making the request has received a controlled substance or a prescription for a controlled substance of like therapeutic use from another practitioner within the previous 30 days.

9. Acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

10. Affix any false or forged label to a package or receptacle containing a controlled substance.

11. Furnish false or fraudulent material information in, or omit any material information from, any report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter.

12. Store anhydrous ammonia in a container that is not approved by the United States Department of Transportation to hold anhydrous ammonia or is not constructed in accordance with sound engineering, agricultural, or commercial practices.

13. With the intent to obtain a controlled substance or

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2092 combination of controlled substances that are not medically  
2093 necessary for the person or an amount of a controlled substance  
2094 or substances that is not medically necessary for the person,  
2095 obtain or attempt to obtain from a practitioner a controlled  
2096 substance or a prescription for a controlled substance by  
2097 misrepresentation, fraud, forgery, deception, subterfuge, or  
2098 concealment of a material fact. For purposes of this  
2099 subparagraph, a material fact includes whether the person has an  
2100 existing prescription for a controlled substance issued for the  
2101 same period of time by another practitioner or as described in  
2102 subparagraph 8.

2103 (8)

2104 (d) Notwithstanding paragraph (c), if a prescribing  
2105 practitioner has violated paragraph (a) and received \$1,000 or  
2106 more in payment for writing one or more prescriptions or, in the  
2107 case of a prescription written for a controlled substance  
2108 described in s. 893.135, has written one or more prescriptions  
2109 for a quantity of a controlled substance which, individually or  
2110 in the aggregate, meets the threshold for the offense of  
2111 trafficking in a controlled substance under s. 893.135 ~~s.~~  
2112 ~~893.15~~, the violation is reclassified as a felony of the second  
2113 degree and ranked in level 4 of the Criminal Punishment Code.

2114 Section 6. Paragraphs (g) and (l) of subsection (1) of  
2115 section 893.135, Florida Statutes, are republished, paragraph  
2116 (k) of that subsection is amended, and subsection (6) of that  
2117 section is amended, to read:

2118 893.135 Trafficking; mandatory sentences; suspension or  
2119 reduction of sentences; conspiracy to engage in trafficking.—

2120 (1) Except as authorized in this chapter or in chapter 499

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and notwithstanding the provisions of s. 893.13:

(g)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

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

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

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except

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2150 pardon or executive clemency or conditional medical release  
2151 under s. 947.149. However, if the court determines that, in  
2152 addition to committing any act specified in this paragraph:

2153 a. The person intentionally killed an individual or  
2154 counseled, commanded, induced, procured, or caused the  
2155 intentional killing of an individual and such killing was the  
2156 result; or

2157 b. The person's conduct in committing that act led to a  
2158 natural, though not inevitable, lethal result,

2159  
2160 such person commits the capital felony of trafficking in  
2161 flunitrazepam, punishable as provided in ss. 775.082 and  
2162 921.142. Any person sentenced for a capital felony under this  
2163 paragraph shall also be sentenced to pay the maximum fine  
2164 provided under subparagraph 1.

2165 (k)1. A person who knowingly sells, purchases,  
2166 manufactures, delivers, or brings into this state, or who is  
2167 knowingly in actual or constructive possession of, 10 grams or  
2168 more of any of the following substances described in s.  
2169 893.03(1)(c):

- 2170 a. (MDMA) 3,4-Methylenedioxymethamphetamine ~~(MDMA)~~;  
2171 b. DOB (4-Bromo-2,5-dimethoxyamphetamine);  
2172 c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);  
2173 d. 2,5-Dimethoxyamphetamine;  
2174 e. DOET (4-Ethyl-2,5-dimethoxyamphetamine) ~~2,5-Dimethoxy-4-~~  
2175 ~~ethylamphetamine (DOET)~~;  
2176 f. N-ethylamphetamine;  
2177 g. N-Hydroxy-3,4-methylenedioxymphetamine;  
2178 h. 5-Methoxy-3,4-methylenedioxymphetamine;

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- i. PMA (4-methoxyamphetamine);  
j. PMMA (4-methoxymethamphetamine);  
k. DOM (4-Methyl-2,5-dimethoxyamphetamine);  
l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);  
m. MDA (3,4-Methylenedioxyamphetamine);  
n. N,N-dimethylamphetamine;  
o. 3,4,5-Trimethoxyamphetamine;  
p. Methylone (3,4-Methylenedioxymethcathinone);  
q. MDPV (3,4-Methylenedioxypyrovalerone) ~~(MDPV)~~; or  
r. Methylmethcathinone,

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

2. If the quantity involved:

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

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

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

3. A person who knowingly manufactures or brings into this

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state 30 kilograms or more of any of the following substances described in s. 893.03(1)(c):

- a. MDMA (3,4-Methylenedioxymethamphetamine) ~~(MDMA)~~;
- b. 2C-B (4-Bromo-2,5-dimethoxyamphetamine);
- c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);
- d. 2,5-Dimethoxyamphetamine;
- e. DOET (4-Ethyl-2,5-dimethoxyamphetamine) ~~2,5-Dimethoxy-4-ethylamphetamine (DOET)~~;
- f. N-ethylamphetamine;
- g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- i. PMA (4-methoxyamphetamine);
- j. PMMA (4-methoxymethamphetamine);
- k. DOM (4-Methyl-2,5-dimethoxyamphetamine);
- l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);
- m. MDA (3,4-Methylenedioxyamphetamine);
- n. N,N-dimethylamphetamine;
- o. 3,4,5-Trimethoxyamphetamine;
- p. Methylone (3,4-Methylenedioxymethcathinone);
- q. MDPV (3,4-Methylenedioxypyrovalerone) ~~(MDPV)~~; or
- r. Methyldmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of Phenethylamines, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony

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under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(1)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 gram or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or of any mixture containing lysergic acid diethylamide (LSD), commits a felony of the first degree, which felony shall be known as "trafficking in lysergic acid diethylamide (LSD)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 gram or more, but less than 5 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 5 grams or more, but less than 7 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 7 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$500,000.

2. Any person who knowingly manufactures or brings into this state 7 grams or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or any mixture containing lysergic acid diethylamide (LSD), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of lysergic acid diethylamide (LSD), a capital felony punishable

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as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(6) A mixture, as defined in s. 893.02, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a gelatin capsule, pill, or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture.

Section 7. Subsection (2) of section 893.138, Florida Statutes, is amended to read:

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

(2) Any place or premises that has been used:

(a) On more than two occasions within a 6-month period, as the site of a violation of s. 796.07;

(b) On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(c) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a



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felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(d) By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03; ~~or~~

(e) On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property; or

(f) On two or more occasions within a 6-month period, as the site of a violation of chapter 499,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

Section 8. Subsections (6) and (12) of section 893.145, Florida Statutes, are amended to read:

893.145 "Drug paraphernalia" defined.—The term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter or s. 877.111. Drug paraphernalia is deemed to be contraband which shall be subject to civil forfeiture. The term includes, but is not limited to:

(6) Diluents and adulterants, such as quinine hydrochloride, caffeine, dimethyl sulfone, mannitol, mannite,

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dextrose, and lactose, used, intended for use, or designed for use in diluting ~~cutting~~ controlled substances; or substances such as damiana leaf, marshmallow leaf, and mullein leaf, used, intended for use, or designed for use as carrier mediums of controlled substances.

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing controlled substances, as described in s. 893.03, or substances described in s. 877.111(1) ~~cannabis, cocaine, hashish, hashish oil, or nitrous oxide~~ into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.

(b) Water pipes.

(c) Carburetion tubes and devices.

(d) Smoking and carburetion masks.

(e) Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.

(f) Miniature cocaine spoons, and cocaine vials.

(g) Chamber pipes.

(h) Carburetor pipes.

(i) Electric pipes.

(j) Air-driven pipes.

(k) Chillums.

(l) Bongs.

(m) Ice pipes or chillers.

(n) A cartridge or canister, which means a small metal device used to contain nitrous oxide.

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(o) A charger, sometimes referred to as a "cracker," which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container.

(p) A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister.

(q) A whip-it, which means a device that may be used to expel nitrous oxide.

(r) A tank.

(s) A balloon.

(t) A hose or tube.

(u) A 2-liter-type soda bottle.

(v) Duct tape.

Section 9. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

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2382 4. Section 409.920 or s. 409.9201, relating to Medicaid  
2383 fraud.

2384 5. Section 414.39, relating to public assistance fraud.

2385 6. Section 440.105 or s. 440.106, relating to workers'  
2386 compensation.

2387 7. Section 443.071(4), relating to creation of a fictitious  
2388 employer scheme to commit reemployment assistance fraud.

2389 8. Section 465.0161, relating to distribution of medicinal  
2390 drugs without a permit as an Internet pharmacy.

2391 9. Section 499.0051, relating to crimes involving  
2392 contraband, ~~and~~ adulterated, or misbranded drugs.

2393 10. Part IV of chapter 501, relating to telemarketing.

2394 11. Chapter 517, relating to sale of securities and  
2395 investor protection.

2396 12. Section 550.235 or s. 550.3551, relating to dogracing  
2397 and horseracing.

2398 13. Chapter 550, relating to jai alai frontons.

2399 14. Section 551.109, relating to slot machine gaming.

2400 15. Chapter 552, relating to the manufacture, distribution,  
2401 and use of explosives.

2402 16. Chapter 560, relating to money transmitters, if the  
2403 violation is punishable as a felony.

2404 17. Chapter 562, relating to beverage law enforcement.

2405 18. Section 624.401, relating to transacting insurance  
2406 without a certificate of authority, s. 624.437(4)(c)1., relating  
2407 to operating an unauthorized multiple-employer welfare  
2408 arrangement, or s. 626.902(1)(b), relating to representing or  
2409 aiding an unauthorized insurer.

2410 19. Section 655.50, relating to reports of currency

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transactions, when such violation is punishable as a felony.

20. Chapter 687, relating to interest and usurious practices.

21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

23. Section 777.03, relating to commission of crimes by accessories after the fact.

24. Chapter 782, relating to homicide.

25. Chapter 784, relating to assault and battery.

26. Chapter 787, relating to kidnapping or human trafficking.

27. Chapter 790, relating to weapons and firearms.

28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.

29. Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

30. Chapter 806, relating to arson and criminal mischief.

31. Chapter 810, relating to burglary and trespass.

32. Chapter 812, relating to theft, robbery, and related crimes.

33. Chapter 815, relating to computer-related crimes.

34. Chapter 817, relating to fraudulent practices, false

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pretenses, fraud generally, and credit card crimes.

35. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

36. Section 827.071, relating to commercial sexual exploitation of children.

37. Section 828.122, relating to fighting or baiting animals.

38. Chapter 831, relating to forgery and counterfeiting.

39. Chapter 832, relating to issuance of worthless checks and drafts.

40. Section 836.05, relating to extortion.

41. Chapter 837, relating to perjury.

42. Chapter 838, relating to bribery and misuse of public office.

43. Chapter 843, relating to obstruction of justice.

44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with

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jurors and evidence.

Section 10. Paragraphs (c), (e), and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended, and paragraphs (b), (d), and (h) of that subsection are republished, to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1) (e) 3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1) (e) 4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413 (6) (c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial

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			purposes, or hazardous waste.
2482	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
2483	590.28(1)	3rd	Intentional burning of lands.
2484	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
2485	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
2486	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
2487	810.061(2)	3rd	Impairing or impeding telephone or power to a



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			dwelling; facilitating or furthering burglary.
2488	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
2489	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
2490	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
2491	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
2492	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
2493	817.481(3)(a)	3rd	Obtain credit or purchase with false,

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			expired, counterfeit, etc., credit card, value over \$300.
2494	817.52 (3)	3rd	Failure to redeliver hired vehicle.
2495	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
2496	817.60 (5)	3rd	Dealing in credit cards of another.
2497	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
2498	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
2499	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
2500	831.01	3rd	Forgery.
2501			

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2502	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
2503	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
2504	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
2505	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
2506	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
2507	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
2508	843.08	3rd	False personation.
	893.13 (2) (a) 2.	3rd	Purchase of any s.

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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.

2509

893.147(2)

3rd

Manufacture or delivery  
of drug paraphernalia.

2510

2511

2512

(c) LEVEL 3

2513

Florida  
Statute

Felony  
Degree

Description

2514

119.10(2)(b)

3rd

Unlawful use of  
confidential information  
from police reports.

2515

316.066  
(3)(b)-(d)

3rd

Unlawfully obtaining or  
using confidential crash  
reports.

2516

316.193(2)(b)

3rd

Felony DUI, 3rd conviction.

2517

316.1935(2)

3rd

Fleeing or attempting to  
elude law enforcement

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officer in patrol vehicle  
with siren and lights  
activated.

2518

319.30(4)

3rd

Possession by junkyard of  
motor vehicle with  
identification number plate  
removed.

2519

319.33(1)(a)

3rd

Alter or forge any  
certificate of title to a  
motor vehicle or mobile  
home.

2520

319.33(1)(c)

3rd

Procure or pass title on  
stolen vehicle.

2521

319.33(4)

3rd

With intent to defraud,  
possess, sell, etc., a  
blank, forged, or  
unlawfully obtained title  
or registration.

2522

327.35(2)(b)

3rd

Felony BUI.

2523

328.05(2)

3rd

Possess, sell, or  
counterfeit fictitious,  
stolen, or fraudulent  
titles or bills of sale of

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2524

vessels.

328.07(4)

3rd

Manufacture, exchange, or  
possess vessel with  
counterfeit or wrong ID  
number.

2525

376.302(5)

3rd

Fraud related to  
reimbursement for cleanup  
expenses under the Inland  
Protection Trust Fund.

2526

379.2431

3rd

(1) (e) 5.

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.

2527

379.2431

3rd

(1) (e) 6.

Soliciting to commit or  
conspiring to commit a  
violation of the Marine  
Turtle Protection Act.

2528

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2529	400.9935 (4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
	400.9935 (4) (e)	3rd	Filing a false license application or other required information or failing to report information.
2530	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
2531	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
2532	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
2533	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium

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collected less than  
\$20,000.

2534

626.902 (1) (a) &  
(b)

3rd

Representing an  
unauthorized insurer.

2535

697.08

3rd

Equity skimming.

2536

790.15 (3)

3rd

Person directs another to  
discharge firearm from a  
vehicle.

2537

806.10 (1)

3rd

Maliciously injure,  
destroy, or interfere with  
vehicles or equipment used  
in firefighting.

2538

806.10 (2)

3rd

Interferes with or assaults  
firefighter in performance  
of duty.

2539

810.09 (2) (c)

3rd

Trespass on property other  
than structure or  
conveyance armed with  
firearm or dangerous  
weapon.

2540

812.014 (2) (c) 2.

3rd

Grand theft; \$5,000 or more  
but less than \$10,000.



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2541

812.0145 (2) (c)

3rd

Theft from person 65 years  
of age or older; \$300 or  
more but less than \$10,000.

2542

815.04 (5) (b)

2nd

Computer offense devised to  
defraud or obtain property.

2543

817.034 (4) (a) 3.

3rd

Engages in scheme to  
defraud (Florida  
Communications Fraud Act),  
property valued at less  
than \$20,000.

2544

817.233

3rd

Burning to defraud insurer.

2545

817.234  
(8) (b) & (c)

3rd

Unlawful solicitation of  
persons involved in motor  
vehicle accidents.

2546

817.234 (11) (a)

3rd

Insurance fraud; property  
value less than \$20,000.

2547

817.236

3rd

Filing a false motor  
vehicle insurance  
application.

2548

817.2361

3rd

Creating, marketing, or  
presenting a false or

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			fraudulent motor vehicle insurance card.
2549			
	817.413 (2)	3rd	Sale of used goods as new.
2550			
	817.505 (4)	3rd	Patient brokering.
2551			
	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
2552			
	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
2553			
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
2554			
	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
2555			
	843.19	3rd	Injure, disable, or kill police dog or horse.
2556			

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860.15 (3)

3rd

Overcharging for repairs  
and parts.

2557

870.01 (2)

3rd

Riot; inciting or  
encouraging.

2558

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).

2559

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.

2560

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.,

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(2) (c) 8., (2) (c) 9., (3), or  
(4) drugs within 1,000 feet  
of public housing facility.

2561

893.13 (4) (c)3rd

Use or hire of minor;  
deliver to minor other  
controlled substances.

2562

893.13 (6) (a)

3rd

Possession of any  
controlled substance other  
than felony possession of  
cannabis.

2563

893.13 (7) (a) 8.

3rd

Withhold information from  
practitioner regarding  
previous receipt of or  
prescription for a  
controlled substance.

2564

893.13 (7) (a) 9.

3rd

Obtain or attempt to obtain  
controlled substance by  
fraud, forgery,  
misrepresentation, etc.

2565

893.13 (7) (a) 10.

3rd

Affix false or forged label  
to package of controlled  
substance.

2566

893.13 (7) (a) 11.

3rd

Furnish false or fraudulent

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material information on any  
document or record required  
by chapter 893.

2567

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.

2568

893.13(8)(a)2.

3rd

Employ a trick or scheme in  
the practitioner's practice  
to assist a patient, other  
person, or owner of an  
animal in obtaining a  
controlled substance.

2569

893.13(8)(a)3.

3rd

Knowingly write a  
prescription for a  
controlled substance for a  
fictitious person.

2570

893.13(8)(a)4.

3rd

Write a prescription for a  
controlled substance for a  
patient, other person, or

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an animal if the sole  
purpose of writing the  
prescription is a monetary  
benefit for the  
practitioner.

2571

918.13 (1) (a)

3rd

Alter, destroy, or conceal  
investigation evidence.

2572

944.47  
(1) (a) 1. & 2.

3rd

Introduce contraband to  
correctional facility.

2573

944.47 (1) (c)

2nd

Possess contraband while  
upon the grounds of a  
correctional institution.

2574

985.721

3rd

Escapes from a juvenile  
facility (secure detention  
or residential commitment  
facility).

2575

2576 (d) LEVEL 4

2577

Florida  
Statute

Felony  
Degree

Description

2578

316.1935 (3) (a)

2nd

Driving at high speed or  
with wanton disregard  
for safety while fleeing

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			or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
2579	499.0051 (1)	3rd	Failure to maintain or deliver pedigree papers.
2580	499.0051 (2)	3rd	Failure to authenticate pedigree papers.
2581	499.0051 (6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
2582	517.07 (1)	3rd	Failure to register securities.
2583	517.12 (1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
2584	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.

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2585

784.074 (1) (c)

3rd

Battery of sexually  
violent predators  
facility staff.

2586

784.075

3rd

Battery on detention or  
commitment facility  
staff.

2587

784.078

3rd

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

2588

784.08 (2) (c)

3rd

Battery on a person 65  
years of age or older.

2589

784.081 (3)

3rd

Battery on specified  
official or employee.

2590

784.082 (3)

3rd

Battery by detained  
person on visitor or  
other detainee.

2591

784.083 (3)

3rd

Battery on code  
inspector.

2592

784.085

3rd

Battery of child by



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			throwing, tossing, projecting, or expelling certain fluids or materials.
2593	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
2594	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
2595	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
2596	787.07	3rd	Human smuggling.
2597	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.

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2598

790.115 (2) (b)

3rd

Possessing electric  
weapon or device,  
destructive device, or  
other weapon on school  
property.

2599

790.115 (2) (c)

3rd

Possessing firearm on  
school property.

2600

800.04 (7) (c)

3rd

Lewd or lascivious  
exhibition; offender  
less than 18 years.

2601

810.02 (4) (a)

3rd

Burglary, or attempted  
burglary, of an  
unoccupied structure;  
unarmed; no assault or  
battery.

2602

810.02 (4) (b)

3rd

Burglary, or attempted  
burglary, of an  
unoccupied conveyance;  
unarmed; no assault or  
battery.

2603

810.06

3rd

Burglary; possession of  
tools.

2604

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2605	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
2606	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
2607	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
2608	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
2609	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03 (5) drugs.
2610	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
	817.625 (2) (a)	3rd	Fraudulent use of scanning device or

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2611			reencoder.
	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
2612			
	837.02 (1)	3rd	Perjury in official proceedings.
2613			
	837.021 (1)	3rd	Make contradictory statements in official proceedings.
2614			
	838.022	3rd	Official misconduct.
2615			
	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
2616			
	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Families.
2617			
	843.021	3rd	Possession of a concealed handcuff key

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2618

by a person in custody.

843.025

3rd

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

2619

843.15(1) (a)

3rd

Failure to appear while  
on bail for felony (bond  
estreature or bond  
jumping).

2620

847.0135(5) (c)

3rd

Lewd or lascivious  
exhibition using  
computer; offender less  
than 18 years.

2621

874.05(1) (a)

3rd

Encouraging or  
recruiting another to  
join a criminal gang.

2622

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).

2623

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914.14 (2)

3rd

Witnesses accepting  
bribes.

2624

914.22 (1)

3rd

Force, threaten, etc.,  
witness, victim, or  
informant.

2625

914.23 (2)

3rd

Retaliation against a  
witness, victim, or  
informant, no bodily  
injury.

2626

918.12

3rd

Tampering with jurors.

2627

934.215

3rd

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

2628

(e) LEVEL 5

2629

2630

Florida  
StatuteFelony  
Degree

Description

2631

316.027 (2) (a)

3rd

Accidents involving  
personal injuries other  
than serious bodily  
injury, failure to stop;  
leaving scene.

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2632	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
2633	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
2634	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
2635	379.367 (4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
2636	379.3671 (2) (c) 3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
2637	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.

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2638

440.10 (1) (g)

2nd

Failure to obtain  
workers' compensation  
coverage.

2639

440.105 (5)

2nd

Unlawful solicitation  
for the purpose of  
making workers'  
compensation claims.

2640

440.381 (2)

2nd

Submission of false,  
misleading, or  
incomplete information  
with the purpose of  
avoiding or reducing  
workers' compensation  
premiums.

2641

624.401 (4) (b) 2.

2nd

Transacting insurance  
without a certificate or  
authority; premium  
collected \$20,000 or  
more but less than  
\$100,000.

2642

626.902 (1) (c)

2nd

Representing an  
unauthorized insurer;  
repeat offender.

2643



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2644	790.01 (2)	3rd	Carrying a concealed firearm.
	790.162	2nd	Threat to throw or discharge destructive device.
2645	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
2646	790.221 (1)	2nd	Possession of short- barreled shotgun or machine gun.
2647	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
2648	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
2649	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
2650	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18

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			years of age or older.
2651	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
2652	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
2653	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
2654	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
2655	812.131 (2) (b)	3rd	Robbery by sudden snatching.
2656	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
2657	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.

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2658

817.234 (11) (b)

2nd

Insurance fraud;  
property value \$20,000  
or more but less than  
\$100,000.

2659

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

3rd

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

2660

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.

2661

817.625 (2) (b)

2nd

Second or subsequent  
fraudulent use of

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scanning device or  
reencoder.

2662

825.1025(4)

3rd

Lewd or lascivious  
exhibition in the  
presence of an elderly  
person or disabled  
adult.

2663

827.071(4)

2nd

Possess with intent to  
promote any photographic  
material, motion  
picture, etc., which  
includes sexual conduct  
by a child.

2664

827.071(5)

3rd

Possess, control, or  
intentionally view any  
photographic material,  
motion picture, etc.,  
which includes sexual  
conduct by a child.

2665

839.13(2)(b)

2nd

Falsifying records of an  
individual in the care  
and custody of a state  
agency involving great  
bodily harm or death.

2666

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2667	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
2668	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
2669	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
2670	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
2671	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join

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2672

893.13(1)(a)1.

2nd

a criminal gang.

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).

2673

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.

2674

893.13(1)(d)1.

1st

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a),

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2675

893.13(1)(e)2.

2nd

(2)(b), or (2)(c)4.  
drugs) within 1,000 feet  
of university.

2676

893.13(1)(f)1.

1st

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.

2677

893.13(4)(b)

2nd

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.

Use or hire of minor;  
deliver to minor other  
controlled substance

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~~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).~~

2678

893.1351(1)

3rd

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

2679

2680 (g) LEVEL 7

2681

Florida  
 Statute

Felony  
 Degree

Description

2682

316.027(2)(c)

1st

Accident involving death,  
 failure to stop; leaving  
 scene.

2683

316.193(3)(c)2.

3rd

DUI resulting in serious  
 bodily injury.

2684

316.1935(3)(b)

1st

Causing serious bodily  
 injury or death to another  
 person; driving at high  
 speed or with wanton



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			disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
2685	327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.
2686	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
2687	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
2688	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
2689	456.065 (2)	3rd	Practicing a health care profession without a license.
2690	456.065 (2)	2nd	Practicing a health care

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			profession without a license which results in serious bodily injury.
2691	458.327 (1)	3rd	Practicing medicine without a license.
2692	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
2693	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
2694	461.012 (1)	3rd	Practicing podiatric medicine without a license.
2695	462.17	3rd	Practicing naturopathy without a license.
2696	463.015 (1)	3rd	Practicing optometry without a license.
2697	464.016 (1)	3rd	Practicing nursing without a license.
2698	465.015 (2)	3rd	Practicing pharmacy

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			without a license.
2699	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
2700	467.201	3rd	Practicing midwifery without a license.
2701	468.366	3rd	Delivering respiratory care services without a license.
2702	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
2703	483.901(9)	3rd	Practicing medical physics without a license.
2704	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
2705	484.053	3rd	Dispensing hearing aids without a license.
2706	494.0018(2)	1st	Conviction of any violation of chapter 494

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in which the total money  
and property unlawfully  
obtained exceeded \$50,000  
and there were five or  
more victims.

2707

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.

2708

560.125 (5) (a)

3rd

Money services business by  
unauthorized person,  
currency or payment  
instruments exceeding \$300  
but less than \$20,000.

2709

655.50 (10) (b) 1.

3rd

Failure to report  
financial transactions  
exceeding \$300 but less  
than \$20,000 by financial  
institution.

2710

775.21 (10) (a)

3rd

Sexual predator; failure  
to register; failure to  
renew driver license or  
identification card; other  
registration violations.

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2711

775.21 (10) (b)

3rd

Sexual predator working  
where children regularly  
congregate.

2712

775.21 (10) (g)

3rd

Failure to report or  
providing false  
information about a sexual  
predator; harbor or  
conceal a sexual predator.

2713

782.051 (3)

2nd

Attempted felony murder of  
a person by a person other  
than the perpetrator or  
the perpetrator of an  
attempted felony.

2714

782.07 (1)

2nd

Killing of a human being  
by the act, procurement,  
or culpable negligence of  
another (manslaughter).

2715

782.071

2nd

Killing of a human being  
or unborn child by the  
operation of a motor  
vehicle in a reckless  
manner (vehicular  
homicide).

2716

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2717	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
2718	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
2719	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
2720	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
2721	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
2722	784.048 (7)	3rd	Aggravated stalking; violation of court order.
2723	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators

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			facility staff.
2724	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
2725	784.081 (1)	1st	Aggravated battery on specified official or employee.
2726	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
2727	784.083 (1)	1st	Aggravated battery on code inspector.
2728	787.06 (3) (a) 2.	1st	Human trafficking using coercion for labor and services of an adult.
2729	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.
2730	790.07 (4)	1st	Specified weapons

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			violation subsequent to previous conviction of s. 790.07(1) or (2).
2731	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
2732	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
2733	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
2734	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
2735	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.



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2736

790.23

1st,PBL

Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.

2737

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.

2738

796.05 (1)

1st

Live on earnings of a prostitute; 2nd offense.

2739

796.05 (1)

1st

Live on earnings of a prostitute; 3rd and subsequent offense.

2740

800.04 (5) (c) 1.

2nd

Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.

2741

800.04 (5) (c) 2.

2nd

Lewd or lascivious molestation; victim 12 years of age or older but

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			younger than 16 years of age; offender 18 years of age or older.
2742	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.
2743	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
2744	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
2745	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
2746	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
2747	810.02 (3) (e)	2nd	Burglary of authorized

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2748	812.014 (2) (a) 1.	1st	emergency vehicle.
2749	812.014 (2) (b) 2.	2nd	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.
2750	812.014 (2) (b) 3.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
2751	812.014 (2) (b) 4.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
2752	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.

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812.019 (2)

1st

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

2754

812.131 (2) (a)

2nd

Robbery by sudden  
snatching.

2755

812.133 (2) (b)

1st

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

2756

817.034 (4) (a) 1.

1st

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

2757

817.234 (8) (a)

2nd

Solicitation of motor  
vehicle accident victims  
with intent to defraud.

2758

817.234 (9)

2nd

Organizing, planning, or  
participating in an  
intentional motor vehicle  
collision.

2759

817.234 (11) (c)

1st

Insurance fraud; property  
value \$100,000 or more.

2760

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817.2341

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.

(2) (b) &amp; (3) (b)

2761

817.535 (2) (a)

3rd

Filing false lien or other unauthorized document.

2762

825.102 (3) (b)

2nd

Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

2763

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.

2764

827.03 (2) (b)

2nd

Neglect of a child causing great bodily harm, disability, or disfigurement.

2765

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2766	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
2767	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
2768	838.015	2nd	Bribery.
2769	838.016	2nd	Unlawful compensation or reward for official behavior.
2770	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
2771	838.22	2nd	Bid tampering.
2772	843.0855 (2)	3rd	Impersonation of a public officer or employee.
2773	843.0855 (3)	3rd	Unlawful simulation of legal process.
	843.0855 (4)	3rd	Intimidation of a public officer or employee.

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2774	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
2775	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
2776	872.06	2nd	Abuse of a dead human body.
2777	874.05 (2) (b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
2778	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
2779	893.13 (1) (c) 1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03 (1) (a), (1) (b),

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(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.

2780

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.

2781

893.13 (4) (a)

1st

Use or hire of minor;  
deliver to minor other  
controlled substance  
~~cocaine (or other s.~~  
~~893.03 (1) (a), (1) (b),~~  
~~(1) (d), (2) (a), (2) (b), or~~  
~~(2) (c) 4. drugs).~~

2782

893.135 (1) (a) 1.

1st

Trafficking in cannabis,



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2783	893.135 (1) (b) 1.a.	1st	more than 25 lbs., less than 2,000 lbs.
2784	893.135 (1) (c) 1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
2785	893.135 (1) (c) 2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
2786	893.135 (1) (c) 2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
2787	893.135 (1) (c) 3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
2788	893.135 (1) (c) 3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
2789	893.135 (1) (d) 1.	1st	Trafficking in phencyclidine, more than

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			28 grams, less than 200 grams.
2790	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
2791	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
2792	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
2793	893.135 (1) (h) 1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
2794	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4- Butanediol, 1 kilogram or more, less than 5 kilograms.
2795	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200

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			grams.
2796	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
2797	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
2798	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
2799	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
2800	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

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2801

943.0435 (9) (a)

3rd

Sexual offender; failure  
to comply with reporting  
requirements.

2802

943.0435 (13)

3rd

Failure to report or  
providing false  
information about a sexual  
offender; harbor or  
conceal a sexual offender.

2803

943.0435 (14)

3rd

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

2804

944.607 (9)

3rd

Sexual offender; failure  
to comply with reporting  
requirements.

2805

944.607 (10) (a)

3rd

Sexual offender; failure  
to submit to the taking of  
a digitized photograph.

2806

944.607 (12)

3rd

Failure to report or  
providing false  
information about a sexual

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2807

offender; harbor or  
conceal a sexual offender.

944.607(13)

3rd

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

2808

985.4815(10)

3rd

Sexual offender; failure  
to submit to the taking of  
a digitized photograph.

2809

985.4815(12)

3rd

Failure to report or  
providing false  
information about a sexual  
offender; harbor or  
conceal a sexual offender.

2810

985.4815(13)

3rd

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

2811

2812

(h) LEVEL 8

2813

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	Florida	Felony	
	Statute	Degree	Description
2814	316.193	2nd	DUI manslaughter.
	(3) (c) 3.a.		
2815	316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
2816	327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
2817	499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
2818	499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
2819	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.
2820	560.125 (5) (b)	2nd	Money transmitter

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			business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
2821	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
2822	777.03 (2) (a)	1st	Accessory after the fact, capital felony.
2823	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.

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2824	782.051 (2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04 (3).
2825	782.071 (1) (b)	1st	Committing vehicular homicide and failing to render aid or give information.
2826	782.072 (2)	1st	Committing vessel homicide and failing to render aid or give information.
2827	787.06 (3) (a) 1.	1st	Human trafficking for labor and services of a child.
2828	787.06 (3) (b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
2829	787.06 (3) (c) 2.	1st	Human trafficking using coercion for labor and services of an



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unauthorized alien adult.

2830

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.

2831

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.

2832

790.161(3)

1st

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

2833

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.

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2834

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.

2835

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.

2836

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.

2837

794.08 (3)

2nd

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

2838

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2839	800.04 (4) (b)	2nd	Lewd or lascivious battery.
	800.04 (4) (c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
2840	806.01 (1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
2841	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
2842	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
2843	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
2844	812.014 (2) (a) 2.	1st	Property stolen; cargo

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			valued at \$50,000 or more, grand theft in 1st degree.
2845			
	812.13 (2) (b)	1st	Robbery with a weapon.
2846			
	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
2847			
	817.535 (2) (b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
2848			
	817.535 (3) (a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
2849			
	817.535 (4) (a) 1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
2850			
	817.535 (5) (a)	2nd	Filing false lien or other unauthorized

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document; owner of the  
property incurs financial  
loss as a result of the  
false instrument.

2851

817.568 (6)

2nd

Fraudulent use of  
personal identification  
information of an  
individual under the age  
of 18.

2852

825.102 (2)

1st

Aggravated abuse of an  
elderly person or  
disabled adult.

2853

825.1025 (2)

2nd

Lewd or lascivious  
battery upon an elderly  
person or disabled adult.

2854

825.103 (3) (a)

1st

Exploiting an elderly  
person or disabled adult  
and property is valued at  
\$50,000 or more.

2855

837.02 (2)

2nd

Perjury in official  
proceedings relating to  
prosecution of a capital  
felony.

2856

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2857	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
2858	860.16	1st	Aircraft piracy.
2859	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).
2860	893.13 (2) (b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
2861	893.13 (6) (c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
2862			

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2863	893.135 (1) (a) 2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
2864	893.135 (1) (b) 1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
2865	893.135 (1) (c) 1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
2866	893.135 (1) (c) 2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
2867	893.135 (1) (c) 3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
2868	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5

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2869	<p>893.135 (1) (f) 1.b.</p>	<p>1st</p>	<p>kilograms, less than 25 kilograms.</p>
2870	<p>893.135 (1) (g) 1.b.</p>	<p>1st</p>	<p>Trafficking in amphetamine, more than 28 grams, less than 200 grams.</p>
2871	<p>893.135 (1) (h) 1.b.</p>	<p>1st</p>	<p>Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.</p>
2872	<p>893.135 (1) (j) 1.b.</p>	<p>1st</p>	<p>Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.</p>
2873	<p>893.135 (1) (k) 2.b.</p>	<p>1st</p>	<p>Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.</p>

2874



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2875	893.1351 (3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
2876	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
2877	895.03 (2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
2878	895.03 (3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
2879	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

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to evade reporting or  
registration  
requirements, financial  
transactions totaling or  
exceeding \$20,000 but  
less than \$100,000.

Section 11. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, paragraphs (a) and (g) of subsection (30) of section 39.01, Florida Statutes, are reenacted to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(30) "Harm" to a child's health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted.

Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:

- a. Sprains, dislocations, or cartilage damage.
- b. Bone or skull fractures.
- c. Brain or spinal cord damage.

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d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term "willful" refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term "drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following

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factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

- a. Sprains, dislocations, or cartilage damage.
- b. Bone or skull fractures.
- c. Brain or spinal cord damage.
- d. Intracranial hemorrhage or injury to other internal organs.
- e. Asphyxiation, suffocation, or drowning.
- f. Injury resulting from the use of a deadly weapon.
- g. Burns or scalding.
- h. Cuts, lacerations, punctures, or bites.
- i. Permanent or temporary disfigurement.
- j. Permanent or temporary loss or impairment of a body part or function.

k. Significant bruises or welts.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or
2. Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

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As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

Section 12. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (5) of section 316.193, Florida Statutes, is reenacted to read:

316.193 Driving under the influence; penalties.—

(5) The court shall place all offenders convicted of violating this section on monthly reporting probation and shall require completion of a substance abuse course conducted by a DUI program licensed by the department under s. 322.292, which must include a psychosocial evaluation of the offender. If the DUI program refers the offender to an authorized substance abuse treatment provider for substance abuse treatment, in addition to any sentence or fine imposed under this section, completion of all such education, evaluation, and treatment is a condition of reporting probation. The offender shall assume reasonable costs for such education, evaluation, and treatment. The referral to treatment resulting from a psychosocial evaluation shall not be waived without a supporting independent psychosocial evaluation conducted by an authorized substance abuse treatment provider appointed by the court, which shall have access to the DUI program's psychosocial evaluation before the independent psychosocial evaluation is conducted. The court shall review the results and recommendations of both evaluations before determining the request for waiver. The offender shall bear the

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full cost of this procedure. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I through V of s. 893.03. If an offender referred to treatment under this subsection fails to report for or complete such treatment or fails to complete the DUI program substance abuse education course and evaluation, the DUI program shall notify the court and the department of the failure. Upon receipt of the notice, the department shall cancel the offender's driving privilege, notwithstanding the terms of the court order or any suspension or revocation of the driving privilege. The department may temporarily reinstate the driving privilege on a restricted basis upon verification from the DUI program that the offender is currently participating in treatment and the DUI education course and evaluation requirement has been completed. If the DUI program notifies the department of the second failure to complete treatment, the department shall reinstate the driving privilege only after notice of completion of treatment from the DUI program. The organization that conducts the substance abuse education and evaluation may not provide required substance abuse treatment unless a waiver has been granted to that organization by the department. A waiver may be granted only if the department determines, in accordance with its rules, that the service provider that conducts the substance abuse education and evaluation is the most appropriate service provider and is licensed under chapter 397 or is exempt from such licensure. A statistical referral report shall be submitted quarterly to the department by each organization authorized to provide services under this section.

Section 13. For the purpose of incorporating the amendment

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made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 322.2616, Florida Statutes, is reenacted to read:

322.2616 Suspension of license; persons under 21 years of age; right to review.—

(2)

(c) When a driver subject to this section has a blood-alcohol or breath-alcohol level of 0.05 or higher, the suspension shall remain in effect until such time as the driver has completed a substance abuse course offered by a DUI program licensed by the department. The driver shall assume the reasonable costs for the substance abuse course. As part of the substance abuse course, the program shall conduct a substance abuse evaluation of the driver, and notify the parents or legal guardians of drivers under the age of 19 years of the results of the evaluation. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I through V of s. 893.03. If a driver fails to complete the substance abuse education course and evaluation, the driver license shall not be reinstated by the department.

Section 14. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (5) of section 327.35, Florida Statutes, is reenacted to read:

327.35 Boating under the influence; penalties; "designated drivers."—

(5) In addition to any sentence or fine, the court shall place any offender convicted of violating this section on monthly reporting probation and shall require attendance at a

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substance abuse course specified by the court; and the agency conducting the course may refer the offender to an authorized service provider for substance abuse evaluation and treatment, in addition to any sentence or fine imposed under this section. The offender shall assume reasonable costs for such education, evaluation, and treatment, with completion of all such education, evaluation, and treatment being a condition of reporting probation. Treatment resulting from a psychosocial evaluation may not be waived without a supporting psychosocial evaluation conducted by an agency appointed by the court and with access to the original evaluation. The offender shall bear the cost of this procedure. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I-V of s. 893.03.

Section 15. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (11) of section 440.102, Florida Statutes, is reenacted to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(11) PUBLIC EMPLOYEES IN MANDATORY-TESTING OR SPECIAL-RISK POSITIONS.—

(b) An employee who is employed by a public employer in a special-risk position may be discharged or disciplined by a public employer for the first positive confirmed test result if the drug confirmed is an illicit drug under s. 893.03. A special-risk employee who is participating in an employee



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3077 assistance program or drug rehabilitation program may not be  
3078 allowed to continue to work in any special-risk or mandatory-  
3079 testing position of the public employer, but may be assigned to  
3080 a position other than a mandatory-testing position or placed on  
3081 leave while the employee is participating in the program.

3082 However, the employee shall be permitted to use any accumulated  
3083 annual leave credits before leave may be ordered without pay.

3084 Section 16. For the purpose of incorporating the amendment  
3085 made by this act to section 893.03, Florida Statutes, in a  
3086 reference thereto, subsection (2) of section 456.44, Florida  
3087 Statutes, is reenacted to read:

3088 456.44 Controlled substance prescribing.—

3089 (2) REGISTRATION.—Effective January 1, 2012, a physician  
3090 licensed under chapter 458, chapter 459, chapter 461, or chapter  
3091 466 who prescribes any controlled substance, listed in Schedule  
3092 II, Schedule III, or Schedule IV as defined in s. 893.03, for  
3093 the treatment of chronic nonmalignant pain, must:

3094 (a) Designate himself or herself as a controlled substance  
3095 prescribing practitioner on the physician's practitioner  
3096 profile.

3097 (b) Comply with the requirements of this section and  
3098 applicable board rules.

3099 Section 17. For the purpose of incorporating the amendment  
3100 made by this act to section 893.03, Florida Statutes, in a  
3101 reference thereto, subsection (3) of section 458.326, Florida  
3102 Statutes, is reenacted to read:

3103 458.326 Intractable pain; authorized treatment.—

3104 (3) Notwithstanding any other provision of law, a physician  
3105 may prescribe or administer any controlled substance under

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Schedules II-V, as provided for in s. 893.03, to a person for the treatment of intractable pain, provided the physician does so in accordance with that level of care, skill, and treatment recognized by a reasonably prudent physician under similar conditions and circumstances.

Section 18. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 458.3265, Florida Statutes, is reenacted to read:

458.3265 Pain-management clinics.—

(1) REGISTRATION.—

(e) The department shall deny registration to any pain-management clinic owned by or with any contractual or employment relationship with a physician:

1. Whose Drug Enforcement Administration number has ever been revoked.

2. Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction.

3. Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in this state, any other state, or the United States.

Section 19. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 459.0137, Florida Statutes, is reenacted to read:

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459.0137 Pain-management clinics.—

(1) REGISTRATION.—

(e) The department shall deny registration to any pain-management clinic owned by or with any contractual or employment relationship with a physician:

1. Whose Drug Enforcement Administration number has ever been revoked.

2. Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction.

3. Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in this state, any other state, or the United States.

Section 20. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (4) of section 463.0055, Florida Statutes, is reenacted to read:

463.0055 Administration and prescription of ocular pharmaceutical agents.—

(4) A certified optometrist shall be issued a prescriber number by the board. Any prescription written by a certified optometrist for an ocular pharmaceutical agent pursuant to this section shall have the prescriber number printed thereon. A certified optometrist may not administer or prescribe:

(a) A controlled substance listed in Schedule III, Schedule IV, or Schedule V of s. 893.03, except for an oral analgesic

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placed on the formulary pursuant to this section for the relief of pain due to ocular conditions of the eye and its appendages.

Section 21. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 465.0276, Florida Statutes, is reenacted to read:

465.0276 Dispensing practitioner.—

(1)

(b) A practitioner registered under this section may not dispense a controlled substance listed in Schedule II or Schedule III as provided in s. 893.03. This paragraph does not apply to:

1. The dispensing of complimentary packages of medicinal drugs which are labeled as a drug sample or complimentary drug as defined in s. 499.028 to the practitioner's own patients in the regular course of her or his practice without the payment of a fee or remuneration of any kind, whether direct or indirect, as provided in subsection (5).

2. The dispensing of controlled substances in the health care system of the Department of Corrections.

3. The dispensing of a controlled substance listed in Schedule II or Schedule III in connection with the performance of a surgical procedure. The amount dispensed pursuant to the subparagraph may not exceed a 14-day supply. This exception does not allow for the dispensing of a controlled substance listed in Schedule II or Schedule III more than 14 days after the performance of the surgical procedure. For purposes of this subparagraph, the term "surgical procedure" means any procedure in any setting which involves, or reasonably should involve:

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3193       a. Perioperative medication and sedation that allows the  
3194 patient to tolerate unpleasant procedures while maintaining  
3195 adequate cardiorespiratory function and the ability to respond  
3196 purposefully to verbal or tactile stimulation and makes intra-  
3197 and postoperative monitoring necessary; or

3198       b. The use of general anesthesia or major conduction  
3199 anesthesia and preoperative sedation.

3200       4. The dispensing of a controlled substance listed in  
3201 Schedule II or Schedule III pursuant to an approved clinical  
3202 trial. For purposes of this subparagraph, the term "approved  
3203 clinical trial" means a clinical research study or clinical  
3204 investigation that, in whole or in part, is state or federally  
3205 funded or is conducted under an investigational new drug  
3206 application that is reviewed by the United States Food and Drug  
3207 Administration.

3208       5. The dispensing of methadone in a facility licensed under  
3209 s. 397.427 where medication-assisted treatment for opiate  
3210 addiction is provided.

3211       6. The dispensing of a controlled substance listed in  
3212 Schedule II or Schedule III to a patient of a facility licensed  
3213 under part IV of chapter 400.

3214       Section 22. For the purpose of incorporating the amendment  
3215 made by this act to section 893.03, Florida Statutes, in  
3216 references thereto, subsection (14) and paragraph (a) of  
3217 subsection (15) of section 499.0121, Florida Statutes, are  
3218 reenacted to read:

3219       499.0121 Storage and handling of prescription drugs;  
3220 recordkeeping.—The department shall adopt rules to implement  
3221 this section as necessary to protect the public health, safety,

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and welfare. Such rules shall include, but not be limited to, requirements for the storage and handling of prescription drugs and for the establishment and maintenance of prescription drug distribution records.

(14) DISTRIBUTION REPORTING.—Each prescription drug wholesale distributor, out-of-state prescription drug wholesale distributor, retail pharmacy drug wholesale distributor, manufacturer, or repackager that engages in the wholesale distribution of controlled substances as defined in s. 893.02 shall submit a report to the department of its receipts and distributions of controlled substances listed in Schedule II, Schedule III, Schedule IV, or Schedule V as provided in s. 893.03. Wholesale distributor facilities located within this state shall report all transactions involving controlled substances, and wholesale distributor facilities located outside this state shall report all distributions to entities located in this state. If the prescription drug wholesale distributor, out-of-state prescription drug wholesale distributor, retail pharmacy drug wholesale distributor, manufacturer, or repackager does not have any controlled substance distributions for the month, a report shall be sent indicating that no distributions occurred in the period. The report shall be submitted monthly by the 20th of the next month, in the electronic format used for controlled substance reporting to the Automation of Reports and Consolidated Orders System division of the federal Drug Enforcement Administration. Submission of electronic data must be made in a secured Internet environment that allows for manual or automated transmission. Upon successful transmission, an acknowledgment page must be displayed to confirm receipt. The

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report must contain the following information:

(a) The federal Drug Enforcement Administration registration number of the wholesale distributing location.

(b) The federal Drug Enforcement Administration registration number of the entity to which the drugs are distributed or from which the drugs are received.

(c) The transaction code that indicates the type of transaction.

(d) The National Drug Code identifier of the product and the quantity distributed or received.

(e) The Drug Enforcement Administration Form 222 number or Controlled Substance Ordering System Identifier on all Schedule II transactions.

(f) The date of the transaction.

The department must share the reported data with the Department of Law Enforcement and local law enforcement agencies upon request and must monitor purchasing to identify purchasing levels that are inconsistent with the purchasing entity's clinical needs. The Department of Law Enforcement shall investigate purchases at levels that are inconsistent with the purchasing entity's clinical needs to determine whether violations of chapter 893 have occurred.

(15) DUE DILIGENCE OF PURCHASERS.—

(a) Each prescription drug wholesale distributor, out-of-state prescription drug wholesale distributor, and retail pharmacy drug wholesale distributor must establish and maintain policies and procedures to credential physicians licensed under chapter 458, chapter 459, chapter 461, or chapter 466 and

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pharmacies that purchase or otherwise receive from the wholesale distributor controlled substances listed in Schedule II or Schedule III as provided in s. 893.03. The prescription drug wholesale distributor, out-of-state prescription drug wholesale distributor, or retail pharmacy drug wholesale distributor shall maintain records of such credentialing and make the records available to the department upon request. Such credentialing must, at a minimum, include:

1. A determination of the clinical nature of the receiving entity, including any specialty practice area.

2. A review of the receiving entity's history of Schedule II and Schedule III controlled substance purchasing from the wholesale distributor.

3. A determination that the receiving entity's Schedule II and Schedule III controlled substance purchasing history, if any, is consistent with and reasonable for that entity's clinical business needs.

Section 23. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 499.029, Florida Statutes, is reenacted to read:

499.029 Cancer Drug Donation Program.—

(3) As used in this section:

(a) "Cancer drug" means a prescription drug that has been approved under s. 505 of the federal Food, Drug, and Cosmetic Act and is used to treat cancer or its side effects or is used to treat the side effects of a prescription drug used to treat cancer or its side effects. "Cancer drug" does not include a substance listed in Schedule II, Schedule III, Schedule IV, or



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Schedule V of s. 893.03.

Section 24. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, subsections (1) and (4) of section 782.04, Florida Statutes, are reenacted to read:

782.04 Murder.—

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

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

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

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

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

f. Kidnapping,

g. Escape,

h. Aggravated child abuse,

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

j. Aircraft piracy,

k. Unlawful throwing, placing, or discharging of a destructive device or bomb,

l. Carjacking,

m. Home-invasion robbery,

n. Aggravated stalking,

o. Murder of another human being,

p. Resisting an officer with violence to his or her person,

q. Aggravated fleeing or eluding with serious bodily injury

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or death,

r. Felony that is an act of terrorism or is in furtherance of an act of terrorism; or

3. Which resulted from the unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

(b) In all cases under this section, the procedure set forth in s. 921.141 shall be followed in order to determine sentence of death or life imprisonment.

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

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

(b) Arson,

(c) Sexual battery,

(d) Robbery,

(e) Burglary,

(f) Kidnapping,

(g) Escape,

(h) Aggravated child abuse,

(i) Aggravated abuse of an elderly person or disabled adult,

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(j) Aircraft piracy,

(k) Unlawful throwing, placing, or discharging of a destructive device or bomb,

(l) Unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

(m) Carjacking,

(n) Home-invasion robbery,

(o) Aggravated stalking,

(p) Murder of another human being,

(q) Aggravated fleeing or eluding with serious bodily injury or death,

(r) Resisting an officer with violence to his or her person, or

(s) Felony that is an act of terrorism or is in furtherance of an act of terrorism,

is murder in the third degree and constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 25. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 787.06, Florida Statutes, is reenacted to read:

787.06 Human trafficking.—

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

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(a) "Coercion" means:

1. Using or threatening to use physical force against any person;

2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;

3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;

5. Causing or threatening to cause financial harm to any person;

6. Enticing or luring any person by fraud or deceit; or

7. Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03 to any person for the purpose of exploitation of that person.

Section 26. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (1) of section 817.563, Florida Statutes, is reenacted to read:

817.563 Controlled substance named or described in s. 893.03; sale of substance in lieu thereof.—It is unlawful for any person to agree, consent, or in any manner offer to

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unlawfully sell to any person a controlled substance named or described in s. 893.03 and then sell to such person any other substance in lieu of such controlled substance. Any person who violates this section with respect to:

(1) A controlled substance named or described in s. 893.03(1), (2), (3), or (4) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 27. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, section 831.31, Florida Statutes, is reenacted to read:

831.31 Counterfeit controlled substance; sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver.—

(1) It is unlawful for any person to sell, manufacture, or deliver, or to possess with intent to sell, manufacture, or deliver, a counterfeit controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance named or described in s. 893.03(1), (2), (3), or (4) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(5) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) For purposes of this section, "counterfeit controlled substance" means:

(a) A controlled substance named or described in s. 893.03

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which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or number, or any likeness thereof, of a manufacturer other than the person who in fact manufactured the controlled substance; or

(b) Any substance which is falsely identified as a controlled substance named or described in s. 893.03.

Section 28. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, section 893.0301, Florida Statutes, is reenacted to read:

893.0301 Death resulting from apparent drug overdose; reporting requirements.—If a person dies of an apparent drug overdose:

(1) A law enforcement agency shall prepare a report identifying each prescribed controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 which is found on or near the deceased or among the deceased's possessions. The report must identify the person who prescribed the controlled substance, if known or ascertainable. Thereafter, the law enforcement agency shall submit a copy of the report to the medical examiner.

(2) A medical examiner who is preparing a report pursuant to s. 406.11 shall include in the report information identifying each prescribed controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 that was found in, on, or near the deceased or among the deceased's possessions.

Section 29. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a

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reference thereto, paragraph (a) of subsection (7) of section 893.035, Florida Statutes, is reenacted to read:

893.035 Control of new substances; findings of fact; delegation of authority to Attorney General to control substances by rule.—

(7) (a) If the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03 on a temporary basis is necessary to avoid an imminent hazard to the public safety, he or she may by rule and without regard to the requirements of subsection (5) relating to the Department of Health and the Department of Law Enforcement schedule such substance in Schedule I if the substance is not listed in any other schedule of s. 893.03. The Attorney General shall be required to consider, with respect to his or her finding of imminent hazard to the public safety, only those factors set forth in paragraphs (3) (a) and (4) (d), (e), and (f), including actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution.

Section 30. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (1) of section 893.05, Florida Statutes, is reenacted to read:

893.05 Practitioners and persons administering controlled substances in their absence.—

(1) A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner may cause the same to be administered by a licensed nurse or an intern practitioner under his or her

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direction and supervision only. A veterinarian may so prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause it to be administered by an assistant or orderly under the veterinarian's direction and supervision only. A certified optometrist licensed under chapter 463 may not administer or prescribe a controlled substance listed in Schedule I or Schedule II of s. 893.03.

Section 31. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 893.055, Florida Statutes, is reenacted to read:

893.055 Prescription drug monitoring program.—

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

(b) "Controlled substance" means a controlled substance listed in Schedule II, Schedule III, or Schedule IV in s. 893.03.

Section 32. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (5) of section 893.07, Florida Statutes, is reenacted to read:

893.07 Records.—

(5) Each person described in subsection (1) shall:

(b) In the event of the discovery of the theft or significant loss of controlled substances, report such theft or significant loss to the sheriff of that county within 24 hours after discovery. A person who fails to report a theft or significant loss of a substance listed in s. 893.03(3), (4), or (5) within 24 hours after discovery as required in this paragraph commits a misdemeanor of the second degree, punishable



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as provided in s. 775.082 or s. 775.083. A person who fails to report a theft or significant loss of a substance listed in s. 893.03(2) within 24 hours after discovery as required in this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 33. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, paragraphs (b), (c), and (d) of subsection (2) of section 893.12, Florida Statutes, are reenacted to read:

893.12 Contraband; seizure, forfeiture, sale.—

(2)

(b) All real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is used, or intended to be used, in any manner or part, to commit or to facilitate the commission of, or which real property is acquired with proceeds obtained as a result of, a violation of any provision of this chapter related to a controlled substance described in s. 893.03(1) or (2) may be seized and forfeited as provided by the Florida Contraband Forfeiture Act except that no property shall be forfeited under this paragraph to the extent of an interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed or omitted without the knowledge or consent of that owner or lienholder.

(c) All moneys, negotiable instruments, securities, and other things of value furnished or intended to be furnished by any person in exchange for a controlled substance described in s. 893.03(1) or (2) or a listed chemical in violation of any

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provision of this chapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of this chapter or which are acquired with proceeds obtained in violation of any provision of this chapter may be seized and forfeited as provided by the Florida Contraband Forfeiture Act, except that no property shall be forfeited under this paragraph to the extent of an interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed or omitted without the knowledge or consent of that owner or lienholder.

(d) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, or which are acquired with proceeds obtained, in violation of any provision of this chapter related to a controlled substance described in s. 893.03(1) or (2) or a listed chemical may be seized and forfeited as provided by the Florida Contraband Forfeiture Act.

Section 34. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (2) of section 944.474, Florida Statutes, is reenacted to read:

944.474 Legislative intent; employee wellness program; drug and alcohol testing.—

(2) An employee of the department may not test positive for illegal use of controlled substances. An employee of the department may not be under the influence of alcohol while on duty. In order to ensure that these prohibitions are adhered to by all employees of the department and notwithstanding s.

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112.0455, the department may develop a program for the drug testing of all job applicants and for the random drug testing of all employees. The department may randomly evaluate employees for the contemporaneous use or influence of alcohol through the use of alcohol tests and observation methods. Notwithstanding s. 112.0455, the department may develop a program for the reasonable suspicion drug testing of employees who are in mandatory-testing positions, as defined in s. 440.102(1)(o), or special risk positions, as defined in s. 112.0455(5), for the controlled substances listed in s. 893.03(3)(d). The reasonable suspicion drug testing authorized by this subsection shall be conducted in accordance with s. 112.0455, but may also include testing upon reasonable suspicion based on violent acts or violent behavior of an employee who is on or off duty. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 that are necessary to administer this subsection.

Section 35. For the purpose of incorporating the amendment made by this act to section 893.033, Florida Statutes, in a reference thereto, subsection (4) of section 893.149, Florida Statutes, is reenacted to read:

893.149 Unlawful possession of listed chemical.—

(4) Any damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical, as defined in s. 893.033, shall be the sole responsibility of the person or persons unlawfully possessing, storing, or tampering with the listed chemical. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the

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3628 listed chemical, unless such damages arise out of the acts or  
3629 omissions of the owner, installer, maintainer, designer,  
3630 manufacturer, possessor, or seller which constitute negligent  
3631 misconduct or failure to abide by the laws regarding the  
3632 possession or storage of a listed chemical.

3633 Section 36. For the purpose of incorporating the amendment  
3634 made by this act to section 893.13, Florida Statutes, in a  
3635 reference thereto, paragraph (b) of subsection (4) of section  
3636 397.451, Florida Statutes, is reenacted to read:

3637 397.451 Background checks of service provider personnel.—

3638 (4) EXEMPTIONS FROM DISQUALIFICATION.—

3639 (b) Since rehabilitated substance abuse impaired persons  
3640 are effective in the successful treatment and rehabilitation of  
3641 substance abuse impaired adolescents, for service providers  
3642 which treat adolescents 13 years of age and older, service  
3643 provider personnel whose background checks indicate crimes under  
3644 s. 817.563, s. 893.13, or s. 893.147 may be exempted from  
3645 disqualification from employment pursuant to this paragraph.

3646 Section 37. For the purpose of incorporating the amendment  
3647 made by this act to section 893.13, Florida Statutes, in a  
3648 reference thereto, subsection (2) of section 435.07, Florida  
3649 Statutes, is reenacted to read:

3650 435.07 Exemptions from disqualification.—Unless otherwise  
3651 provided by law, the provisions of this section apply to  
3652 exemptions from disqualification for disqualifying offenses  
3653 revealed pursuant to background screenings required under this  
3654 chapter, regardless of whether those disqualifying offenses are  
3655 listed in this chapter or other laws.

3656 (2) Persons employed, or applicants for employment, by

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treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from disqualification from employment pursuant to this chapter without application of the waiting period in subparagraph (1)(a)1.

Section 38. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (2) of section 772.12, Florida Statutes, is reenacted to read:

772.12 Drug Dealer Liability Act.—

(2) A person, including any governmental entity, has a cause of action for threefold the actual damages sustained and is entitled to minimum damages in the amount of \$1,000 and reasonable attorney's fees and court costs in the trial and appellate courts, if the person proves by the greater weight of the evidence that:

(a) The person was injured because of the defendant's actions that resulted in the defendant's conviction for:

1. A violation of s. 893.13, except for a violation of s. 893.13(2)(a) or (b), (3), (5), (6)(a), (b), or (c), (7); or
2. A violation of s. 893.135; and

(b) The person was not injured by reason of his or her participation in the same act or transaction that resulted in the defendant's conviction for any offense described in subparagraph (a)1.

Section 39. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section

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775.084, Florida Statutes, is reenacted to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4) (a), if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.

2. The felony for which the defendant is to be sentenced was committed:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or

b. Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.

3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13 relating to the purchase or the possession of a

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controlled substance.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

Section 40. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (3) of section 810.02, Florida Statutes, is reenacted to read:

810.02 Burglary.—

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

(c) Structure, and there is another person in the structure at the time the offender enters or remains;

(d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains;

(e) Authorized emergency vehicle, as defined in s. 316.003; or

(f) Structure or conveyance when the offense intended to be

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committed therein is theft of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for burglary with the intent to commit theft of a controlled substance under this paragraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the burglary is committed within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 41. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a



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reference thereto, subsection (2) of section 812.014, Florida Statutes, is reenacted to read:

812.014 Theft.—

(2)(a)1. If the property stolen is valued at \$100,000 or more or is a semitrailer that was deployed by a law enforcement officer; or

2. If the property stolen is cargo valued at \$50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or

3. If the offender commits any grand theft and:

a. In the course of committing the offense the offender uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another; or

b. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of \$1,000,

the offender commits grand theft in the first degree, punishable as a felony of the first degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)1. If the property stolen is valued at \$20,000 or more, but less than \$100,000;

2. The property stolen is cargo valued at less than \$50,000 that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock;

3. The property stolen is emergency medical equipment,

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valued at \$300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401; or

4. The property stolen is law enforcement equipment, valued at \$300 or more, that is taken from an authorized emergency vehicle, as defined in s. 316.003,

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(9) or to treat medical emergencies. Law enforcement equipment means any property, device, or apparatus used by any law enforcement officer as defined in s. 943.10 in the officer's official business. However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the theft is committed after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the theft is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense

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committed.

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at \$300 or more, but less than \$5,000.
2. Valued at \$5,000 or more, but less than \$10,000.
3. Valued at \$10,000 or more, but less than \$20,000.
4. A will, codicil, or other testamentary instrument.
5. A firearm.
6. A motor vehicle, except as provided in paragraph (a).
7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a \$10,000 fine shall be imposed.
8. Any fire extinguisher.
9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.
10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).
11. Any stop sign.
12. Anhydrous ammonia.
13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such

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offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at \$5,000 or more, but less than \$10,000, as provided under subparagraph 2., or if the property is valued at \$10,000 or more, but less than \$20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(d) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at \$100 or more, but less than \$300, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

(e) Except as provided in paragraph (d), if the property stolen is valued at \$100 or more, but less than \$300, the

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offender commits petit theft of the first degree, punishable as a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

Section 42. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (1) of section 831.311, Florida Statutes, is reenacted to read:

831.311 Unlawful sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks for controlled substances.—

(1) It is unlawful for any person having the intent to injure or defraud any person or to facilitate any violation of s. 893.13 to sell, manufacture, alter, deliver, utter, or possess with intent to injure or defraud any person, or to facilitate any violation of s. 893.13, any counterfeit-resistant prescription blanks for controlled substances, the form and content of which are adopted by rule of the Department of Health pursuant to s. 893.065.

Section 43. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (1) of section 893.1351, Florida Statutes, is reenacted to read:

893.1351 Ownership, lease, rental, or possession for trafficking in or manufacturing a controlled substance.—

(1) A person may not own, lease, or rent any place, structure, or part thereof, trailer, or other conveyance with the knowledge that the place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance, as provided in s. 893.135; for the sale of a

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controlled substance, as provided in s. 893.13; or for the manufacture of a controlled substance intended for sale or distribution to another. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 44. For the purpose of incorporating the amendment made by this act to section 893.138, Florida Statutes, in a reference thereto, subsection (3) of section 893.138, Florida Statutes, is reenacted to read:

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

(3) Any pain-management clinic, as described in s. 458.3265 or s. 459.0137, which has been used on more than two occasions within a 6-month period as the site of a violation of:

(a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery;

(b) Section 810.02, relating to burglary;

(c) Section 812.014, relating to dealing in theft;

(d) Section 812.131, relating to robbery by sudden snatching; or

(e) Section 893.13, relating to the unlawful distribution of controlled substances,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

Section 45. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, section 893.15, Florida Statutes, is

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reenacted to read:

893.15 Rehabilitation.—Any person who violates s. 893.13(6) (a) or (b) relating to possession may, in the discretion of the trial judge, be required to participate in a substance abuse services program approved or regulated by the Department of Children and Families pursuant to the provisions of chapter 397, provided the director of such program approves the placement of the defendant in such program. Such required participation shall be imposed in addition to any penalty or probation otherwise prescribed by law. However, the total time of such penalty, probation, and program participation shall not exceed the maximum length of sentence possible for the offense.

Section 46. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, section 903.133, Florida Statutes, is reenacted to read:

903.133 Bail on appeal; prohibited for certain felony convictions.—Notwithstanding the provisions of s. 903.132, no person adjudged guilty of a felony of the first degree for a violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s. 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a violation of s. 794.011(2) or (3), shall be admitted to bail pending review either by posttrial motion or appeal.

Section 47. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, paragraph (1) of subsection (1) of section 921.187, Florida Statutes, is reenacted to read:

921.187 Disposition and sentencing; alternatives; restitution.—

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(1) The alternatives provided in this section for the disposition of criminal cases shall be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation. If the offender does not receive a state prison sentence, the court may:

(1)1. Require the offender who violates any criminal provision of chapter 893 to pay an additional assessment in an amount up to the amount of any fine imposed, pursuant to ss. 938.21 and 938.23.

2. Require the offender who violates any provision of s. 893.13 to pay an additional assessment in an amount of \$100, pursuant to ss. 938.055 and 943.361.

Section 48. For the purpose of incorporating the amendment made by this act to section 893.145, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 893.12, Florida Statutes, is reenacted to read:

893.12 Contraband; seizure, forfeiture, sale.—

(2)(a) Any vessel, vehicle, aircraft, or drug paraphernalia as defined in s. 893.145 which has been or is being used in violation of any provision of this chapter or in, upon, or by means of which any violation of this chapter has taken or is taking place may be seized and forfeited as provided by the Florida Contraband Forfeiture Act.

Section 49. For the purpose of incorporating the amendment made by this act to section 893.145, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 893.147, Florida Statutes, is reenacted to read:

893.147 Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug



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paraphernalia.—

(6) RETAIL SALE OF DRUG PARAPHERNALIA.—

(a) It is unlawful for a person to knowingly and willfully sell or offer for sale at retail any drug paraphernalia described in s. 893.145(12)(a)-(c) or (g)-(m), other than a pipe that is primarily made of briar, meerschaum, clay, or corn cob.

Section 50. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is reenacted to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

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4. Any violation of the Florida Anti-Fencing Act;

5. Any violation of the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of chapter 815;

9. Any criminal violation of part I of chapter 499;

10. Any violation of the Florida Motor Fuel Tax Relief Act of 2004;

11. Any criminal violation of s. 409.920 or s. 409.9201;

12. Any crime involving voter registration, voting, or candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering Act;

14. Any criminal violation of the Florida Securities and Investor Protection Act; or

15. Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related

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transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 51. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (g) of subsection (3) of section 655.50, Florida Statutes, is reenacted to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

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

(g) "Specified unlawful activity" means "racketeering activity" as defined in s. 895.02.

Section 52. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (g) of subsection (2) of section 896.101, Florida Statutes, is reenacted to read:

896.101 Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity.—

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

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

Section 53. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, section 905.34, Florida Statutes, is

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reenacted to read:

905.34 Powers and duties; law applicable.—The jurisdiction of a statewide grand jury impaneled under this chapter shall extend throughout the state. The subject matter jurisdiction of the statewide grand jury shall be limited to the offenses of:

(1) Bribery, burglary, carjacking, home-invasion robbery, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, and robbery;

(2) Crimes involving narcotic or other dangerous drugs;

(3) Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

(4) Any violation of the provisions of the Florida Anti-Fencing Act;

(5) Any violation of the provisions of the Florida Antitrust Act of 1980, as amended;

(6) Any violation of the provisions of chapter 815;

(7) Any crime involving, or resulting in, fraud or deceit upon any person;

(8) Any violation of s. 847.0135, s. 847.0137, or s. 847.0138 relating to computer pornography and child exploitation prevention, or any offense related to a violation of s.

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847.0135, s. 847.0137, or s. 847.0138 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

(9) Any criminal violation of part I of chapter 499;

(10) Any criminal violation of s. 409.920 or s. 409.9201;

(11) Any criminal violation of the Florida Money Laundering Act;

(12) Any criminal violation of the Florida Securities and Investor Protection Act; or

(13) Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any violation of the crimes specifically enumerated above, when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. The statewide grand jury may return indictments and presentments irrespective of the county or judicial circuit where the offense is committed or triable. If an indictment is returned, it shall be certified and transferred for trial to the county where the offense was committed. The powers and duties of, and law applicable to, county grand juries shall apply to a statewide grand jury except when such powers, duties, and law are inconsistent with the provisions of ss. 905.31-905.40.

Section 54. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Community Affairs, *Chair*  
Environmental Preservation and Conservation,  
*Vice Chair*  
Appropriations Subcommittee on General Government  
Finance and Tax  
Judiciary  
Transportation

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

### SENATOR WILTON SIMPSON

18th District

January 27, 2016

The Honorable Joe Negron  
Senate Committee Criminal & Civil Justice Appropriations, Chair  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that Senate Bill 1528, relating to *Synthetic Drugs*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Wilton Simpson", with a stylized flourish at the end.

Wilton Simpson, State Senator, 18<sup>th</sup> District

CC: Senate Committee Criminal & Civil Justice Appropriations Staff

#### REPLY TO:

- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- ☐ Post Office Box 938, Brooksville, Florida 34605
- ☐ Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

SB 1528

*Bill Number (if applicable)*

Topic R/T Illicit Drugs

*Amendment Barcode (if applicable)*

Name Sarrah Carroll

Job Title Lobbyist

Address 123 S. Adams

Phone 850-671-4401

*Street*

Tallahassee

FL

32301

Email carroll@sostrategy.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

1528

Bill Number (if applicable)

Topic Synthetic Drugs

Amendment Barcode (if applicable)

Name Rob Johnson

Job Title Leg. Director

Address PL-01

Phone 245-0155

Street

Tall

FL

32399

City

State

Zip

Email rob.johnson@myfloridalegal.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Attorney General

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11 Feb 2014  
Meeting Date

1528  
Bill Number (if applicable)

Topic Illicit Drugs

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Policy Director

Address 2868 Mahan Dr

Phone 850-878-2190

Tallahassee FL  
City State

32308 jill@fadaa.org  
Zip Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Alcohol & Drug Abuse

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: CS/SB 1584

INTRODUCER: Transportation Committee and Senator Smith and others

SUBJECT: Suspended Driver Licenses

DATE: February 11, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Eichin	TR	<b>Fav/CS</b>
2.	Harkness	Sadberry	ACJ	<b>Recommend: Favorable</b>
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1584 establishes a Driver License Reinstatement Days pilot program in certain counties throughout the state. The program requires the Department of Highway Safety and Motor Vehicles (DHSMV), state attorney, public defender's office, circuit and county courts, clerk of the court, and interested organizations within each county, participate in the pilot program. The purpose of the program is to reinstate suspended driver licenses. The clerk of the circuit court (clerk of court) is authorized to waive certain fees to facilitate driver license reinstatements for eligible persons. By October 1, 2017, the DHSMV is required to report the results of the program and a recommendation to continue, discontinue, or expand the program to the Governor, Senate President, and Speaker of the House of Representatives.

This section is repealed October 1, 2017.

The bill does not have a discernible state fiscal impact. See Section V.

The act takes effect July 1, 2016.

## **II. Present Situation:**

### **Driver License Suspensions and Revocations**

Individuals who violate Florida laws may be sanctioned through the suspension or revocation of their driving privilege. Driver license revocations and suspensions, respectively, terminate or temporarily withdraw one's driving privilege.<sup>1</sup> To reinstate a suspended or revoked license, individuals must fulfill legal and financial obligations. Drivers will need to pay reinstatement fees in addition to any outstanding obligations to legally drive.

Entities at both state and local level play a role in driver license suspensions. At the state level, the DHSMV is responsible for issuing driver licenses and administering driver license examinations, as well as suspending and revoking driver licenses, which includes providing notice required by law and communicating license reinstatement requirements. The role of other state agencies is to notify the DHSMV when individuals violate laws that can be sanctioned by driver license suspension. For example, if a parent is delinquent on child support payments, the Department of Revenue (DOR) notifies the DHSMV to start the process of driver license suspension.

At the local level, clerks of court are responsible for collecting financial obligations imposed by a court for criminal and traffic offenses, as well as maintaining court records and ensuring that court orders are carried out. Clerks of court use driver license sanctions as a means to improve collections of fines and fees. Section 322.245, F.S., requires clerks of court to notify the DHSMV when a driver fails to pay court-imposed financial obligations for criminal offenses. Failure to pay can result in a license suspension. In addition, clerks of court provide information to the DHSMV about any court actions that require the suspension or revocation of driver licenses. On behalf of DHSMV, clerks of court and county tax collectors may reinstate driving privileges and collect reinstatement fees.

### ***Effectiveness***

As three-fourths of drivers with suspended or revoked licenses are estimated to continue to drive, indicating driver license sanctions may not effectively force compliance.<sup>2</sup> Driver license suspension and revocation penalties are commonly used to punish individuals who do not pay certain financial penalties and obligations, sometimes whether or not the individual can afford to do so. Penalties for driving with a suspended or revoked license increase per offense, causing individuals suffering from financial hardship to become stuck in a self-perpetuating cycle. Drivers who were unable to pay their original fine or court fees may lose their ability to legally get to and from work. If they are caught driving while the license is suspended or revoked, they will incur additional court costs and penalties.

### ***Driver License Reinstatement Fees***

Section 322.21(8), F.S., requires a person who applies for reinstatement following a driver license suspension or revocation to pay a service fee of \$45 following a suspension and \$75

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<sup>1</sup> Sections 322.01(36) and (40), F.S.

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

following a revocation, in addition to the \$25 fee to replace their license if necessary. “Failure to comply” suspensions require a \$60 reinstatement fee.

### **Driver License Reinstatement Days<sup>3</sup>**

In July 2015, Sarasota County held a Driver License Reinstatement Day. The purpose of the event was to negotiate fees with people whose licenses were suspended because of a failure to pay fines. An estimated 2,000 people attended, of which approximately 500 were served. Of those 500 people, 100 were able to reinstate their license. Some were not eligible for reinstatement because they were habitual traffic offenders, under suspension for a DUI, or other were facing charges. All 500 people experienced some level of reduction in the local county fees they owed.

In April 2015, the Duval County Clerk of the Circuit Court, in conjunction with 59 other clerk of courts’ offices, participated in a statewide campaign called “Operation Green Light.” The goal of the operation was to allow individuals who were delinquent in traffic or court fines and fees to make those payments and assist them in getting their licenses reinstated. The 40 percent collections surcharge was waived for these individuals.<sup>4</sup>

### **III. Effect of Proposed Changes:**

The bill establishes a Driver License Reinstatement Days program in Broward, Duval, Hillsborough, Miami-Dade, Orange, and Pinellas County.

The purpose of the program is to reinstate suspended driver licenses. A person is eligible for reinstatement under this program if the period of his or her suspension has elapsed, the person completed any required course or program, the person is otherwise eligible for reinstatement, and the license was suspended for:

- Driving without a valid license;
- Driving with a suspended license;
- Failing to make payments on penalties in collection;
- Failing to appear in court for a traffic violation; or
- Failing to comply with provisions of ch. 318, F.S., relating to disposition of a traffic citation, or ch. 322, F.S., relating to driver licenses.

A person is not eligible for reinstatement under this program if the person’s driver license is suspended or revoked for:

- Failing to fulfill any court-ordered or administratively established child support obligations;
- A violation under s. 316.193, F.S., involving driving under the influence of alcohol or drugs;
- Failing to complete a required driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program;
- Commission of a traffic-related felony;

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<sup>3</sup> Email from the DHSMV, *Draft – SB 1584 Legislative Bill Analysis* (Jan. 22, 2016) (on file with the Senate Committee on Transportation).

<sup>4</sup> See American Safety Council, *Florida’s Operation Green Light Program* (April 17, 2015), <http://blog.americansafetycouncil.com/florida-operation-green-light/> (last visited Jan. 24, 2016).

- Becoming a habitual traffic offender; or
- An offense committed outside a county in which the pilot program is being implemented.

The DHSMV has indicated within these six counties approximately 541,681 licenses are suspended for failure to appear or comply with a traffic summons, failure to pay a traffic fine, or failure to pay or appear on a criminal charge. These counts are broken down by county and suspension categories below<sup>5</sup>:

Suspended Driver Category:	Broward	Duval	Hillsboro.	Dade	Orange	Pinellas	Total
Fail to Appear-Traffic Summons	23,567	17,214	12,454	56,296	9,410	6,177	125,118
Fail to Comply-Traffic Summons	2,073	1,964	1,488	2,198	1,800	872	10,395
Failed to pay Traffic Fine-Penalty	63,221	47,965	44,622	118,794	51,034	28,158	353,794
Criminal-Fail to Pay	17,574	3,352	11,060	4,291	2,646	2,515	41,438
Criminal- Failed to Appear	2,703	998	2,729	2,509	1,003	994	10,936
	109,138	71,493	72,353	184,088	65,893	38,716	541,681

Participants within each county implementing the pilot program shall include the DHSMV, state attorney, public defender's office, circuit and county courts, clerk of court, and interested organizations within each county participate in the pilot program.

The clerk of court, in consultation with the other participants, will select one or more days for the event. The bill requires a person seeking reinstatement through the program to pay the full reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate the reinstatement.

The clerk of court and the DHSMV are responsible for verifying any information necessary for reinstatement of a driver license under the program.

The DHSMV, by October 1, 2017, is required to report the results of the program and a recommendation to continue, discontinue, or expand the program to the Governor, Senate President, and Speaker of the House of Representatives.

This section is repealed October 1, 2017.

The act takes effect July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

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<sup>5</sup> *Supra* note 3.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1584 will have a positive impact on individuals who may have their financial obligations waived or reduced, and assistance in reinstating their driver license.

The bill may also have a negative impact on collection agents working with the clerk of courts, if collection fees and costs are waived.

C. Government Sector Impact:

The bill may have a negative impact to local clerks of court if clerks waive fees and costs, as permitted in the bill.

The costs associated with implementing the program are unknown; therefore, the bill could have a negative fiscal impact on the required participants.

The bill will likely have a positive impact on state revenue from the increase in reinstatement fees collected.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill creates an undesignated section of law that will be repealed October 1, 2017.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Transportation on January 27, 2016:**

The CS amended the language of SB 1584 to maintain consistency with statutory provisions.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By the Committee on Transportation; and Senators Smith and Thompson

596-02695-16

20161584c1

A bill to be entitled

An act relating to suspended driver licenses; establishing a Driver License Reinstatement Days pilot program in certain counties to facilitate reinstatement of suspended driver licenses; specifying participants; providing duties of the clerks of court and the Department of Highway Safety and Motor Vehicles; authorizing the clerk of court to compromise certain fees and costs; providing for program eligibility; directing the department to make a report to the Governor and Legislature; providing for future repeal; providing an effective date.

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

Section 1. Driver License Reinstatement Days.—

(1) There is established a Driver License Reinstatement Days pilot program in Broward, Duval, Hillsborough, Miami-Dade, Orange, and Pinellas Counties for the purpose of reinstating suspended driver licenses. Participants within each county shall include the Department of Highway Safety and Motor Vehicles, the state attorney, the public defender's office, the circuit and county courts, the clerk of court, and interested community organizations.

(2) The clerk of court, in consultation with the other participants, shall select 1 or more days for an event at which persons with suspended driver licenses may have their licenses reinstated pursuant to this section. A person must pay the full reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate the reinstatement.

(3) (a) A person is eligible for reinstatement under the



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pilot program if the person's driver license was suspended because the person:

1. Was driving without a valid driver license;
2. Was driving with a suspended license;
3. Failed to make payments on penalties in collection;
4. Failed to appear in court for a traffic violation; or
5. Failed to comply with provisions of chapter 318, Florida Statutes, relating to disposition of a traffic citation, or chapter 322, Florida Statutes, relating to driver licenses.

(b) Notwithstanding paragraphs (4) (a)-(c), a person is eligible for reinstatement under the pilot program if the period of suspension has elapsed, the person has completed any required course or program as described in paragraph (4) (c), and the person is otherwise eligible for reinstatement of his or her driver license.

(4) A person is not eligible for reinstatement under the pilot program if:

(a) The person's driver license is under suspension because the person failed to fulfill court-ordered or administratively established child support obligations;

(b) The person's driver license is under suspension or has been revoked for a violation under s. 316.193, Florida Statutes, involving driving under the influence of alcohol or drugs;

(c) The person's driver license is under suspension because the person has not completed a driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program required under s. 316.192, s. 316.193, s. 322.2616, s. 322.271, or s. 322.291, Florida Statutes;

(d) The person's driver license has been revoked for

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61 commission of a traffic-related felony;

62 (e) The person's driver license was revoked because the  
63 person is a habitual traffic offender under s. 322.264, Florida  
64 Statutes; or

65 (f) The person's driver license is under suspension for an  
66 offense committed outside a county in which the pilot program is  
67 being implemented.

68 (5) The clerk of court and the Department of Highway Safety  
69 and Motor Vehicles shall verify any information necessary for  
70 reinstatement of a driver license under the pilot program.

71 (6) By October 1, 2017, the Department of Highway Safety  
72 and Motor Vehicles shall report the results of the pilot program  
73 to the Governor, the President of the Senate, and the Speaker of  
74 the House of Representatives. The report shall include any  
75 recommendation by the department to continue, discontinue, or  
76 expand the pilot program and any necessary legislative action to  
77 facilitate a continuation or expansion of the pilot program.

78 (7) This section is repealed October 1, 2017.

79 Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16  
Meeting Date

1584  
Bill Number (if applicable)

Topic D.L.

Amendment Barcode (if applicable)

Name Greg Pound

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr.

Phone \_\_\_\_\_

Street

Largo  
City

Fla.  
State

33773  
Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

1584

*Bill Number (if applicable)*

Topic Suspended Driver Licenses

*Amendment Barcode (if applicable)*

Name Larry Eger

Job Title Public Defender, 12th Circuit

Address 2071 Ringling Blvd.

Phone 941.861.5500

*Street*

Sarasota

Florida

34237

Email egersrq@gmail.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

*Meeting Date*

1584

*Bill Number (if applicable)*

Topic Drivers Licenses Reinstatement

*Amendment Barcode (if applicable)*

Name Dan Hendrickson

Job Title Chair Advocacy Committee

Address 319 E Park Ave PO Box 1201

Phone 850-570-1967

*Street*

Tallahassee

FL

32302

Email danbhendrickson@comcast.net

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Big Bend Mental Health Coalition, NAMI Tallahassee, Veterans Standdown Legal Program

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: SB 7046

INTRODUCER: Transportation Committee

SUBJECT: Penalties and Fees

DATE: February 10, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Jones	Eichin		<b>TR Submitted as Committee Bill</b>
1.	Harkness	Sadberry	ACJ	<b>Pre-meeting</b>
2.			AP	

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**I. Summary:**

SB 7046 makes numerous changes to the Florida Statutes related to driver license (DL) suspensions and revocations, and the penalties and fees associated with them. Specifically, the bill:

- Removes suspension and revocation penalties for a number of specified non-driving-related offenses;
- Reduces the length of mandatory DL suspension for drug convictions from one year to six months;
- Allows individuals whose licenses are suspended for failure to comply with a court order or failure to pay court financial obligations, under ss. 318.15 or 322.245, F.S., to apply for a hardship license issued by the Department of Highway Safety and Motor Vehicles (DHSMV);
- Requires the court to inquire about a person's financial ability to pay a fine at the time a civil penalty is ordered in court;
- Prohibits a DL from being suspended solely for inability to pay a financial penalty or court obligation if the individual demonstrates to the court that he or she cannot pay;
- Adds criteria of what evidence demonstrates to the court a person is unable to pay;
- Prohibits clerk of the court-approved payment plans from exceeding two percent of an applicant's income, unless approved by the applicant;
- Requires clerks of the circuit court (clerks of court) to competitively bid for collection agents or private attorneys taking over unpaid accounts, and:
  - Prohibits the clerk of court from adding collection fees to the unpaid accounts for transferring the account to an agent or attorney; and
  - Prohibits the collections agent or attorney to add additional fees to the account other than the contractually agreed upon surcharge;
- Requires uniform traffic citations include information regarding the option of a payment plan and community service;

- Requires, in criminal cases, public defender request forms include the option to elect or refuse community service, if it is offered by the court; and
- Allows the court to use the information provided on the public defender request form to determine the person's inability to pay court financial obligations for the purpose of converting financial obligations into court-ordered community service.

The bill has an indeterminate negative fiscal impact on state and local government. The Revenue Estimating Conference estimated the removal of suspension penalties for non-driving-related offenses within the bill will negatively impact state and local government by a recurring loss of \$1.5 million each year for Fiscal Years 2016-2017 through 2020-2021. The bill will likely have a negative impact on local tax collectors and clerks of court who retain a portion of revenues from certain DL sanctions when issuing reinstatements, in addition to other fees retained by them associated with DL suspensions and revocations. However, the Revenue Estimating Conference was unable to determine the fiscal impact of the reduction in suspensions for "failure to comply" and "failure to pay court obligations", the strengthening of the payment plan provisions, or the potential increase in the use of community service in lieu of payment. The clerks of court estimate that the cost to comply with the bill's provisions related to the monitoring and management of the payment plans are approximately \$7.5 million and a loss in revenue ranging from \$24.7 million to \$82.4 million, based on County Fiscal Year 2014-2015 revenue. *See* Section V.

The bill has an effective date of October 1, 2016.

## II. Present Situation:

Driver license (DL) revocations and suspensions, respectively, terminate or temporarily withdraw one's driving privilege.<sup>1</sup> Although initially used to address poor driving behavior, DL sanctions are now commonly used to punish individuals engaged in behavior unrelated to the operation of a motor vehicle. Consequently, a substantial amount of time and resources are expended by state and local entities to deal with and process non-driving-related suspensions and revocations.

According to the American Association of Motor Vehicle Administrators (AAMVA), "Some studies have shown that suspending driving privileges for non-highway safety related reasons is not effective."<sup>2</sup> Enforcing non-driving-related suspensions is costly and detracts from highway safety priorities. Licenses being suspended for non-driving-related reasons have caused the seriousness of DL suspensions to become lessened in the minds of law enforcement, the courts, and the public, even though data shows drivers with suspensions for traffic-safety-related reasons are three times more likely to be involved in a crash than drivers suspended for other reasons.<sup>3</sup>

It is estimated that as many as three-fourths of drivers with suspended or revoked licenses continue to drive, indicating DL suspensions may not effectively force compliance.<sup>4</sup> According

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<sup>1</sup> Sections 322.01(36) and (40), F.S.

<sup>2</sup> AAMVA, *Best Practices Guide to Reducing Suspended Drivers*, (Feb. 2013), available at: <http://www.aamva.org/WorkArea/DownloadAsset.aspx?id=3723> at p. 2 (last visited Jan. 4, 2016).

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

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

to the Transportation Research Board of the National Academies, one out of five fatalities nationally involves a driver who is operating a vehicle without a valid license.<sup>5</sup>

DL suspension and revocation penalties are used to punish individuals who do not pay certain financial penalties and obligations, sometimes whether or not the individual can afford to do so. Furthermore, penalties for driving with a DL that is suspended or revoked increase per offense, causing individuals suffering from financial hardship to become stuck in a self-perpetuating cycle. Drivers who were unable to pay their original fine or court fees may lose their ability to legally get to and from work. If they are caught driving while the DL is suspended or revoked, they will incur additional court costs and penalties. Additionally, these drivers are not allowed to obtain a hardship license, restricted to business or employment purposes only<sup>6</sup>, even though this option is available for numerous driving-related suspensions, including DUIs.<sup>7</sup> Drivers whose license is suspended for inability to pay penalties or court financial obligations need to pay reinstatement fees in addition to their outstanding obligations to legally drive.

Clerks (clerks of court or clerks) use DL sanctions as a means to improve collections of fines and fees and have indicated that DL sanctions are their most effective tool to increase collections.<sup>8</sup> However, a 2007 report by the Office of Program Policy Analysis and Government Accountability (OPPAGA) indicated, of the 67 clerks they surveyed, there was no meaningful difference between the average revenue collected overall and clerks' use of any particular collection method.<sup>9</sup> According to a 2004 OPPAGA *Information Brief*, some clerks and judges both indicated that imposing sanctions against a DL for non-traffic-related offenses would not be appropriate since the punishment did not fit the crime; licenses were already overburdened with penalties; and sanctions would result in more unlicensed drivers on Florida's roadways as well as potentially more court cases.<sup>10</sup>

### **Non-Driving-Related DL Suspensions and Revocations**

Generally, the threat of losing one's driving privilege has been used to combat truancy, theft, vandalism, illegal possession of drugs, alcohol, tobacco, and firearms, and a number of other non-driving-related offenses. Relevant non-driving offenses are detailed below.

#### ***School Attendance Requirements***

A minor is not eligible for driving privileges unless that minor:

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<sup>5</sup> See *Id.* at p. 6.

<sup>6</sup> Section 322.271(1)(c), F.S., defines a "business purposes only" restricted driving privilege as limited to driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and medical purposes. An "employment purposes only" restricted driving privilege is limited to driving to and from work and necessary on-the-job driving.

<sup>7</sup> DHSMV, *Hardship Reinstatement Eligibility Requirements*, (Revised May 12, 2014) (on file with the Senate Committee on Transportation).

<sup>8</sup> OPPAGA, *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, Report No. 14-07, (Feb. 2014), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1407rpt.pdf> (last visited Dec. 9, 2015).

<sup>9</sup> OPPAGA, *Clerks of Court Generally Are Meeting the System's Collections Performance Standards*, Report No. 07-21, (Mar. 2007), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0721rpt.pdf> at p. 4 (last visited Jan. 2016).

<sup>10</sup> OPPAGA, *Information Brief: Court Fine and Fee Collections Can Increase*, Report No. 04-07, (Jan. 2004), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0407rpt.pdf> at p. 5 (last visited Jan. 4, 2016).



- Is enrolled in a public school, nonpublic school, or home education program and satisfies relevant attendance requirements;
- Has received a high school diploma, a high school equivalency diploma, a special diploma, or a certificate of high school completion;
- Is enrolled in a study course in preparation for the high school equivalency examination and satisfies relevant attendance requirements;
- Has been issued a certificate of exemption<sup>11</sup> from the district school superintendent; or
- Has been issued a hardship waiver.<sup>12</sup>

In Fiscal Year 2012-2013, the Department of Highway Safety and Motor Vehicles (DHSMV) suspended 4,020 licenses for non-compliance with school attendance requirements.<sup>13</sup> Approximately 60 percent of DL suspensions for non-compliance with school attendance requirements are reinstated in less than one year; however, the majority of the reinstatements are for individuals who reached their eighteenth birthday and were thus, no longer subject to the requirements.<sup>14</sup> Revenue from reinstatement fees for school attendance non-compliance from Fiscal Year 2012-2013 totaled \$241,389.<sup>15</sup> As of 2013, 29 states linked minors' driving privileges to school enrollment, attendance, academic performance, or behavior.<sup>16</sup>

### ***Worthless Check - Failure to Appear***

The court may order the suspension or revocation of a DL if the licensee is being prosecuted for giving worthless checks, drafts, or debit card orders under s. 832.05, F.S., and fails to appear before the court after having been previously adjudicated guilty under the same section.<sup>17</sup> The DHSMV issued 906 DL sanctions in 2014 for failing to appear on a worthless check charge.<sup>18</sup> The driving privilege is suspended until full payment of any court financial obligations incurred as a result of the warrant or *capias* issued is received, the cancellation of the warrant or *capias* from the Department of Law Enforcement is recorded, and a payment of a \$10 fee in addition to the suspension or revocation fee is paid to the DHSMV.<sup>19</sup>

### ***Misdemeanor Theft***

The court has the option to suspend the DL of a person adjudicated guilty of any misdemeanor violation of theft regardless of the value of the property stolen.<sup>20</sup> The first suspension following an adjudication of guilt for theft is for a period of six months, and a second or subsequent

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<sup>11</sup> See s. 1003.21(3), F.S.

<sup>12</sup> Section 322.091, F.S.

<sup>13</sup> OPPAGA 2014 report, *supra* note 8 at p. 9

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

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

<sup>16</sup> National Conference of State Legislatures (NCSL), *State Statutes Linking Driver's Licenses to School Enrollment, Attendance, Academic Performance, or Behavior* (2013), <http://www.ncsl.org/documents/transportation/DLsgradesattend.pdf> (last visited Dec. 9, 2015).

<sup>17</sup> Section 832.09, F.S., provides the individual is also issued a warrant or *capias* for failure to appear by the court.

<sup>18</sup> DHSMV, PowerPoint Presentation to the Florida Senate Committee on Transportation (Sept. 16, 2015), *available at*: [http://www.flsenate.gov/PublishedContent/Committees/2014-2016/TR/MeetingRecords/MeetingPacket\\_3156\\_2.pdf](http://www.flsenate.gov/PublishedContent/Committees/2014-2016/TR/MeetingRecords/MeetingPacket_3156_2.pdf) at p. 35 (last visited Dec. 28, 2015).

<sup>19</sup> See s. 322.251(7)(a), F.S., and DHSMV website, *Fee Schedule*, <http://www.flhsmv.gov/fees/> (last visited Dec. 28, 2015).

<sup>20</sup> Section 812.0155, F.S., allows the suspension for a misdemeanor violation under ss. 812.014 or 812.015, F.S.

suspension is for a period of one year.<sup>21</sup> The DHSMV issued 508 DL sanctions in 2014 for theft.<sup>22</sup>

The court may also suspend, revoke, or withhold issuance of a DL of a minor found guilty of a violation of theft<sup>23</sup> as an alternative to sentencing the minor to probation, commitment to the Department of Juvenile Justice, community control, or incarceration if the minor has never previously been convicted of or adjudicated delinquent for any criminal offense.<sup>24</sup>

### ***Providing Alcohol to Persons Under 21***

The court has discretion to order the DHSMV to withhold the issuance of, or suspend or revoke the DL of a person found guilty of violating s. 562.11(1), F.S., which prohibits a person from selling, giving, serving, or permitting service of alcoholic beverages to a person under the age of 21 or permitting a person under the age of 21 to consume an alcoholic beverage on a licensed premise.<sup>25</sup> Additionally, a person found guilty of violating this prohibition commits a second degree misdemeanor, and a person who violates this prohibition a second or subsequent time within one year after a prior conviction commits a first degree misdemeanor.

### ***Minor Guilty of Certain Alcohol, Drug, or Tobacco Offenses***

Section 322.056, F.S., requires a mandatory suspension, revocation, or withholding of a DL for persons under age 18 found guilty of certain alcohol, drug, or tobacco offenses. This penalty is in addition to any other penalty imposed by law.

#### **Alcohol and Drug Offenses**

The court must direct the DHSMV to revoke or withhold the issuance of driving privileges if a minor, who is eligible by reason of age for driving privileges, is guilty of:

- A violation of s. 562.11(2), F.S., misrepresenting his or her age or the age of another for the purpose of obtaining alcoholic beverages;
- A violation of s. 562.111, F.S., possession of alcoholic beverages by a person under age 21; or
- A violation of the Florida Comprehensive Drug Abuse Prevention and Control Act.<sup>26</sup>

The DL or driving privilege is revoked or withheld for not less than six months or more than one year for a first violation, and two years for a second or subsequent violation. However, the court may direct the DHSMV to issue a hardship license if the person is otherwise qualified for such a license.<sup>27</sup>

#### **Tobacco and Nicotine Offenses**

Section 569.11, F.S., prohibits a minor from knowingly possessing any tobacco product or misrepresenting his or her age to obtain a tobacco product. Additionally, a minor is prohibited

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<sup>21</sup> *Id.*

<sup>22</sup> DHSMV PowerPoint Presentation, *supra* note 18.

<sup>23</sup> Violation of ss. 812.014 or 812.015, F.S.

<sup>24</sup> Section 812.0155(2), F.S.

<sup>25</sup> Section 322.057, F.S.

<sup>26</sup> Chapter 893, F.S.

<sup>27</sup> Section 322.056(1), F.S.

from possessing nicotine products, possessing nicotine dispensing devices, or misrepresenting age to obtain these products or devices.<sup>28</sup> A violation of these sections is a noncriminal violation punishable by:

- For a first violation or subsequent violation not within 12 weeks of the first: 16 hours of community service or a \$25 fine, and the minor must attend a school-approved anti-tobacco and nicotine program, if locally available;
- For a second violation within 12 weeks of the first: A \$25 fine, and
- For a third or subsequent violation within 12 weeks of the first violation: Suspension or withholding issuance of a DL or driving privilege for 60 consecutive days.

If a minor, eligible by reason of age for driving privileges, fails to comply with the penalty, the court must revoke or withhold issuance of the driving privilege of the minor for a period of:<sup>29</sup>

- 30 days for the first violation or a subsequent violation not within 12 weeks of the first;
- 45 days for a second violation within 12 weeks of the first; or
- 60 consecutive days for a third violation within 12 weeks of the first.

### ***A Minor Guilty of Unlawful Possession of Firearms***

Section 790.22, F.S., prohibits a minor from possessing certain weapons and firearms. A person under the age of 18 may not possess a loaded firearm, unless the minor is at least 16 years of age or being supervised by an adult, and engaged in lawful hunting, marksmanship competitions or practice, or other lawful recreational shooting activities. A minor who violates this prohibition commits a first degree misdemeanor for the first offense and may serve a detention period of up to three days, shall be required to perform community service, and have his or her DL or privilege to drive revoked or withheld for up to one year. A second or subsequent offense is a third degree felony, plus up to a 15-day detention period, community service, and DL or privilege to drive is revoked or withheld for up to two years.

A minor who commits any other offense involving the use or possession of a firearm, in addition to the penalties provided by that offense and the penalties in s. 790.22(9), F.S., will also have his or her DL or privilege to drive revoked or withheld for up to one year for a first offense and up to two years for a second or subsequent offense.<sup>30</sup>

### ***Graffiti***

A minor found to have illegally placed graffiti on any public or private property, in addition to any other penalty provided by law, will have his or her DL or privilege to drive revoked or withheld for a period of not more than one year.<sup>31</sup>

### ***Drug Convictions***

Federal Law requires the state to enact and enforce “[A] law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception....” the driver

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<sup>28</sup> Sections 877.112(6) and (7), F.S.

<sup>29</sup> Sections 322.056(2) and (3), F.S.

<sup>30</sup> Section 790.22(10), F.S.

<sup>31</sup> Section 806.13(7), F.S.

license of any individual convicted of any drug offense be suspended for at least six months.<sup>32</sup> A percentage of federal highway funding given to the state is contingent upon this law. A state may opt-out of the law if the State Governor submits both written certification stating he is opposed to the enforcement of this law and certification from the State Legislature that it has adopted a resolution expressing opposition to the law. As of 2013, ten states had passed resolutions in opposition to this law.<sup>33</sup>

Under Florida Law, the court is required to direct the DHSMV to suspend, revoke, or withhold the issuance of the DL of a person 18 years or older who is convicted of a drug offense.<sup>34</sup> The privilege to drive is unavailable for one year or until the person is evaluated for and, if deemed necessary, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. The court has the discretion to direct the DHSMV to issue a hardship license, which is available after six months of suspension of the driving privilege, or a driver may petition the DHSMV for restoration of restricted or unrestricted driving privileges after six months.

In 2014, the Legislature passed a bill, which was signed into law, reducing the length of suspension of a DL from two years to one year for individuals convicted of drug offenses.<sup>35</sup>

The DHSMV issued 19,168 DL sanctions for violation of a controlled substance in 2014.<sup>36</sup>

### **Suspensions Initiated by the Clerk of Court**

The majority, over 1.5 million in 2014, of DL suspension notices issued by the DHSMV are a result of requests initiated by a clerk of the court.<sup>37</sup> Most originate from “failure to comply” or “failure to pay” offenses, actions that are not necessarily indicative of the violator’s ability to operate a motor vehicle safely.

### ***Suspension for Failure to Comply with Civil Penalties or to Appear***

An individual who is issued a noncriminal traffic citation, who is not required to appear before the court, has 30 days to comply with the penalty (i.e., pay the fine), enter into a penalty payment plan with the clerk of court, or request a hearing before the court.<sup>38</sup>

If an individual does not comply with the civil penalty, enter into a payment plan, attend driver improvement school (if ordered), or appear at a scheduled hearing, the clerk of court must issue notice of failure to the DHSMV within 10 days.<sup>39</sup> Upon receiving the notice of failure, the DHSMV immediately issues an order suspending the driving privilege of the individual effective

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<sup>32</sup> 23 U.S.C. s. 159 (2011).

<sup>33</sup> AAMVA, *supra* note 2 at p. 29.

<sup>34</sup> Section 322.055, F.S.

<sup>35</sup> See ch. 2014-216, s. 28, Laws of Fla.

<sup>36</sup> DHSMV PowerPoint Presentation, *supra* note 18.

<sup>37</sup> See DHSMV PowerPoint Presentation, *supra* note 18 at p. 33.

<sup>38</sup> Section 318.14, F.S.

<sup>39</sup> Section 318.15, F.S.

20 days after the order of suspension is mailed to the individual.<sup>40</sup> The DL and driving privilege are suspended until the driver meets the court requirements for reinstatement, and pays a \$60 reinstatement fee.<sup>41</sup>

Section 322.245, F.S., provides that the clerk of court shall mail a notice of failure, within five days after the failure, to a person charged with a violation of any criminal offense enumerated in s. 318.17, F.S., or a misdemeanor offense under chs. 320 or 322, F.S., who fails to comply with all directives of the court within the time allotted. The notice indicates the individual has 30 days from the date of the notice to comply with the court directives and pay a delinquency fee up to \$25, or his or her DL will be suspended. Upon failure to comply with the court directives within the 30-day period, the clerk of court must notify the DHSMV of such failure within 10 days. Upon receiving the notice of failure, the DHSMV immediately issues an order suspending the driving privilege of the individual effective 20 days after the order of suspension is mailed to the individual.

According to the DHSMV, 807,000 licenses were suspended for “failure to comply” reasons in 2014. As of September 23, 2015, 496,000 of these were reinstated.<sup>42</sup>

### ***Suspension for Failure to Pay Court Financial Obligations***

When a clerk of court provides notification to the DHSMV that a person has failed to pay financial obligations for *any* criminal offense, in full or in part under a payment plan with the clerk of court, the DHSMV will suspend the DL of the person until:<sup>43</sup>

- The person has satisfied the financial obligation in full or made all payments currently due under a payment plan;
- The person has entered into a written agreement for payment of the financial obligation if not presently enrolled in a payment plan; or
- A court has entered an order granting relief to the person ordering reinstatement of the DL.

OPPAGA reported that a large percentage of licenses suspended for failure to pay court obligations are not reinstated for at least two years, and some are not reinstated in over five years.<sup>44</sup> According to the DHSMV, 136,596 licenses were suspended in 2014 for financial obligations.

### **Payment Plans**

The clerk of court is required to accept partial payment of court-related fees, service charges, costs, or fines in accordance with the terms of an established payment plan.<sup>45</sup> The court may review the reasonableness of the payment plan. A monthly payment amount is “presumed to

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<sup>40</sup> Notice of cancellation, suspension, revocation, or disqualification of a driver license must be mailed in accordance with s. 322.251, F.S.

<sup>41</sup> DHSMV PowerPoint, *supra* note 18 at p. 30.

<sup>42</sup> DHSMV, Presentation to the Florida Senate Committee on Transportation (Oct. 8, 2015) *available at*: [http://www.flsenate.gov/PublishedContent/Committees/2014-2016/TR/MeetingRecords/MeetingPacket\\_3181\\_2.pdf](http://www.flsenate.gov/PublishedContent/Committees/2014-2016/TR/MeetingRecords/MeetingPacket_3181_2.pdf) (last visited Jan. 9, 2016).

<sup>43</sup> Section 322.245(5), F.S.

<sup>44</sup> OPPAGA 2014 report, *supra* note 8 at p. 8.

<sup>45</sup> Section 28.246(4), F.S.

correspond to the person's ability to pay if the amount does not exceed two percent of the person's annual net income," divided by 12.<sup>46</sup> The Brennan Center for Justice has indicated this presumption is often ignored and payment levels are set at fixed amounts.<sup>47</sup> Payment plan fees are \$5 per transaction or a \$25 one time set-up fee.<sup>48</sup>

### **Collection of Fees, Service Charges, Fines, Courts Costs, and Liens**

Section 28.246(6), F.S., provides a clerk of court must pursue the collection of any unpaid financial obligations to the court which remain unpaid after 90 days by referring the account to a private attorney or collection agent.<sup>49</sup> The clerk of court must have attempted to collect the unpaid obligation through a collection court, collections docket, or any other collections process established by the court prior to referring the account to a private attorney or collections agent, find the referral to be cost-effective, and follow any applicable procurement processes. A collection fee may be added to the balance owed of up to 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection.

### **Penalties and Fees**

#### ***Driving While License is Suspended or Revoked (DWLSR) Penalties***

Section 322.34, F.S., provides penalties for individuals driving while their DL is suspended, revoked, canceled, or disqualified. A person, excluding a habitual traffic offender<sup>50</sup>, whose DL has been canceled, suspended, or revoked is guilty of a moving violation if driving a motor vehicle while *unaware* of the DL sanction. A person, excluding a "habitual traffic offender," who *knowingly* drives a motor vehicle while his or her DL is invalid is guilty of:

- A second degree misdemeanor for the first conviction;
- A first degree misdemeanor for a second conviction; and
- A third degree felony for a third or subsequent conviction.

However, if a person does not have a prior forcible felony<sup>51</sup> conviction, and knowingly drives with a DL that is canceled, suspended, or revoked for failing to:

- Pay child support or certain financial obligations;
- Comply with a civil penalty required in s. 318.15, F.S.;

<sup>46</sup> *Id.*

<sup>47</sup> Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry*, (2010), available at: <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> at p. 14 (last visited Jan. 4, 2016).

<sup>48</sup> Section 28.24(26), F.S.

<sup>49</sup> A private attorney must be a member in good standing with The Florida Bar, and the collection agent must be registered and in good standing pursuant to ch. 559, F.S.

<sup>50</sup> Section 322.264, F.S., defines a "habitual traffic offender" as having at least three convictions arising out of separate acts of: manslaughter resulting from the operation of a motor vehicle; driving under the influence; any felony offense using a motor vehicle; driving while license is suspended or revoked; failing to stop and render aid as required; or driving a commercial motor vehicle while privilege is disqualified; or has accumulated 15 convictions of moving traffic offenses for which points may be assessed within a five-year period.

<sup>51</sup> Section 776.08, F.S., defines "forcible felony" as "treason; murder; manslaughter; sexual battery; carjacking; home invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual."

- Maintain adequate automobile insurance as required in ch. 324, F.S.; or
- Comply with attendance requirements;

then the person may be penalized with a second degree misdemeanor which is increased to a first degree misdemeanor for a second or subsequent conviction.

### ***Driver License Reinstatement Fees***

Section 322.21(8), F.S., requires a person who applies for reinstatement following a DL suspension or revocation to pay a service fee of \$45 following a suspension and \$75 following a revocation, in addition to the \$25 fee to replace their license if necessary. “Failure to comply” suspensions require a \$60 reinstatement fee. Additionally, the county tax collectors are required to charge a service fee of \$6.25, when providing services in ch. 322, F.S., including DL reinstatements.<sup>52</sup>

### **Community Service Option in Lieu of Payment**

A person ordered to pay a civil penalty for a noncriminal traffic infraction who is unable to comply with the court’s order due to demonstrable financial hardship must be allowed, by the court, to satisfy the civil penalty by participating in community service.<sup>53</sup> The penalty is reduced based on the hourly rate of community service performed. The specified hourly credit rate is the federal minimum wage<sup>54</sup>, currently \$7.25, or the average prevailing wage rate for a trade or profession that the community service agency needs.<sup>55</sup>

Similarly, the court may require a person liable for payment of a financial obligation in a criminal case to appear before the court and be examined under oath concerning the person’s ability to pay the obligation. The court may convert statutory financial obligations into community service after determining the person’s inability to pay.<sup>56</sup>

The Florida Court Clerks and Comptrollers reported in Fiscal Year 2013-2014, that \$4,153,505 of the \$946,782,692 court-related fines, fees, penalties, charges, or costs assessed by the courts statewide had been converted to community service.<sup>57</sup>

## **III. Effect of Proposed Changes:**

The bill makes changes to the Florida Statutes in order to reduce the amount of driver license (DL) suspensions and revocations for non-driving-related offenses, reduce the financial burden of DL suspensions, and reduce the severity of suspension-related penalties.

<sup>52</sup> Section 322.135(1)(c), F.S.

<sup>53</sup> Section 318.18(8)(b), F.S.

<sup>54</sup> As specified in 29 U.S.C. s. 206(a)(1) under the Federal Fair Labor Standards Act of 1938.

<sup>55</sup> Section 318.18(8)(b)2., F.S.

<sup>56</sup> Section 938.30(2), F.S.

<sup>57</sup> Florida Court Clerks and Comptrollers, *2014 Annual Assessments and Collections Report*, (Jan. 2, 2015), available at: [http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Public\\_Documents\\_/2014\\_Clerks\\_A\\_and\\_C\\_Consolid.pdf](http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Public_Documents_/2014_Clerks_A_and_C_Consolid.pdf) at p. 6 (last visited Jan. 4, 2016).

### **Non-Driving-Related DL Suspensions and Revocations**

The bill removes suspension or revocation of a DL from the potential penalties that may be applied for the following offenses:

- A minor who does not meet school attendance requirements;
- A person who fails to appear in a worthless check case;
- A person found guilty of misdemeanor theft;
- A person who provides alcohol to anyone under 21 years of age;
- A minor possessing alcohol, tobacco, tobacco products, or nicotine products, or misrepresenting age to obtain them;
- A minor illegally possessing a firearm; and
- A minor found guilty of graffiti.

The bill retains the 30-day and 45-day DL suspension for minors who do not comply with the penalties for tobacco and nicotine offenses, however, this penalty is at the court's discretion rather than mandatory.

### **Drug Convictions**

The bill reduces the length of the suspension period for a drug conviction from one year to six months for persons over the age of 18, and reduces the suspension period to six months for minors convicted of drug offenses.

The bill deletes provisions allowing individuals to petition the DHSMV for a hardship license after six months of their suspension become the bill reduces the suspension period to six months.

### **Failure to Comply and Failure to Pay Court Financial Obligations Suspensions**

Sections 318.15 and 322.245, F.S., are amended to provide that a person's DL may not be suspended solely for failure to pay a penalty or court financial obligation if the person demonstrates to the court that he or she is unable to pay. The person must provide evidence he or she is unable to pay after receiving the penalty, but prior to the suspension taking place in order to avoid suspension. A person is considered unable to pay if the person:

- Receives temporary cash assistance pursuant to ch. 443, F.S.;
- Is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income or Social Security Disability programs;
- Is making payments in accordance with a confirmed bankruptcy plan under chs. 11, 12, or 13 of the United States Bankruptcy Code;
- Has been placed on a payment plan or plans with the clerk of court which in total exceed what is determined to be a reasonable payment plan pursuant to s. 28.246(4), F.S.; or
- Has been determined indigent after filing an application with the clerk of court in accordance with ss. 27.52 or 57.082, F.S.

The bill also allows a person whose DL or privilege to drive has been suspended under either of these sections, with the exception of suspensions related to non-payment of child support, to apply to the DHSMV to have his or her DL reinstated on a restricted basis. The restricted license



is valid until the seven-year suspension period ends for failure to pay or comply penalties under s. 318.15, F.S., or until the debt is paid.

### **Payment Plans with the Clerk of the Circuit Court (Clerk of Court)**

Section. 28.246(4), F.S., is amended to provide that a monthly payment plan with the clerk of court may not exceed two percent of the person's annual net income, divided by 12, without the consent of the applicant.

In addition, the bill requires that uniform traffic citation forms must include language indicating that a person may enter into a payment plan with the clerk of court to pay the penalty.

### **Collection of Fees, Service Charges, Fines, Courts Costs, and Liens by Clerk of Court**

The bill amends s. 28.246(6), F.S., regarding referring accounts to private attorneys or collection agents. A clerk of court *may* pursue collections of an account, after first attempting to collect the debt through other collections processes, by referring the account to a private attorney or collection agent. However, the clerk of court must have competitively bid a contract with a collection agent or private attorney by considering all pertinent criteria including performance quality, customer service, and collection fees. The contract with a collection agent or private attorney may be in effect for no longer than three years with the opportunity to make a maximum of two one-year extensions. The clerk of court is prohibited from assessing any collection surcharges to the account, and the collection agent or private attorney may not impose any additional fees or surcharges other than the contractually agreed upon surcharge.

### **Community Service Option in Lieu of Payment**

The bill adds that the uniform traffic citation form must include language indicating that a person ordered to pay a noncriminal traffic infraction penalty who is unable to comply due to demonstrable hardship will be allowed by the court to satisfy payment by participating in community service. Additionally, if a person is ordered to pay a civil penalty for a noncriminal infraction in court, the court shall inquire regarding the person's ability to pay at the time the civil penalty is ordered.

The bill amends s. 27.52, F.S., with regards to the application a person claiming indigent status makes to the clerk of court in order to receive a public defender. The bill provides that the person must make an election of or refusal of the option to fulfill any court-ordered financial obligation associated with his or her case by completion of community service if offered by the court. For financial obligations in criminal cases, the judge may rely on this information as a factor in determining the person's inability to pay court financial obligations when converting statutory financial obligations into court-ordered community service.

### **Effective Date**

Information regarding payment plans and community service options to be added to the uniform traffic citation form will be added upon the creation of new inventory, which allows the DHSMV to deplete the current stock.

The bill takes effect October 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, s. 18, Florida Constitution, provides that a mandate may exist if a law reduces the authority that counties or municipalities have to raise revenues in the aggregate. Local government tax collectors and clerks of the court do retain a portion of driver license (DL) reinstatement fees for DL suspensions and revocations possibly eliminated or reduced by this bill. However, the bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The Revenue Estimating Conference adopted an estimate it considers a minimum impact and recognized that “behavioral shifts related to changed incentives may make the impact higher than adopted.” The adopted estimate reduces state revenues in Fiscal Year 2016-2017 by \$0.6 million in recurring general revenue, \$0.8 million in recurring trust funds, and reduces local government revenues by \$0.1 million recurring.<sup>58</sup>

##### **B. Private Sector Impact:**

The bill will have a positive impact on individuals who may have otherwise had their driver license (DL) suspended or revoked, or who will be eligible to receive a hardship license if their DL is suspended.

##### **C. Government Sector Impact:**

SB 7046 will have an indeterminate negative fiscal impact to state and local government.

The Revenue Estimating Conference estimated the removal of suspension penalties for non-driving-related offenses under the bill will negatively impact state and local

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<sup>58</sup> Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Impact Conference* (Jan. 14, 2016).

government by a recurring loss of \$1.5 million each year for Fiscal Years 2016-2017 through 2020-2021, which will affect the General Revenue Fund, Highway Safety Operating Trust Fund, and local funds.<sup>59</sup>

It is unknown how much the bill will decrease suspensions for “failure to comply” and “failure to pay court obligations”; however, the Office of Economic and Demographic Research estimates a one percent decrease in state revenues will result in a recurring loss of approximately \$120,000 each year for Fiscal Years 2016-2017 through 2020-2021.<sup>60</sup>

The bill will likely have a negative impact on local tax collectors and clerks of the circuit court (clerk of court) who retain a portion of revenues from certain DL sanctions when issuing reinstatements, in addition to other fees retained by them associated with DL suspensions and revocations. Additionally, it is indeterminate how the bill will impact the clerk of court regarding the competitive bidding process for collection agents or attorneys, and any impact associated with an increased use of clerk of court-approved payment plans.

The clerk of court estimate that the cost to comply with the bill’s provisions related to the monitoring and management of the payment plans would be approximately \$7.5 million in additional full time equivalent positions (FTEs) and IT costs. In addition, the clerk of court’s annual loss of revenue, based on County Fiscal Year 2014-2015 revenue figures, would range from \$24.7 million to \$82.4 million, depending on assumptions regarding what percentage of collections fail to be paid (15% to 50% nonpayment). For instance, if 15% of collections are lost because individuals extend payment plans or participate in community service in lieu of paying fees, the clerk of court could lose an estimated \$24.7 million in revenues.<sup>61</sup> Clerk of court were unable to estimate the percentage of nonpayment associated with the bill.

In addition, the costs associated with the process of suspending and revoking licenses, the loss of revenue associated with drivers being unable to legally drive, and the costs of individuals continuing to drive without a valid license is unknown.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

None.

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<sup>59</sup> Revenue Estimating Conference, *supra* note 59.

<sup>60</sup> Email from the Office of Economic and Demographic Research (Revised Jan. 6, 2016) (on file with the Senate Committee on Transportation).

<sup>61</sup> Letter from the Florida Court Clerks and Comptrollers (January 11, 2016) (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 27.52, 28.246, 316.650, 318.15, 318.18, 322.055, 322.056, 322.09, 322.245, 322.251, 322.271, 322.34, 562.11, 562.111, 569.11, 790.22, 806.13, 877.112, 938.30, and 1003.27.

This bill amends the following sections of the Florida Statutes to conform to changes made by this act: 318.14, 322.05, 397.951, and 1003.01.

This bill repeals the following sections and subsections of the Florida Statutes: 322.057, 322.091, 812.0155, and 832.09.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By the Committee on Transportation

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A bill to be entitled  
An act relating to penalties and fees; amending s.  
27.52, F.S.; adding a financial information  
requirement for a certain application form; amending  
s. 28.246, F.S.; revising requirements relating to the  
payment of court-related fines or other monetary  
penalties, fees, charges, and costs; authorizing,  
rather than requiring, a clerk of court to pursue  
collection of certain fees, charges, fines, costs, or  
liens under certain circumstances; requiring a clerk  
of court to competitively bid a contract with a  
collection agency or private attorney under certain  
circumstances, subject to certain requirements;  
prohibiting the clerk from assessing any collections  
transfer surcharge; prohibiting the collection agency  
or private attorney from imposing certain additional  
fees or surcharges; amending s. 316.650, F.S.;  
requiring traffic citation forms to include certain  
language relating to payment of a penalty; amending s.  
318.15, F.S.; prohibiting the suspension of a person's  
driver license solely for failure to pay a penalty if  
the person demonstrates to the court, when specified,  
that he or she is unable to pay such penalty;  
requiring the person to provide documentation meeting  
certain requirements to the appropriate clerk of court  
in order to be considered unable to pay; amending s.  
318.18, F.S.; requiring a court to inquire regarding a  
person's ability to pay at the time a certain civil  
penalty is ordered; amending s. 322.055, F.S.;  
decreasing the period for revocation or suspension of,  
or delay of eligibility for, driver licenses or  
driving privileges for certain persons convicted of

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33 certain drug offenses; deleting provisions authorizing  
34 a driver to petition the department for restoration of  
35 the person's driving privilege; amending s. 322.056,  
36 F.S.; decreasing the period for revocation or  
37 suspension of, or delay of eligibility for, driver  
38 licenses or driving privileges for certain persons  
39 found guilty of certain drug offenses; deleting a  
40 provision authorizing a court to direct the Department  
41 of Highway Safety and Motor Vehicles to issue a  
42 license for certain restricted driving privileges  
43 under certain circumstances; deleting requirements  
44 relating to the revocation or suspension of, or delay  
45 of eligibility for, driver licenses or driving  
46 privileges for certain persons found guilty of certain  
47 alcohol or tobacco offenses; repealing s. 322.057,  
48 F.S., relating to discretionary revocation or  
49 suspension of a driver license for certain persons who  
50 provide alcohol to persons under a specified age;  
51 amending s. 322.09, F.S.; deleting a provision  
52 prohibiting the issuance of a driver license or  
53 learner's driver license under certain circumstances;  
54 repealing s. 322.091, F.S., relating to attendance  
55 requirements for driving privileges; amending s.  
56 322.245, F.S.; prohibiting the suspension of a  
57 person's driver license solely for failure to pay a  
58 penalty if the person demonstrates to the court, when  
59 specified, that he or she is unable to pay such  
60 penalty; requiring the person to provide documentation  
61 meeting certain requirements to the appropriate clerk

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of court in order to be considered unable to pay;  
repealing s. 322.251(7), F.S., relating to notice of  
suspension or revocation of driving privileges,  
reasons for reinstatement of such driving privileges,  
and certain electronic access to identify a person who  
is the subject of an outstanding warrant or capias for  
passing worthless bank checks; amending s. 322.271,  
F.S.; providing that a person whose driver license or  
privilege to drive has been suspended may have his or  
her driver license or driving privilege reinstated on  
a restricted basis under certain circumstances;  
providing the period of validity of such restricted  
license; amending s. 322.34, F.S.; revising the  
underlying violations resulting in driver license or  
driving privilege cancellation, suspension, or  
revocation for which specified penalties apply;  
amending s. 562.11, F.S.; revising penalties for  
selling, giving, serving, or permitting to be served  
alcoholic beverages to a person under a specified age  
or permitting such person to consume such beverages on  
licensed premises; repealing s. 562.111(3), F.S.,  
relating to withholding issuance of, or suspending or  
revoking, a driver license or driving privilege for  
possession of alcoholic beverages by persons under a  
specified age; amending s. 569.11, F.S.; revising  
penalties for persons under a specified age who  
knowingly possess, misrepresent their age or military  
service to purchase, or purchase or attempt to  
purchase tobacco products; authorizing, rather than

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requiring, the court to direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend a person's driver license or driving privilege for certain violations; amending s. 790.22, F.S.; revising penalties relating to suspending, revoking, or withholding issuance of driver licenses or driving privileges for minors under a specified age who possess firearms under certain circumstances; deleting provisions relating to penalties for certain offenses involving the use or possession of a firearm by a minor under a specified age; amending s. 806.13, F.S.; deleting provisions relating to certain penalties for criminal mischief by a minor; repealing s. 812.0155, F.S., relating to suspension of a driver license following an adjudication of guilt for theft; repealing s. 832.09, F.S., relating to suspension of a driver license after warrant or capias is issued in worthless check cases; amending s. 877.112, F.S.; revising penalties for persons under a specified age who knowingly possess, misrepresent their age or military service to purchase, or purchase or attempt to purchase any nicotine product or nicotine dispensing device; authorizing, rather than requiring, the court to direct the department to withhold issuance of or suspend a person's driver license or driving privilege for certain violations; amending s. 938.30, F.S.; authorizing a judge to convert certain statutory financial obligations into court-ordered obligations to perform community service by reliance



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upon specified information under certain  
circumstances; amending s. 1003.27, F.S.; deleting  
provisions relating to procedures and penalties for  
nonenrollment and nonattendance cases; amending ss.  
318.14, 322.05, 397.951, and 1003.01, F.S.; conforming  
provisions to changes made by the act; providing  
applicability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section  
27.52, Florida Statutes, is amended to read:

27.52 Determination of indigent status.—

(1) APPLICATION TO THE CLERK.—A person seeking appointment  
of a public defender under s. 27.51 based upon an inability to  
pay must apply to the clerk of the court for a determination of  
indigent status using an application form developed by the  
Florida Clerks of Court Operations Corporation with final  
approval by the Supreme Court.

(a) The application must include, at a minimum, the  
following financial information:

1. Net income, consisting of total salary and wages, minus  
deductions required by law, including court-ordered support  
payments.

2. Other income, including, but not limited to, social  
security benefits, union funds, veterans' benefits, workers'  
compensation, other regular support from absent family members,  
public or private employee pensions, reemployment assistance or  
unemployment compensation, dividends, interest, rent, trusts,

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and gifts.

3. Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.

4. All liabilities and debts.

5. If applicable, the amount of any bail paid for the applicant's release from incarceration and the source of the funds.

6. The election of or refusal of the option to fulfill any court-ordered financial obligation associated with the case by the completion of community service as ordered by the court.

The application must include a signature by the applicant which attests to the truthfulness of the information provided. The application form developed by the corporation must include notice that the applicant may seek court review of a clerk's determination that the applicant is not indigent, as provided in this section.

Section 2. Subsections (4) and (6) of section 28.246, Florida Statutes, are amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(4) The clerk of the circuit court shall accept partial payments for court-related fees, service charges, costs, and fines in accordance with the terms of an established payment plan. An individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of

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the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. ~~The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs.~~ A monthly payment amount, calculated based upon all fees and all anticipated costs, may ~~is presumed to correspond to the person's ability to pay if the amount does~~ not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12, without the consent of the applicant. The court may review the reasonableness of the payment plan.

(6) A clerk of court may ~~shall~~ pursue the collection of any fees, service charges, fines, court costs, and liens for the payment of attorney fees and costs pursuant to s. 938.29 which remain unpaid after 90 days by referring the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559. In pursuing the collection of such unpaid financial obligations through a private attorney or collection agent, the clerk of the court must first attempt ~~have attempted~~ to collect the unpaid amount through a collection court, collections docket, or other collections process, if any, established by the court. If this attempt is unsuccessful, the clerk may pursue the collection through a private attorney or collection agent following ~~find this to be cost-effective and follow any applicable procurement practices.~~ and the following conditions:

(a) In retaining a collection agent or private attorney as provided in this subsection, the clerk shall competitively bid a contract with a collection agent or private attorney. Such

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contract may be in effect for no longer than 3 years with a maximum of two, one-year extensions.

(b) The clerk shall consider all pertinent criteria when considering bids including, but not limited to, performance quality, customer service, and collection fees. However, the collection fee, including any reasonable attorney ~~attorney's~~ fee, paid to any attorney or collection agent retained by the clerk may be added to the balance owed in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection.

(c) The clerk may not assess any collections transfer surcharge.

(d) The collection agent or private attorney may not impose any additional fees or surcharges other than their contractually agreed upon surcharge.

(e) The clerk shall give the private attorney or collection agent the application for the appointment of court-appointed counsel regardless of whether the court file is otherwise confidential from disclosure.

Section 3. Present paragraphs (b), (c), and (d) of subsection (1) of section 316.650, Florida Statutes, are redesignated as paragraphs (c), (d), and (e), respectively, a new paragraph (b) is added to that subsection, and present paragraph (c) of that subsection is amended, to read:

316.650 Traffic citations.—

(1)

(b) The traffic citation form must include language indicating that a person may enter into a payment plan with the clerk of court to pay a penalty. The form must also indicate

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that a person ordered to pay a penalty for a noncriminal traffic infraction who is unable to comply due to demonstrable financial hardship will be allowed by the court to satisfy payment by participating in community service pursuant to s. 318.18(8)(b).

(d) ~~(e)~~ Notwithstanding paragraphs (a) and (c) ~~(b)~~, a traffic enforcement agency may produce uniform traffic citations by electronic means. Such citations must be consistent with the state traffic court rules and the procedures established by the department and must be appropriately numbered and inventoried. Affidavit-of-compliance forms may also be produced by electronic means.

Section 4. Subsection (4) is added to section 318.15, Florida Statutes, to read:

318.15 Failure to comply with civil penalty or to appear; penalty.—

(4) Notwithstanding any other law, a person's driver license may not be suspended solely for failure to pay a penalty if the person demonstrates to the court, after receiving the penalty and prior to the suspension taking place, that he or she is unable to pay the penalty. A person is considered unable to pay if the person provides documentation to the appropriate clerk of court evidencing that:

(a) The person receives reemployment assistance or unemployment compensation pursuant to chapter 443;

(b) The person is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income program or Social Security Disability Insurance program;

(c) The person receives temporary cash assistance pursuant to chapter 414;

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(d) The person is making payments in accordance with a confirmed bankruptcy plan under chapter 11, chapter 12, or chapter 13 of the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq.;

(e) The person has been placed on a payment plan or payment plans with the clerk of court which in total exceed what is determined to be a reasonable payment plan pursuant to s. 28.246(4); or

(f) The person has been determined to be indigent after filing an application with the clerk in accordance with s. 27.52 or s. 57.082.

Section 5. Paragraph (b) of subsection (8) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(8)

(b)1.a. If a person has been ordered to pay a civil penalty for a noncriminal traffic infraction and the person is unable to comply with the court's order due to demonstrable financial hardship, the court shall allow the person to satisfy the civil penalty by participating in community service until the civil penalty is paid.

b. The court shall inquire regarding the person's ability to pay at the time the civil penalty is ordered.

c. If a court orders a person to perform community service, the person shall receive credit for the civil penalty at the specified hourly credit rate per hour of community service performed, and each hour of community service performed shall

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294 reduce the civil penalty by that amount.

295       2.a. As used in this paragraph, the term "specified hourly  
296 credit rate" means the wage rate that is specified in 29 U.S.C.  
297 s. 206(a)(1) under the federal Fair Labor Standards Act of 1938,  
298 that is then in effect, and that an employer subject to such  
299 provision must pay per hour to each employee subject to such  
300 provision.

301       b. However, if a person ordered to perform community  
302 service has a trade or profession for which there is a community  
303 service need, the specified hourly credit rate for each hour of  
304 community service performed by that person shall be the average  
305 prevailing wage rate for the trade or profession that the  
306 community service agency needs.

307       3.a. The community service agency supervising the person  
308 shall record the number of hours of community service completed  
309 and the date the community service hours were completed. The  
310 community service agency shall submit the data to the clerk of  
311 court on the letterhead of the community service agency, which  
312 must also bear the notarized signature of the person designated  
313 to represent the community service agency.

314       b. When the number of community service hours completed by  
315 the person equals the amount of the civil penalty, the clerk of  
316 court shall certify this fact to the court. Thereafter, the  
317 clerk of court shall record in the case file that the civil  
318 penalty has been paid in full.

319       4. As used in this paragraph, the term:

320       a. "Community service" means uncompensated labor for a  
321 community service agency.

322       b. "Community service agency" means a not-for-profit

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corporation, community organization, charitable organization, public officer, the state or any political subdivision of the state, or any other body the purpose of which is to improve the quality of life or social welfare of the community and which agrees to accept community service from persons unable to pay civil penalties for noncriminal traffic infractions.

Section 6. Subsections (1) through (4) of section 322.055, Florida Statutes, are amended to read:

322.055 Revocation or suspension of, or delay of eligibility for, driver license for persons 18 years of age or older convicted of certain drug offenses.—

(1) Notwithstanding s. 322.28, upon the conviction of a person 18 years of age or older for possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, the court shall direct the department to revoke the driver license or driving privilege of the person. The period of such revocation shall be 6 months ~~1 year~~ or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. However, the court may, in its sound discretion, direct the department to issue a license for driving privilege restricted to business or employment purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. ~~A driver whose license or driving privilege has been suspended or revoked under this section or s. 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on length of suspension or~~



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~~revocation. In no case shall~~ A restricted license may not be available until 6 months of the suspension or revocation period has expired.

(2) If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is eligible by reason of age for a driver license or privilege, the court shall direct the department to withhold issuance of such person's driver license or driving privilege for a period of 6 months ~~1 year~~ after the date the person was convicted or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. However, the court may, in its sound discretion, direct the department to issue a license for driving privilege restricted to business or employment purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. ~~A driver whose license or driving privilege has been suspended or revoked under this section or s. 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall~~ A restricted license may not be available until 6 months of the suspension or revocation period has expired.

(3) If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person's driver license or driving privilege is already under

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suspension or revocation for any reason, the court shall direct the department to extend the period of such suspension or revocation by an additional period of 6 months ~~1 year~~ or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. However, the court may, in its sound discretion, direct the department to issue a license for driving privilege restricted to business or employment purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. ~~A driver whose license or driving privilege has been suspended or revoked under this section or s. 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall~~ A restricted license may not be available until 6 months of the suspension or revocation period has expired.

(4) If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is ineligible by reason of age for a driver license or driving privilege, the court shall direct the department to withhold issuance of such person's driver license or driving privilege for a period of 6 months ~~1 year~~ after the date that he or she would otherwise have become eligible or until he or she becomes eligible by reason of age for a driver license and is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved

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or regulated by the Department of Children and Families.  
However, the court may, in its sound discretion, direct the  
department to issue a license for driving privilege restricted  
to business or employment purposes only, as defined by s.  
322.271, if the person is otherwise qualified for such a  
license. ~~A driver whose license or driving privilege has been  
suspended or revoked under this section or s. 322.056 may, upon  
the expiration of 6 months, petition the department for  
restoration of the driving privilege on a restricted or  
unrestricted basis depending on the length of suspension or  
revocation. In no case shall~~ A restricted license may not be  
available until 6 months of the suspension or revocation period  
has expired.

Section 7. Section 322.056, Florida Statutes, is amended to  
read:

322.056 Mandatory revocation or suspension of, or delay of  
eligibility for, driver license for persons under age 18 found  
guilty of ~~certain alcohol, drug, or tobacco~~ offenses;  
prohibition.—

(1) Notwithstanding the provisions of s. 322.055, if a  
person under 18 years of age is found guilty of or delinquent  
for a violation of ~~s. 562.11(2), s. 562.111, or~~ chapter 893,  
and:

(a) The person is eligible by reason of age for a driver  
license or driving privilege, the court shall direct the  
department to revoke or to withhold issuance of his or her  
driver license or driving privilege for a period of 6 months.÷

~~1. Not less than 6 months and not more than 1 year for the  
first violation.~~

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~~2. Two years, for a subsequent violation.~~

(b) The person's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the department to extend the period of suspension or revocation by an additional period of 6 months.

~~1. Not less than 6 months and not more than 1 year for the first violation.~~

~~2. Two years, for a subsequent violation.~~

(c) The person is ineligible by reason of age for a driver license or driving privilege, the court shall direct the department to withhold issuance of his or her driver license or driving privilege for a period of:

~~1. Not less than 6 months and not more than 1 year after the date on which he or she would otherwise have become eligible, for the first violation.~~

~~2. Two years after the date on which he or she would otherwise have become eligible, for a subsequent violation.~~

~~However, the court may, in its sound discretion, direct the department to issue a license for driving privileges restricted to business or employment purposes only, as defined in s. 322.271, if the person is otherwise qualified for such a license.~~

~~(2) If a person under 18 years of age is found by the court to have committed a noncriminal violation under s. 569.11 or s. 877.112(6) or (7) and that person has failed to comply with the procedures established in that section by failing to fulfill community service requirements, failing to pay the applicable fine, or failing to attend a locally available school-approved~~

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~~anti-tobacco program, and:~~

~~(a) The person is eligible by reason of age for a driver license or driving privilege, the court shall direct the department to revoke or to withhold issuance of his or her driver license or driving privilege as follows:~~

~~1. For the first violation, for 30 days.~~

~~2. For the second violation within 12 weeks of the first violation, for 45 days.~~

~~(b) The person's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the department to extend the period of suspension or revocation by an additional period as follows:~~

~~1. For the first violation, for 30 days.~~

~~2. For the second violation within 12 weeks of the first violation, for 45 days.~~

~~(c) The person is ineligible by reason of age for a driver license or driving privilege, the court shall direct the department to withhold issuance of his or her driver license or driving privilege as follows:~~

~~1. For the first violation, for 30 days.~~

~~2. For the second violation within 12 weeks of the first violation, for 45 days.~~

~~Any second violation of s. 569.11 or s. 877.112(6) or (7) not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in this subsection.~~

~~(3) If a person under 18 years of age is found by the court to have committed a third violation of s. 569.11 or s.~~

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~~877.112(6) or (7) within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to suspend or withhold issuance of his or her driver license or driving privilege for 60 consecutive days. Any third violation of s. 569.11 or s. 877.112(6) or (7) not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in subsection (2).~~

(2)(4) A penalty imposed under this section shall be in addition to any other penalty imposed by law.

~~(5) The suspension or revocation of a person's driver license imposed pursuant to subsection (2) or subsection (3), shall not result in or be cause for an increase of the convicted person's, or his or her parent's or legal guardian's, automobile insurance rate or premium or result in points assessed against the person's driving record.~~

Section 8. Section 322.057, Florida Statutes, is repealed.

Section 9. Subsection (3) of section 322.09, Florida Statutes, is amended, and present subsections (4) and (5) of that section are redesignated as subsections (3) and (4), respectively, to read:

322.09 Application of minors; responsibility for negligence or misconduct of minor.—

~~(3) The department may not issue a driver license or learner's driver license to any applicant under the age of 18 years who is not in compliance with the requirements of s. 322.091.~~

Section 10. Section 322.091, Florida Statutes, is repealed.

Section 11. Subsection (6) is added to section 322.245,

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Florida Statutes, to read:

322.245 Suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.—

(6) Notwithstanding any other law, a person's driver license may not be suspended solely for failure to pay a penalty or court obligation if the person demonstrates to the court, after receiving the penalty and prior to the suspension taking place, that he or she is unable to pay the penalty or court obligation. A person is considered unable to pay if the person provides documentation to the appropriate clerk of court evidencing that:

(a) The person receives reemployment assistance or unemployment compensation pursuant to chapter 443;

(b) The person is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income program or Social Security Disability Insurance program;

(c) The person receives temporary cash assistance pursuant to chapter 414;

(d) The person is making payments in accordance with a confirmed bankruptcy plan under chapter 11, chapter 12, or chapter 13 of the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq.;

(e) The person has been placed on a payment plan or payment plans with the clerk of court which in total exceed what is determined to be a reasonable payment plan pursuant to s.

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555 28.246(4); or

556 (f) The person has been determined to be indigent after  
557 filing an application with the clerk in accordance with s. 27.52  
558 or s. 57.082.

559 Section 12. Subsection (7) of section 322.251, Florida  
560 Statutes, is repealed.

561 Section 13. Subsection (8) is added to section 322.271,  
562 Florida Statutes, to read:

563 322.271 Authority to modify revocation, cancellation, or  
564 suspension order.—

565 (8) A person whose driver license or privilege to drive has  
566 been suspended under s. 318.15 or s. 322.245, with the exception  
567 of any suspension related to s. 61.13016, may have his or her  
568 driver license or driving privilege reinstated on a restricted  
569 basis by the department in accordance with this section. The  
570 restricted license shall be valid until the 7-year suspension  
571 period ends as provided in s. 318.15 or until the debt is paid.

572 Section 14. Subsection (10) of section 322.34, Florida  
573 Statutes, is amended to read:

574 322.34 Driving while license suspended, revoked, canceled,  
575 or disqualified.—

576 (10) (a) Notwithstanding any other provision of this  
577 section, if a person does not have a prior forcible felony  
578 conviction as defined in s. 776.08, the penalties provided in  
579 paragraph (b) apply if a person's driver license or driving  
580 privilege is canceled, suspended, or revoked for:

581 1. Failing to pay child support as provided in s. 322.245  
582 or s. 61.13016;

583 2. Failing to pay any other financial obligation as



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584 provided in s. 322.245 ~~other than those specified in s.~~  
585 ~~322.245(1);~~

586 3. Failing to comply with a civil penalty required in s.  
587 318.15;

588 4. Failing to maintain vehicular financial responsibility  
589 as required by chapter 324; or

590 ~~5. Failing to comply with attendance or other requirements~~  
591 ~~for minors as set forth in s. 322.091; or~~

592 5.6. Having been designated a habitual traffic offender  
593 under s. 322.264(1)(d) as a result of suspensions of his or her  
594 driver license or driver privilege for any underlying violation  
595 listed in subparagraphs 1.-4. ~~1.-5.~~

596 (b)1. Upon a first conviction for knowingly driving while  
597 his or her license is suspended, revoked, or canceled for any of  
598 the underlying violations listed in subparagraphs (a)1.-5.  
599 ~~(a)1.-6.~~, a person commits a misdemeanor of the second degree,  
600 punishable as provided in s. 775.082 or s. 775.083.

601 2. Upon a second or subsequent conviction for the same  
602 offense of knowingly driving while his or her license is  
603 suspended, revoked, or canceled for any of the underlying  
604 violations listed in subparagraphs (a)1.-5. ~~(a)1.-6.~~, a person  
605 commits a misdemeanor of the first degree, punishable as  
606 provided in s. 775.082 or s. 775.083.

607 Section 15. Paragraph (a) of subsection (1) of section  
608 562.11, Florida Statutes, is amended to read:

609 562.11 Selling, giving, or serving alcoholic beverages to  
610 person under age 21; providing a proper name; misrepresenting or  
611 misstating age or age of another to induce licensee to serve  
612 alcoholic beverages to person under 21; penalties.-

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613           (1)(a)~~1.~~ A person may not sell, give, serve, or permit to  
614 be served alcoholic beverages to a person under 21 years of age  
615 or permit a person under 21 years of age to consume such  
616 beverages on the licensed premises. A person who violates this  
617 subparagraph commits a misdemeanor of the second degree,  
618 punishable as provided in s. 775.082 or s. 775.083. A person who  
619 violates this subparagraph a second or subsequent time within 1  
620 year after a prior conviction commits a misdemeanor of the first  
621 degree, punishable as provided in s. 775.082 or s. 775.083.

622           ~~2. In addition to any other penalty imposed for a violation~~  
623 ~~of subparagraph 1., the court may order the Department of~~  
624 ~~Highway Safety and Motor Vehicles to withhold the issuance of,~~  
625 ~~or suspend or revoke, the driver license or driving privilege,~~  
626 ~~as provided in s. 322.057, of any person who violates~~  
627 ~~subparagraph 1. This subparagraph does not apply to a licensee,~~  
628 ~~as defined in s. 561.01, who violates subparagraph 1. while~~  
629 ~~acting within the scope of his or her license or an employee or~~  
630 ~~agent of a licensee, as defined in s. 561.01, who violates~~  
631 ~~subparagraph 1. while engaged within the scope of his or her~~  
632 ~~employment or agency.~~

633           ~~3. A court that withholds the issuance of, or suspends or~~  
634 ~~revokes, the driver license or driving privilege of a person~~  
635 ~~pursuant to subparagraph 2. may direct the Department of Highway~~  
636 ~~Safety and Motor Vehicles to issue the person a license for~~  
637 ~~driving privilege restricted to business purposes only, as~~  
638 ~~defined in s. 322.271, if he or she is otherwise qualified.~~

639           Section 16. Subsection (3) of section 562.111, Florida  
640 Statutes, is repealed.

641           Section 17. Subsections (1), (2), and (5) of section

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569.11, Florida Statutes, are amended to read:

569.11 Possession, misrepresenting age or military service to purchase, and purchase of tobacco products by persons under 18 years of age prohibited; penalties; jurisdiction; disposition of fines.—

(1) It is unlawful for any person under 18 years of age to knowingly possess any tobacco product. Any person under 18 years of age who violates the provisions of this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available; or

(b) For a second or subsequent violation within 12 weeks of the first violation, a \$25 fine. ~~or~~

~~(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.~~

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(2) It is unlawful for any person under 18 years of age to misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or

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to purchase, or attempt to purchase, any tobacco product from a person or a vending machine. Any person under 18 years of age who violates a provision of this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a \$25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available; or

(b) For a second or subsequent violation within 12 weeks of the first violation, a \$25 fine. ~~or~~

~~(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.~~

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(5)(a) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco program, if locally available, the court may ~~must~~ direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

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(b) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may ~~must~~ direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

Section 18. Subsections (5) and (10) of section 790.22, Florida Statutes, are amended to read:

790.22 Use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.—

(5) (a) A minor who violates subsection (3) commits a misdemeanor of the first degree; for a first offense, may serve a period of detention of up to 3 days in a secure detention facility; and, in addition to any other penalty provided by law, shall be required to perform 100 hours of community service. †  
~~and:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 1 year.~~

~~3. If the minor is ineligible by reason of age for a driver~~

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~~license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.~~

(b) For a second or subsequent offense, a minor who violates subsection (3) commits a felony of the third degree and shall serve a period of detention of up to 15 days in a secure detention facility and shall be required to perform not less than 100 or ~~not~~ more than 250 hours of community service. 7 ~~and:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 2 years.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.~~

For the purposes of this subsection, community service shall be performed, if possible, in a manner involving a hospital

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emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds.

~~(10) If a minor is found to have committed an offense under subsection (9), the court shall impose the following penalties in addition to any penalty imposed under paragraph (9) (a) or paragraph (9) (b):~~

~~(a) For a first offense:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 1 year.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.~~

~~(b) For a second or subsequent offense:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.~~

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~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 2 years.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.~~

Section 19. Subsections (7) and (8) of section 806.13, Florida Statutes, are amended, and present subsection (9) of that section is redesignated as subsection (7), to read:

806.13 Criminal mischief; penalties; penalty for minor.—

~~(7) In addition to any other penalty provided by law, if a minor is found to have committed a delinquent act under this section for placing graffiti on any public property or private property, and:~~

~~(a) The minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or withhold issuance of the minor's driver license or driving privilege for not more than 1 year.~~

~~(b) The minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of not more than 1 year.~~



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~~(c) The minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for not more than 1 year after the date on which he or she would otherwise have become eligible.~~

~~(8) A minor whose driver license or driving privilege is revoked, suspended, or withheld under subsection (7) may elect to reduce the period of revocation, suspension, or withholding by performing community service at the rate of 1 day for each hour of community service performed. In addition, if the court determines that due to a family hardship, the minor's driver license or driving privilege is necessary for employment or medical purposes of the minor or a member of the minor's family, the court shall order the minor to perform community service and reduce the period of revocation, suspension, or withholding at the rate of 1 day for each hour of community service performed. As used in this subsection, the term "community service" means cleaning graffiti from public property.~~

Section 20. Section 812.0155, Florida Statutes, is repealed.

Section 21. Section 832.09, Florida Statutes, is repealed.

Section 22. Subsections (6) and (7) and paragraphs (c) and (d) of subsection (8) of section 877.112, Florida Statutes, are amended to read:

877.112 Nicotine products and nicotine dispensing devices; prohibitions for minors; penalties; civil fines; signage requirements; preemption.—

(6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR

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NICOTINE DISPENSING DEVICES BY MINORS.—It is unlawful for any person under 18 years of age to knowingly possess any nicotine product or a nicotine dispensing device. Any person under 18 years of age who violates this subsection commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco and nicotine program, if locally available; or

(b) For a second or subsequent violation within 12 weeks of the first violation, a \$25 fine. ~~or~~

~~(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.~~

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for any person under 18 years of age to misrepresent his or her age or military service for the purpose of inducing a retailer of nicotine products or nicotine dispensing devices or an agent or employee of such retailer to sell, give, barter, furnish, or deliver any nicotine product or nicotine dispensing device, or to purchase, or attempt to purchase, any nicotine product or nicotine dispensing device from a person or a vending machine. Any person under 18 years of age who violates this subsection

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commits a noncriminal violation as defined in s. 775.08(3),  
punishable by:

(a) For a first violation, 16 hours of community service  
or, instead of community service, a \$25 fine and, in addition,  
the person must attend a school-approved anti-tobacco and  
nicotine program, if available; or

(b) For a second or subsequent violation within 12 weeks of  
the first violation, a \$25 fine. ~~or~~

~~(c) For a third or subsequent violation within 12 weeks of  
the first violation, the court must direct the Department of  
Highway Safety and Motor Vehicles to withhold issuance of or  
suspend or revoke the person's driver license or driving  
privilege, as provided in s. 322.056.~~

Any second or subsequent violation not within the 12-week time  
period after the first violation is punishable as provided for a  
first violation.

(8) PENALTIES FOR MINORS.—

(c) If a person under 18 years of age is found by the court  
to have committed a noncriminal violation under this section and  
that person has failed to complete community service, pay the  
fine as required by paragraph (6) (a) or paragraph (7) (a), or  
attend a school-approved anti-tobacco and nicotine program, if  
locally available, the court may ~~must~~ direct the Department of  
Highway Safety and Motor Vehicles to withhold issuance of or  
suspend the driver license or driving privilege of that person  
for 30 consecutive days.

(d) If a person under 18 years of age is found by the court  
to have committed a noncriminal violation under this section and

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that person has failed to pay the applicable fine as required by paragraph (6)(b) or paragraph (7)(b), the court may ~~must~~ direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 45 consecutive days.

Section 23. Subsection (2) of section 938.30, Florida Statutes, is amended to read:

938.30 Financial obligations in criminal cases; supplementary proceedings.—

(2) The court may require a person liable for payment of an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation. The judge may convert the statutory financial obligation into a court-ordered obligation to perform community service, subject to the provisions of s. 318.18(8), after examining a person under oath and determining the person's inability to pay, or by reliance upon information provided under s. 27.52(1)(a)6. Any person who fails to attend a hearing may be arrested on warrant or capias issued by the clerk upon order of the court.

Section 24. Subsection (2) of section 1003.27, Florida Statutes, is amended to read:

1003.27 Court procedure and penalties.—The court procedure and penalties for the enforcement of the provisions of this part, relating to compulsory school attendance, shall be as follows:

(2) NONENROLLMENT AND NONATTENDANCE CASES.—

~~(a)~~ In each case of nonenrollment or of nonattendance upon the part of a student who is required to attend some school, when no valid reason for such nonenrollment or nonattendance is

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found, the district school superintendent shall institute a criminal prosecution against the student's parent.

~~(b) Each public school principal or the principal's designee shall notify the district school board of each minor student under its jurisdiction who accumulates 15 unexcused absences in a period of 90 calendar days. Each designee of the governing body of each private school, and each parent whose child is enrolled in a home education program, may provide the Department of Highway Safety and Motor Vehicles with the legal name, sex, date of birth, and social security number of each minor student under his or her jurisdiction who fails to satisfy relevant attendance requirements and who fails to otherwise satisfy the requirements of s. 322.091. The district school superintendent must provide the Department of Highway Safety and Motor Vehicles the legal name, sex, date of birth, and social security number of each minor student who has been reported under this paragraph and who fails to otherwise satisfy the requirements of s. 322.091. The Department of Highway Safety and Motor Vehicles may not issue a driver license or learner's driver license to, and shall suspend any previously issued driver license or learner's driver license of, any such minor student, pursuant to the provisions of s. 322.091.~~

Section 25. Paragraph (a) of subsection (10) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.—

(10) (a) Any person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial motor vehicle for an offense listed

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under this subsection may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In such case, adjudication shall be withheld; however, a person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may not make more than three elections under this subsection. This subsection applies to the following offenses:

1. Operating a motor vehicle without a valid driver license in violation of s. 322.03, s. 322.065, or s. 322.15(1), or operating a motor vehicle with a license that has been suspended for failure to appear, failure to pay civil penalty, or failure to attend a driver improvement course pursuant to s. 322.291.

2. Operating a motor vehicle without a valid registration in violation of s. 320.0605, s. 320.07, or s. 320.131.

3. Operating a motor vehicle in violation of s. 316.646.

4. Operating a motor vehicle with a license that has been suspended under s. 61.13016 or s. 322.245 for failure to pay child support or for failure to pay any other financial obligation as provided in s. 322.245; however, this subparagraph does not apply if the license has been suspended pursuant to s. 322.245(1).

~~5. Operating a motor vehicle with a license that has been suspended under s. 322.091 for failure to meet school attendance requirements.~~

Section 26. Subsections (1) and (2) of section 322.05, Florida Statutes, are amended to read:

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322.05 Persons not to be licensed.—The department may not issue a license:

(1) To a person who is under the age of 16 years, except that the department may issue a learner's driver license to a person who is at least 15 years of age and who meets the requirements of s. 322.1615 ~~ss. 322.091 and 322.1615~~ and of any other applicable law or rule.

(2) To a person who is at least 16 years of age but is under 18 years of age ~~unless the person meets the requirements of s. 322.091~~ and holds a valid:

(a) Learner's driver license for at least 12 months, with no moving traffic convictions, before applying for a license;

(b) Learner's driver license for at least 12 months and who has a moving traffic conviction but elects to attend a traffic driving school for which adjudication must be withheld pursuant to s. 318.14; or

(c) License that was issued in another state or in a foreign jurisdiction and that would not be subject to suspension or revocation under the laws of this state.

Section 27. Paragraph (i) of subsection (2) of section 397.951, Florida Statutes, is amended to read:

397.951 Treatment and sanctions.—The Legislature recognizes that the integration of treatment and sanctions greatly increases the effectiveness of substance abuse treatment. It is the responsibility of the department and the substance abuse treatment provider to employ the full measure of sanctions available to require participation and completion of treatment to ensure successful outcomes for children in substance abuse treatment.

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(2) The department shall ensure that substance abuse treatment providers employ any and all appropriate available sanctions necessary to engage, motivate, and maintain a child in treatment, including, but not limited to, provisions in law that:

(i) Provide that, pursuant to s. 322.056, for any person under 18 years of age who is found guilty of or delinquent for a violation of ~~s. 562.11(2), s. 562.111, or~~ chapter 893, and is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of his or her driver license or driving privilege for a period of 6 months.~~÷~~

~~1. Not less than 6 months and not more than 1 year for the first violation.~~

~~2. Two years, for a subsequent violation.~~

Section 28. Subsection (9) of section 1003.01, Florida Statutes, is amended to read:

1003.01 Definitions.—As used in this chapter, the term:

(9) "Dropout" means a student who meets any one or more of the following criteria:

(a) The student has voluntarily removed himself or herself from the school system before graduation for reasons that include, but are not limited to, marriage, or the student has withdrawn from school because he or she has failed the statewide student assessment test and thereby does not receive any of the certificates of completion;

(b) The student has not met the relevant attendance requirements of the school district pursuant to State Board of



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Education rules, or the student was expected to attend a school but did not enter as expected for unknown reasons, or the student's whereabouts are unknown;

(c) The student has withdrawn from school, but has not transferred to another public or private school or enrolled in any career, adult, home education, or alternative educational program;

(d) The student has withdrawn from school due to hardship, unless such withdrawal has been granted under ~~the provisions of s. 322.091,~~ court action, expulsion, medical reasons, or pregnancy; or

(e) The student is not eligible to attend school because of reaching the maximum age for an exceptional student program in accordance with the district's policy.

The State Board of Education may adopt rules to implement ~~the provisions of~~ this subsection.

Section 29. The amendment made by this act to s. 316.650, Florida Statutes, shall apply upon the creation of new inventory of uniform traffic citation forms.

Section 30. This act shall take effect October 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Joe Negron, Chair  
Appropriations Subcommittee on Criminal and Civil Justice

**Subject:** Committee Agenda Request

**Date:** January 21, 2016

---

I respectfully request that **Senate Bill #7046**, relating to **Penalties and Fees**, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal flourish extending to the right.

---

Senator Jeff Brandes  
Florida Senate, District 22

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

*Meeting Date*

7046

*Bill Number (if applicable)*

Topic drivers license suspensions

*Amendment Barcode (if applicable)*

Name Dan Hendrickson

Job Title Chair Advocacy Committee

Address 319 E Park Ave PO Box 1201

Phone 850-570-1967

*Street*

Tallahassee

FL

32302

Email danbhendrickson@comcast.net

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Big Bend Mental Health Coalition, NAMI Tallahassee, Veterans Standdown Legal Program

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16  
Meeting Date

SB 7046  
Bill Number (if applicable)

Topic Penalties & Fees

Amendment Barcode (if applicable)

Name Fred Baggett

Job Title \_\_\_\_\_

Address 101 E. College Ave.  
Street

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Tall. FL 32301  
City State Zip

Email Baggett-f@GTLaw.Com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Fl. Assoc. of Court Clerks

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16  
Meeting Date

7046  
Bill Number (if applicable)

Topic Penalties AND Fees

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street

Phone 850/425-1344

Tallahassee FL 32301  
City State Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

7046

*Bill Number (if applicable)*

Topic Penalties and Fees

*Amendment Barcode (if applicable)*

Name Larry Eger

Job Title Public Defender, 12th Circuit

Address 2071 Ringling Blvd.

*Street*

Sarasota

*City*

Florida

*State*

34237

*Zip*

Phone 941.861.5500

Email egersrq@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

*Meeting Date*

SB 7046

*Bill Number (if applicable)*

Topic R/T Penalties and Fees

*Amendment Barcode (if applicable)*

Name Sarrah Carroll

Job Title Lobbyist

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Phone 850-671-4401

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Tallahassee

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32301

Email carroll@sostrategy.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

# Medication-Assisted Treatment : Extended-Release Injectable Naltrexone (VIVITROL®)

**Florida Alcohol and Drug Abuse Association**

**Senate Appropriations Subcommittee on  
Criminal and Civil Justice  
February 11, 2016**



# What is Extended-Release Injectable Naltrexone?

- An injectable formulation of naltrexone administered monthly (VIVITROL®).
- Non-addictive, non-narcotic, not pleasure producing.
- Shown effective for opioid and alcohol addiction in over 165 peer-reviewed studies.

# How does it work?

- Extended-release injectable naltrexone is an “antagonist” medication that blocks receptors in the pleasure center of the brain.
- It reduces the urge to drink or use opioids for 28-30 days after the administration of the injection.
- It is used in conjunction with a comprehensive, individualized psychosocial treatment program.

# Opioid Dependence Efficacy

Research shows that opioid-dependent patients participating in counseling plus VIVITROL<sup>®</sup> 1,2:

- Had significantly higher rates of complete abstinence.\*
- Stayed in treatment longer.
- Reported less craving.†
- Were less likely to relapse to physical dependence.

\*Complete abstinence means people had a negative urine drug test for opioids and no self-reported opioid use.

†Craving was measured by self-reported "need for opioids" using the visual analog scale.

1. VIVITROL [prescribing information]. Waltham, MA: Alkermes, Inc; rev July 2013.

2. Krupitsky E, Nunes EV, Ling W, Illeperuma A, Gastfriend DR, Silverman BL. Injectable extended-release naltrexone for opioid dependence: a double-blind, placebo-controlled, multicentre randomised trial. *Lancet*. 2011;377(9776):1506-1513.

# Alcohol Dependence Efficacy

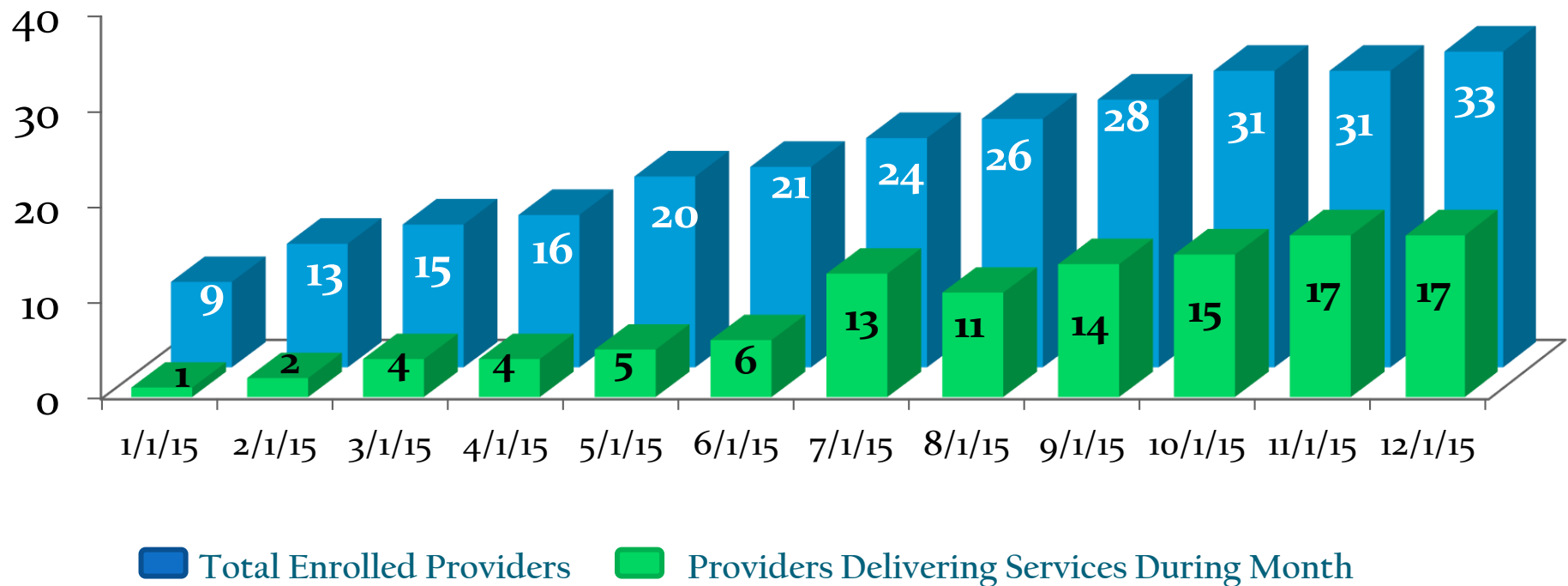
- VIVITROL<sup>®</sup> and counseling significantly reduces the number of heavy drinking days.<sup>1,2</sup>
- A subset of patients who were able to abstain from alcohol a week prior to receiving their first dose of VIVITROL<sup>®</sup> (with counseling)<sup>1,2</sup>:
  - Had significantly more sober days.
  - Had more success maintaining complete abstinence.

\*Heavy drinking =5 or more standard drinks a day (males) and 4 or more standard drinks a day (female).

1. VIVITROL [prescribing information]. Waltham, MA: Alkermes, Inc; rev July 2013.

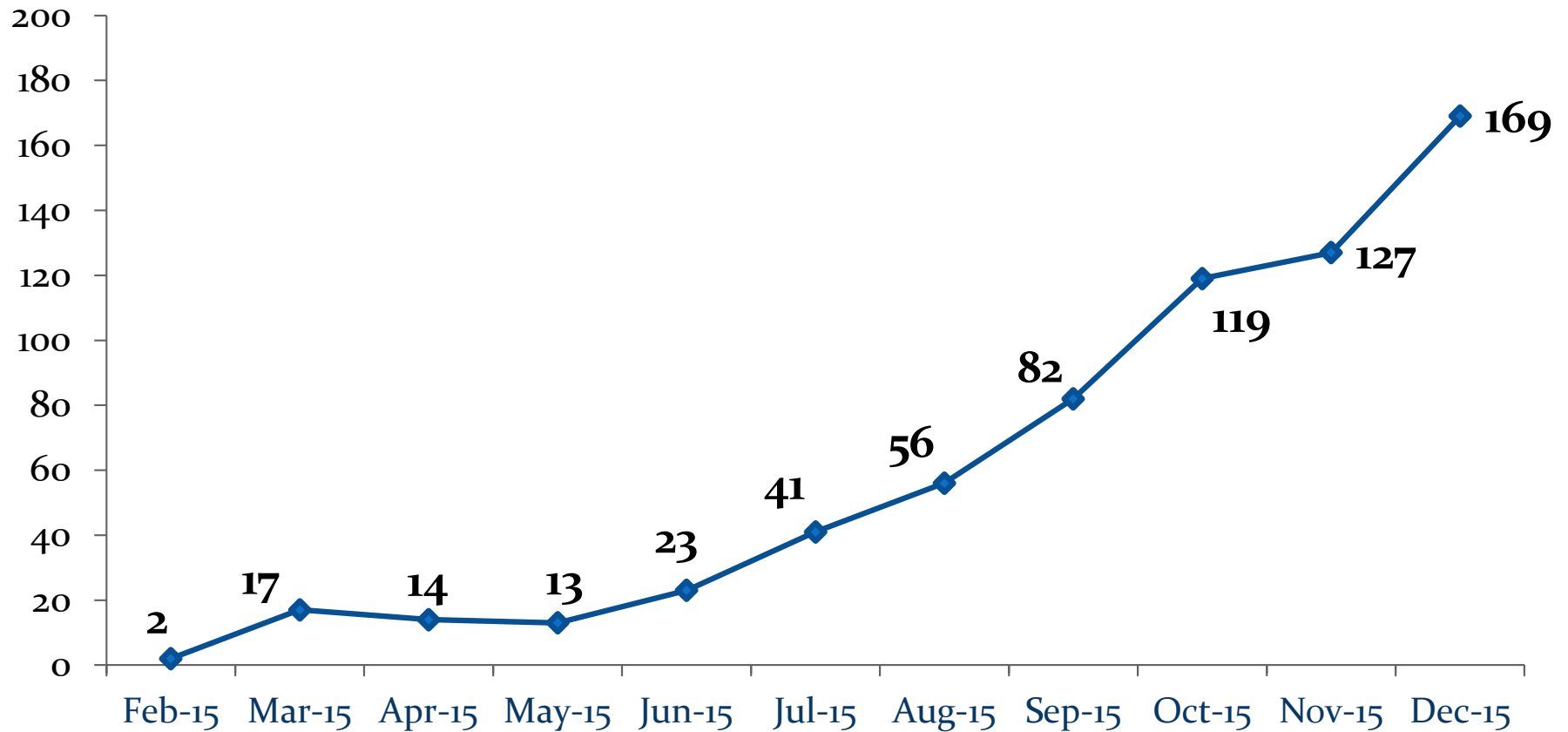
2. Garbutt JC, Kranzler HR, O'Malley SS, et al; for the Vivitrex Study Group. Efficacy and tolerability of long-acting injectable naltrexone for alcohol dependence: a randomized controlled trial. JAMA. 2005;293(13):1617-1625.

# Provider Enrollment and Operational Status



# Patients Receiving Injections

Monthly February – December 2015



# Service Utilization

January 2015 – February 8, 2016



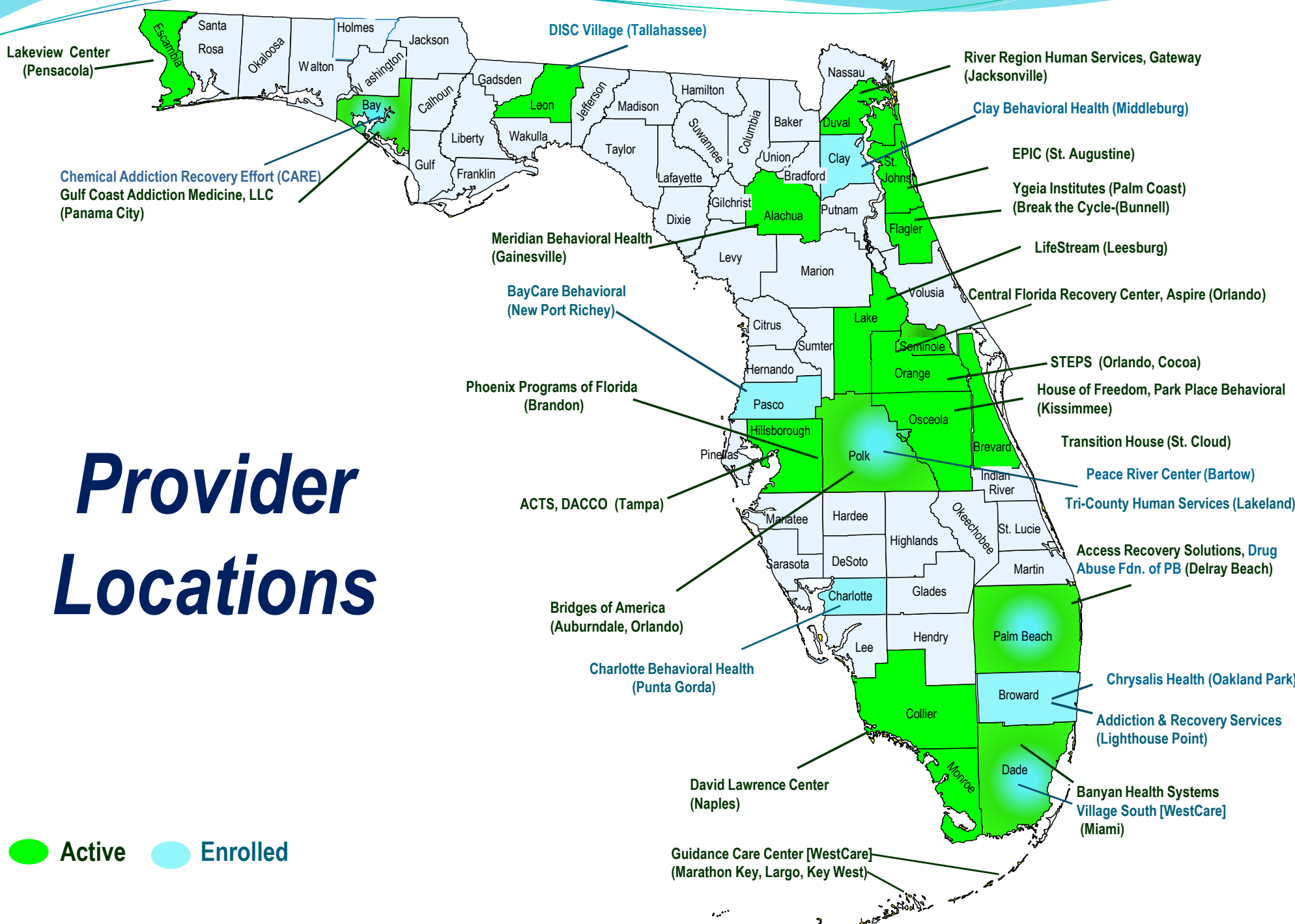
# Patient Characteristics and Outcomes

## **Patients who received VIVITROL® injections:**

- For 58% the primary drug of choice is opioids.
- For 41% the primary drug of choice is alcohol.
- Reported a reduction of 67% in moderate to severe urge to drink/use opioids after 2<sup>nd</sup> injection.
- Reported a reduction of 59% in slight urge to drink/use opioids after 2<sup>nd</sup> injection.



# Provider Locations



## Cortex

- Decision making
- Thinking
- Reasoning
- Learning

- *Psychosocial Therapies*
- *12 Step Programs*
- *Monitoring and*
- *Other Treatment Interventions target the cortex*

## Limbic Region

- Basic Drives
- Experience of Reward, Euphoria

## Pharmaceutical Interventions

- *Agonist Medications*
- *Antagonist Medications*

1. From NIDA Drugs, Brains, and Behavior – The Science of Addiction Website. Available at: <http://www.nida.nih.gov/scienceofaddiction/brain.html>. Accessed June 1,2011.
2. Fowler JS et al. Sci Pract Perspect. 2007;3:4-16.

# FADAA/OSCA VIVITROL® PROGRAM CASE STUDIES

## Clients treated February 2015 - December 2015

### OSCEOLA COUNTY

A 35-year-old male client with opiate use referred to the program by the Osceola County Drug Court Program reported his opiate use began at age 21. After a period of being clean, he began to relapse in his early 30s, using oral opioids, progressed to snorting opiate pills, and ultimately progressed to injecting heroin. He admitted himself into a detox program in January 2015, but relapsed to heroin 2 weeks before his assessment date. His first VIVITROL injection was on 8/24/15. Since that injection client has been compliant with all scheduled appointments, reports a stable mood, good appetite, and restful sleep. He was able to go from part-time to full-time work, improved his relationship with his wife, and become more physically active by starting mixed martial arts training. The client credits VIVITROL for

“The client credits VIVITROL for saving his life, especially after a chain of 14 overdoses and 2 deaths linked to the location where he previously bought opiates.”

saving his life, especially after a chain of 14 overdoses and 2 deaths linked to the location where he previously bought opiates.

### ORANGE COUNTY

A client with major depression and severe alcohol use disorder along with cocaine use has had multiple arrests for alcohol related offenses including 3 DUIs. He entered residential treatment after four Baker Act admissions to the CSU for suicidal ideation. He had a high level of cravings and some using dreams. He is also illiterate which added to his frustration in the program; he was contemplating leaving but agreed to try VIVITROL. After his first injection, his cravings disappeared. He successfully completed

the program, has moved on to a transitional housing program and has returned to work. He has been promoted to being a salesman at a car dealership where they were

“He continues to come back for his injections and reports that this has truly changed his life.”

willing to work with him around his issues with illiteracy. He continues to come back for his injections and reports that this has truly changed his life.

### HILLSBOROUGH COUNTY

A 29-year-old female client with opiate use is currently on drug offender probation for possession of cocaine. She has a history of IV morphine, oxycodone and dilaudid use since age 16 and had early childhood onset of mental health problems due to her history of emotional, physical and sexual abuse. She has been

unemployed since 2013, has legal, educational, financial and family problems, and had several previous treatment admissions. She received her first VIVITROL injection on 09/04/2015 and has received 5 injections thus far. She has maintained her sobriety and has had stable mental health for over seven months. She is employed as a resident worker by the treatment agency and has paid off more than \$1,000.00 in court costs. Her goal is to move into an apartment close to her family and regain custody of her children.

### DUVAL COUNTY

A 32-year-old single male is due to receive his 9th VIVITROL injection in 01/2016. He was a self-referral

that came in late on a Friday, highly impaired and asking for help. He rode his bicycle miles to get to the treatment facility before it closed that evening. After he completed detox treatment, he was admitted to residential treatment where he received his first VIVITROL injection within 60 days. He successfully completed the treatment, transitioned to aftercare and has been attending his appointments regularly. He has a sponsor, attends 4 AA meetings a week, is employed, and in a healthy relationship. He will be moving into his own apartment within the next month and has re-established a formerly broken relationship with his parents.

### SEMINOLE COUNTY

A client with bipolar disorder and moderate to severe alcohol dependence was started on VIVITROL in April 2015 as part of his Mental Health Court Treatment Plan. While in residential treatment, he agreed to a trial of VIVITROL, which helped his cravings and increased his engagement in recovery-focused programming. After his first three injections, he decided to go without and relapsed with alcohol. After a two-week relapse, he was confronted by the MH Court clinical and probation team and made the decision to reenter the program with a much better mindset. He again requested VIVITROL and is now on his 5th injection and doing very well. His MH Court supervision was extended

“Without VIVITROL, he would have failed and ended up going to prison.”

because of his psychiatric issues, but he is now set to graduate within the next two months. Without VIVITROL, he would have failed and ended up going to prison.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

Bill Number (if applicable)

Topic Naltrexone

Amendment Barcode (if applicable)

Name Mark Fontaine

Job Title Executive Director

Address 2868 MATTHEW Drive

Phone 878-2196

Street

Tallahassee, FL

City

State

32308

Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Alcohol + Drug Abuse Association

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

Meeting Date

Bill Number (if applicable)

Topic Naltrexone

Amendment Barcode (if applicable)

Name Valerie Westhead MD

Job Title Chief Medical Officer

Address 919 E. Second St

Phone

Street

Santord

City

FL

State

32771

Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Aspire Health Partners

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16  
Meeting Date

n/a  
Bill Number (if applicable)

Topic Vivitrol

Amendment Barcode (if applicable)

Name Judge John Stargel

Job Title Criminal Court Judge, 10th Judicial Circuit

Address 255 N. Broadway Ave.

Phone \_\_\_\_\_

Street

Bartow  
City

FL  
State

33830  
Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/10/16

Meeting Date

Bill Number (if applicable)

Topic Workshop on Work RELEASE outsourcing Amendment Barcode (if applicable)

Name PAUL BIECKER

Job Title FACILITY DIRECTOR BRIDGES OF AMERICA

Address 585 CAMP RD Phone 321-795-3417

Street

COLUMBIA

City

FL

State

32927

Zip

Email

Speaking: ☒ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing BRIDGES OF AMERICA

Appearing at request of Chair: ☒ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/10/16

Meeting Date

Bill Number (if applicable)

Topic Workshop on Work Release Outsourcing Amendment Barcode (if applicable)

Name Jim DeBeaugrand

Job Title CEO

Address 215 S. MONROE

Street

Phone

FALLAHASSEE

FL

32317

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Coalition to Advance Justice

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)



THE FLORIDA SENATE

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14  
Meeting Date

12. E. 112. 4  
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Work Release

Name Andrew Williams

Job Title Director of Criminal Justice Services

Address 1341 Indian Lake Road

Phone 386-527-8892

Street

City

State

Zip

Email awilliams@smabehavioral.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing SM A Behavioral Healthcare

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

# CourtSmart Tag Report

**Room:** LL 37

**Case:**

**Caption:** Senate Criminal and Civil Justice Appropriations Subcommittee

**Type:**

**Judge:**

**Started:** 2/11/2016 10:00:19 AM

**Ends:** 2/11/2016 11:59:30 AM

**Length:** 01:59:12

10:00:43 AM Senator Evers moved to adjourn without objection  
10:00:46 AM Senator Evers moved to adjourn without objection  
10:02:06 AM Sen Negron  
10:02:35 AM recognize Sen Simpson  
10:03:16 AM amendment  
10:03:56 AM SB 1528 with amendments  
10:04:24 AM Rob Johnson waive in support  
10:05:00 AM waive close  
10:05:29 AM fav  
10:05:34 AM sb436  
10:07:44 AM Erika Slizewslhi-Smith testimony  
10:09:04 AM Erika Slizewslhi-Smith testimony  
10:09:38 AM Chris Nocco Pasco Sherri  
10:12:34 AM Greg Pound  
10:15:01 AM Senator Bradley with a question discusses AA-881368  
10:17:13 AM AA withdrawn  
10:19:03 AM Senator Soto wanting to know why amendment was withdrawn  
10:19:14 AM Senator Bradley stated that the bill sponsor requested that  
10:19:44 AM Delete all adopted  
10:19:55 AM Senator Soto with a question  
10:20:50 AM Senator Simpson closes  
10:21:00 AM SB 1528 favorable  
10:22:01 AM CS/SB 636-Senator Benacquisto  
10:23:40 AM All public speakers waived in support  
10:24:09 AM Greg Pound speaks on the bill  
10:24:39 AM Senator Benacquisto stops the speaker  
10:25:32 AM Debate-none  
10:25:39 AM Close on CS/SB 636-Favorable  
10:26:30 AM SB 954 by Senator Simmons-Electronic Monitoring Devices  
10:28:23 AM amendment 228972 - withdrawn  
10:28:57 AM SB 954-favorable  
10:30:22 AM Use of Naltrexone presentation by Mark Fontaine, Executive Director, Florida  
10:30:52 AM Alcohol and Drug Abuse Association  
10:33:19 AM Senator Bradley with questions  
10:35:55 AM Valerie Westhead, MD, Aspire Health Partners, Orlando  
10:40:23 AM Senator Bradley with a series of questions  
10:46:10 AM Who pays for this treatment?  
10:47:13 AM Senator Negron with budget info  
10:47:36 AM Senator Hutson with a series of questions  
10:49:18 AM Senator Soto with a series of questions  
10:51:46 AM Senator Negron with a series of questions  
10:52:03 AM What can we do as a Legislature to make this available for those that choose to use  
10:55:14 AM The Honorable John K. Stargel, Circuit Judge, Tenth Judicial Circuit  
10:56:05 AM Drug Court Judge-Describes how the courts can enact the treatment  
10:57:05 AM Senator Negron continues discussion on Naltrexone  
11:00:16 AM CS/SB 1044-Senator Brandes-Forfeiture-TP  
11:01:22 AM CS/SB 1584-Senator Smith-Suspended Driver Licenses  
11:02:08 AM Greg Pound  
11:03:14 AM Dan Hendrickson and Larry Eger waive in support  
11:03:35 AM Senator Flores  
11:03:41 AM Senator Smith to close- CS/SB 1584-favorable  
11:04:58 AM Senator Brandes CS/SB 1044

11:06:58 AM Leader Joyner discusses amendment  
11:09:27 AM Senator Evers with a series of questions  
11:09:50 AM Questions continue on amendment 895130  
11:11:31 AM Senator Evers  
11:12:30 AM Josephine Crail-Clinical Psychologist  
11:13:26 AM Senator Brandes  
11:14:31 AM Leader Joyner in debate on the amendment  
11:16:17 AM Senator Brandes to work with Senator Joyner to put families on notice  
11:17:23 AM 396278 adopted  
11:18:04 AM Amendment barcode 895130 by Senator Hutson-adopted  
11:19:09 AM Sarrah Carroll Florida Sheriffs Assoc. speaks against the bill  
11:19:34 AM Senator Negron with a series of questions  
11:21:12 AM Senator Bradley  
11:26:27 AM Electra Bussel-Florida Sheriffs Assoc.  
11:27:37 AM Senator Bradley with a series of questions  
11:28:17 AM Senator Negron with questions  
11:29:49 AM SB 1044 - TP  
11:29:57 AM SB 1322 - Senator Latvala - Juvenile Detention Costs  
11:34:12 AM Substitute Delete all amendment barcode 883106 - favorable  
11:35:18 AM public comments - Lisa Hurley-Florida Assoc. of Counties  
11:37:07 AM Senator Negron wants the two additional counties on board  
11:37:31 AM Collier and Bay County  
11:37:36 AM Senator Bradley with a series of questions  
11:39:18 AM Senator Negron  
11:39:50 AM Senator Bradley  
11:39:56 AM Senator Latvala will work to focus on counties  
11:40:26 AM Public testimony-all waive in support  
11:41:16 AM Senator Latvala to close - CS/SB 1322 - favorable  
11:42:01 AM SB 314 by Senator Diaz de la Portilla - Juvenile Justice presented by Representative  
11:43:02 AM Public Testimony State Attorney's waive in opposition  
11:43:36 AM Judge Terry Ketchel-Supreme Court Steering Committee on Children and Families  
11:45:44 AM Remaining appearance cards - waive in support  
11:46:44 AM Representative Edwards closes on SB 314-Favorable  
11:47:11 AM SB 1044 - vote time certain 11:59am  
11:48:00 AM Public Testimony - all waive in support  
11:48:59 AM Greg Pound speaks on SB 1044  
11:49:54 AM Senator Soto in debate on the bill  
11:50:05 AM Senator Bradley in debate  
11:52:13 AM Leader Joyner in debate  
11:52:46 AM SB 1044-Favorable  
11:53:16 AM Senator Flores-SB 784-Human Trafficking  
11:54:02 AM Public Testimony-waive time in support  
11:54:21 AM SB 784-Favorable  
11:54:45 AM SB 122-Senator Joyner-Compensation of Victims of Wrongful Incarceration  
11:55:13 AM Presented by Senator Bradley  
11:56:46 AM Public Testimony - waive  
11:56:55 AM SB 122 - favorable  
11:57:26 AM SB 700 - Senator Soto  
11:58:28 AM Amendment adopted back on the bill as amended  
11:59:05 AM SB 700-favorable  
11:59:20 AM adjourn