

<b>Tab 1 SB 214 by Detert;</b> (Compare to CS/H 0047) Offenses Committed on Real Estate Agents						
897402	D	S		CJ, Bradley	Delete everything after	02/04 02:54 PM
<b>Tab 2 CS/SB 332 by TR, Altman;</b> (Similar to CS/H 0253) Highway Safety						
196208	A	S		CJ, Clemens	Delete L.642:	02/05 03:42 PM
<b>Tab 3 SB 360 by Clemens;</b> (Similar to CS/H 0685) Victim Assistance						
258592	A	S		CJ, Clemens	Delete L.38 - 40:	02/05 03:10 PM
<b>Tab 4 SB 408 by Altman (CO-INTRODUCERS) Negron, Joyner, Clemens, Flores, Sachs, Sobel, Soto;</b> Juvenile Civil Citations						
854832	D	S		CJ, Clemens	Delete everything after	02/05 03:45 PM
<b>Tab 5 SB 1182 by Latvala;</b> (Identical to H 0073) Controlled Substances						
<b>Tab 6 SB 1314 by Dean (CO-INTRODUCERS) Margolis, Braynon;</b> (Compare to CS/CS/H 0475) Public Records/Witness to a Felony						
849632	D	S		CJ, Bradley	Delete everything after	02/05 12:59 PM
<b>Tab 7 SB 1352 by Smith;</b> (Similar to H 1281) Autism Awareness Training for Law Enforcement Officers						
<b>Tab 8 SB 1382 by Flores;</b> (Identical to H 7075) Victim and Witness Protection						
<b>Tab 9 SB 1580 by Legg;</b> (Similar to H 0621) First Responders						
<b>Tab 10 SB 1662 by Bradley;</b> (Identical to H 1333) Sexual Offenders						
<b>Tab 11 SPB 7006 by CJ;</b> Corrections						
976882	A	S	FAV	CJ, Gibson	Delete L.47:	02/09 09:00 AM
<del>328176</del>	A	S	WD	CJ, Brandes	btw L.85 - 86:	02/09 09:00 AM
<del>723682</del>	SA	S	WD	CJ, Brandes	btw L.85 - 86:	02/09 09:00 AM
<del>570664</del>	A	S	WD	CJ, Gibson	btw L.85 - 86:	02/09 09:00 AM
<b>Tab 12 SPB 7066 by CJ;</b> Criminal Justice						
<b>Tab 13 SPB 7068 by CJ;</b> Sentencing for Capital Felonies						
936370	A	S	FAV	CJ, Brandes	Delete L.149 - 186:	02/09 09:00 AM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CRIMINAL JUSTICE**  
**Senator Evers, Chair**  
**Senator Gibson, Vice Chair**

**MEETING DATE:** Monday, February 8, 2016  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

**MEMBERS:** Senator Evers, Chair; Senator Gibson, Vice Chair; Senators Bradley, Brandes, and Clemens

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 214</b> Detert (Compare CS/H 47)	Offenses Committed on Real Estate Agents; Providing for reclassification of specified offenses committed on real estate brokers, broker associates, or sales associates, etc.  CJ      02/08/2016 Not Considered ACJ RC	Not Considered
2	<b>CS/SB 332</b> Transportation / Altman (Similar CS/H 253)	Highway Safety; Revising provisions relating to the passing of a vehicle; exempting bicycles from provisions for passing a vehicle on the right under certain circumstances; revising provisions for turning at intersections; requiring motor vehicle operators to allow a group of bicycles to travel through an intersection under certain circumstances, etc.  TR      01/27/2016 Fav/CS CJ      02/08/2016 Not Considered FP	Not Considered
3	<b>SB 360</b> Clemens (Similar CS/H 685)	Victim Assistance; Requiring a law enforcement agency to immediately notify a victim if his or her property is determined to be in the possession of a pawnbroker; requiring the law enforcement agency to provide specified information to the victim, etc.  CJ      02/08/2016 Not Considered ACJ FP	Not Considered
4	<b>SB 408</b> Altman (Similar S 506)	Juvenile Civil Citations; Requiring, rather than authorizing, a law enforcement officer to issue a civil citation or require participation in a similar diversion program if the officer does not issue a warning or inform a child's guardian or parent of the infraction; requiring a law enforcement officer to receive approval from a supervisor before arresting a child for a first-time misdemeanor, etc.  CJ      02/08/2016 Not Considered CF RC	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, February 8, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 1182</b> Latvala (Identical H 73)	Controlled Substances; Scheduling Mitragynine and 7-Hydroxymitragynine, constituents of Kratom, in a schedule of controlled substances; providing an exception from scheduling for any drug product approved by the United States Food and Drug Administration which contains Mitragynine or 7-Hydroxymitragynine, etc.  CJ 02/08/2016 Not Considered ACJ AP	Not Considered
6	<b>SB 1314</b> Dean (Compare CS/CS/H 475)	Public Records/Witness to a Felony; Providing an exemption from public records requirements for personal identifying information of a witness to a felony; prohibiting release of such information to a newspaper; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CJ 02/08/2016 Not Considered GO FP	Not Considered
7	<b>SB 1352</b> Smith (Similar H 1281)	Autism Awareness Training for Law Enforcement Officers; Requiring the Department of Law Enforcement to establish an online continued employment training component relating to autism spectrum disorder; providing that completion of the training may count toward continued employment instruction requirements, etc.  CJ 02/08/2016 Not Considered ACJ AP	Not Considered
8	<b>SB 1382</b> Flores (Identical H 7075, Compare H 1367, S 1294)	Victim and Witness Protection; Increasing the maximum age of victims and witnesses for whom the court may order the use of videotaped testimony and closed circuit television in court proceedings in lieu of testifying in open court; revising the corroboration requirements for certain victim testimony and the admissibility of certain evidence in prosecutions to include specified human trafficking and lewd or lascivious offenses, etc.  CJ 02/08/2016 Not Considered JU FP	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, February 8, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>SB 1580</b> Legg (Similar H 621)	First Responders; Requiring state agencies to establish a first responder career development plan for certain purposes, etc.  CJ 02/08/2016 Not Considered ACJ AP	Not Considered
10	<b>SB 1662</b> Bradley (Identical H 1333)	Sexual Offenders; Revising the criteria for a felony offense for which an offender is designated as a sexual predator; revising the criteria for loitering or prowling by certain offenders; modifying the list of offenses for which a sexual offender or sexual predator must be considered by the department for removal from registration requirements; revising the information that the Department of Law Enforcement is required to provide about a sexual offender upon his or her release from incarceration, etc.  CJ 02/08/2016 Not Considered ACJ AP	Not Considered
Consideration of proposed bill:			
11	<b>SPB 7006</b>	Corrections; Requiring the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders; revising the definition of "victim injury" by removing a prohibition on assessing certain victim injury sentence points for sexual misconduct by an employee of the Department of Corrections or a private correctional facility with an inmate or an offender supervised by the department; expanding applicability of a current felony offense to include employees of private providers and private correctional facilities, etc.	Submitted as Committee Bill Yeas 5 Nays 0
Consideration of proposed bill:			
12	<b>SPB 7066</b>	Criminal Justice; Requiring a defendant who is sentenced for a primary offense of possession of a controlled substance committed on or after a specified date to be sentenced to a nonstate prison sanction under certain circumstances unless the court makes specified written findings; revising the incentive gain-time that the Department of Corrections may grant a prisoner for offenses committed on or after a specified date, etc.	Submitted as Committee Bill Yeas 4 Nays 0
Consideration of proposed bill:			

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, February 8, 2016, 4:00—6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	<b>SPB 7068</b>	Sentencing for Capital Felonies; Requiring the prosecutor to give notice to the defendant and to file the notice with the court within a certain timeframe if the prosecutor intends to seek the death penalty; requiring juries to determine the existence of aggravating factors, if any, in the penalty phase of capital cases; requiring a sentence of life imprisonment without the possibility of parole in certain circumstances, etc.	Submitted as Committee Bill Yeas 5 Nays 0

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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
<b>Senate Confirmation Hearing:</b> A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.			
<b>Board of Directors, Prison Rehabilitative Industries and Diversified Enterprises, Inc.</b>			
14	Garey, Alan L. (Parkland)	09/30/2019	Not Considered
15	Upchurch, James R. (Tallahassee)	09/30/2017	Not Considered
16	Hunter, Donald C. (Naples)	09/30/2017	Not Considered

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

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**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 Committee on Criminal Justice

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BILL: SB 214

INTRODUCER: Senator Detert

SUBJECT: Offenses Committed on Real Estate Agents

DATE: February 5, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			RC	

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**I. Summary:**

SB 214 reclassifies the felony or misdemeanor degree of an assault, battery, or sexual battery if the offense is knowingly committed on a “broker,” “broker associate,” or “sales associate.” These terms are currently defined in ch. 475, F.S., which regulates real estate professionals.

This reclassification would increase the maximum penalty for the offense. Specifically, the bill provides:

- A first degree misdemeanor (maximum penalty of one year in jail) is reclassified as a third degree felony (maximum penalty of 5 years in state prison);
- A third degree felony is reclassified as a second degree felony (maximum penalty of 15 years in state prison);
- A second degree felony is reclassified as a first degree felony (maximum penalty of 30 years in state prison); and
- A first degree felony is reclassified as a life felony (maximum penalty of life imprisonment or a term of years not exceeding life imprisonment).

**II. Present Situation:**

**Real Estate Professionals: Brokers, Broker Associates, and Sales Associates**

Chapter 475, F.S., regulates real estate professionals, including brokers, broker associates, and sales associates.

A “broker”<sup>1</sup> is:

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<sup>1</sup> A broker renders a professional service and is a professional within the meaning of s. 95.11(4)(a), F.S. Section 475.01(1)(a), F.S. Section 95.11(4)(a), F.S., addresses the limitations period for an action for professional malpractice.

- A person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises,<sup>2</sup> auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases;
- A person who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights;
- A person who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights;
- A person who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor;
- All persons who advertise rental property information or lists;
- A general partner, officer, or director of a partnership or corporation which acts as a broker; and
- Any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in s. 475.011 (exemptions from part I of ch. 475, F.S.), and s. 721.20, F.S. (licensing requirements and prohibited acts relating to timeshares).<sup>3</sup>

A “broker associate” is a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another.<sup>4</sup>

A “sales associate” is a person who performs any act specified in the definition of “broker,” but who performs such act under the direction, control, or management of another person.<sup>5</sup>

### **Violent Acts Committed Upon Real Estate Professionals**

National workforce (preliminary) statistics provided by the U.S. Department of Labor indicate that in 2014 there were 19 fatal occupational injuries involving property, real estate, and community association managers. Twelve of the 19 fatal injuries involved “violence and other

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<sup>2</sup> Where the term “appraise” or “appraising” appears in the definition of the term “broker,” it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II of ch. 475, F.S. Section 475.01(1)(a), F.S.

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

<sup>4</sup> Section 475.01(1)(b), F.S.

<sup>5</sup> Section 475.01(1)(b), F.S. A sales associate renders a professional service and is a professional within the meaning of s. 95.11(4)(a), F.S. *Id.*

injuries by persons or animals” and event or exposure that includes “violence by persons, self-inflicted injury, and attacks by animals.”<sup>6</sup>

In a 2015 survey conducted by the National Association of REALTORS® of its members (2,804 members responded to the survey),<sup>7</sup> 40 percent of members responding to the survey reported that they “experienced a situation that made them fear for their personal safety or safety of their personal information.” The survey notes that “common situations that caused fear” included “open houses, vacant homes/model homes, properties that were unlocked or unsecured, [and] properties in remote areas.” Two percent of members responding to the survey indicated that they were a victim of a robbery while working as a real estate professional. One percent of members responding to the survey indicated that they were a victim of an assault while working as a real estate professional.

In 2015, at least three incidents were reported in the news media of real estate professionals in Florida being attacked or robbed while showing houses. One or more of these incidents involved armed robbery, kidnapping kidnapping with a deadly weapon, or attempted sexual battery.<sup>8</sup>

### **Assault**

Assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.<sup>9</sup> Assault is typically a second degree misdemeanor. However, if a perpetrator commits assault using a deadly weapon without intent to kill or commits assault with the intent to commit a felony, the crime constitutes aggravated assault<sup>10</sup> and is punishable as a third degree felony.

### **Battery**

Battery is to actually and intentionally touch or strike another person against the will of that person or intentionally causing bodily harm to another person.<sup>11</sup> Battery is typically a first degree misdemeanor.<sup>12</sup> However, battery can be enhanced to felony battery when a perpetrator commits a battery and causes great bodily harm, permanent disability, or permanent disfigurement to the victim,<sup>13</sup> or when the perpetrator has one or more prior convictions for battery, aggravated

<sup>6</sup> “Table A-2. Fatal occupational injuries resulting from transportation incidents and homicides, all United States, 2014” (preliminary data), U.S. Department of Labor, available at <http://www.bls.gov/iif/oshwc/cfoi/cftb0287.pdf> (last visited on February 2, 2016).

<sup>7</sup> *2015 Member Safety Report*, National Association of REALTORS®, available at <http://www.realtor.org/sites/default/files/reports/2015/2015-member-safety-report-2015-03-02-updated.pdf> (last visited on February 2, 2016).

<sup>8</sup> “Man arrested in attempted rape of real estate agent in Manatee” (August 11, 2015), *Tampa Tribune*, available at <http://www.tbo.com/news/crime/deputies-manatee-real-estate-agent-thwarts-sex-attack-while-showing-house-20150811/> (last visited on February 2, 2016); McNeill, Claire, “Police arrest suspect in robbery and kidnapping of St. Petersburg real estate agents” (June 8, 2015), *Tampa Bay Times*, available at <http://www.tampabay.com/news/publicsafety/crime/police-to-arrest-suspect-in-robbery-and-kidnapping-of-st-petersburg-real/2232843> (last visited on February 2, 2016).

<sup>9</sup> Section 784.011, F.S.

<sup>10</sup> Section 784.021, F.S.

<sup>11</sup> Section 784.03, F.S.

<sup>12</sup> Section 784.03(1)(b), F.S.

<sup>13</sup> Section 784.041(1), F.S.

battery, or felony battery, and commits a subsequent battery.<sup>14</sup> Both forms of felony battery are third degree felonies.

### **Sexual Battery**

Section 794.011, F.S., contains a variety of offenses relating to sexual battery. Depending on various factors, such as whether a deadly weapon is used or the victim is physically incapacitated, these offenses can be punishable as a third degree felony, a second degree felony, a first degree felony, a life felony, or a capital felony.

### **Reclassification of Felonies or Misdemeanors**

The typical reclassification statute reclassifies the felony or misdemeanor degree of offenses (or specific offenses) to the next higher degree (e.g., a first degree misdemeanor is reclassified to a third degree felony or a third degree felony is reclassified to a second degree felony). For example, s. 775.085, F.S., Florida's "hate crimes" statute, reclassifies the degree of any felony or misdemeanor in which the commission of the offense "evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability, or advanced age of the victim." Another example, is s. 784.07, F.S., which reclassifies the felony or misdemeanor degree of an assault or battery if that offense was committed upon a law enforcement officer (or other specified official or person) engaged in the lawful performance of his or her duties.

Several statutes reclassify the degree of certain felonies and misdemeanors when committed against specified professionals or officials engaged in the performance of their duties.<sup>15</sup> For the most part, the victim is a public servant. However, there is precedent for reclassifying the degree of certain felonies and misdemeanors when committed against specified professionals who are not public servants and who are engaged in the performance of their duties, e.g., licensed security officers<sup>16</sup> or sports officials.<sup>17</sup>

A felony or misdemeanor reclassification increases the maximum penalty for the offense. For example, the maximum penalty for a third degree felony is 5 years in state prison.<sup>18</sup> The maximum penalty for a second degree felony is 15 years in state prison.<sup>19</sup> If a third degree felony is reclassified to a second degree felony, the maximum penalty increases from 5 years in state prison to 15 years in state prison.

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

The bill creates s. 775.0863, F.S., which reclassifies the felony or misdemeanor degree of an assault, battery, or sexual battery if the offense is knowingly committed on a "broker," "broker

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<sup>14</sup> Section 784.03(2), F.S.

<sup>15</sup> See e.g., ss. 784.07, 784.074, 784.081, and 784.083, F.S.

<sup>16</sup> Section 784.07, F.S.

<sup>17</sup> Section 784.081, F.S.

<sup>18</sup> Section 775.082, F.S.

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

associate,” or “sales associate.” These terms have the same meaning as provided in s. 475.01, F.S.

The bill provides that the felony or misdemeanor degree of such offenses is reclassified in the following manner:

- A second degree misdemeanor<sup>20</sup> is reclassified as a first degree misdemeanor;<sup>21</sup>
- A first degree misdemeanor is reclassified as a third degree felony;<sup>22</sup>
- A third degree felony is reclassified as a second degree felony;<sup>23</sup>
- A second degree felony is reclassified as a first degree felony;<sup>24</sup> and
- A first degree felony is reclassified as a life felony.<sup>25</sup>

For purposes of sentencing under ch. 921, F.S., and determining incentive gain-time eligibility under ch. 944, F.S., a reclassified felony offense is ranked one level above the ranking specified under s. 921.0022, F.S., or s. 921.0023, F.S., for the offense. However, a first degree misdemeanor that has been reclassified to a third degree felony is ranked in Level 2 of the offense severity ranking chart in s. 921.0022, F.S. Noncapital felonies are ranked under s. 921.0022, F.S., or s. 921.023 of the Criminal Punishment Code (“Code”). The higher the ranking, the greater the number of sentence points, which are used to calculate the lowest permissible sentence under the Code.

The effective date of the bill is October 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>20</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>21</sup> A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>22</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>23</sup> A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>24</sup> A first degree felony is *generally* punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>25</sup> A life felony is *generally* punishable by life imprisonment or a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

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

None.

**B. Private Sector Impact:**

None

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official estimate of prison bed impact, if any, of legislation, estimates that the bill will have an insignificant prison bed impact (an increase of 10 or fewer prison beds).

**VI. Technical Deficiencies:**

As the bill is presently written, reclassification is triggered by commission of certain crimes against a victim who is a specified real estate professional, rather than triggered by commission of certain crimes against a specified real estate professional while he or she is engaged in certain activities relevant to his or her profession. If it is the intent of the sponsor to reclassify based on the latter factor, staff recommends the bill be amended to adopt the following language from CS/HB 47 (the House companion to SB 214): "... if the offense is committed against a broker, broker associate, or sales associate while he or she is engaged in the act of showing real property or holding an open house of real property...."

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 775.0863 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.)

None.

**B. Amendments:**

None.



897402

LEGISLATIVE ACTION

Senate

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House

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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 775.0863, Florida Statutes, is created  
to read:

775.0863 Offenses against brokers, broker associates, or  
sales associates; reclassification of offenses.-

(1) For purposes of this section, the terms "broker,"  
"broker associate," and "sales associate" have the same meanings



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11 as provided in s. 475.01.

12 (2) The degree of an offense shall be reclassified as  
13 provided in subsection (3) if the offense is committed against a  
14 broker, broker associate, or sales associate while he or she is  
15 engaged in the act of showing real property or holding an open  
16 house of real property and the offense is a felony or  
17 misdemeanor violation of:

18 (a) Section 784.011, relating to assault;

19 (b) Section 784.021, relating to aggravated assault;

20 (c) Section 784.03, relating to battery and felony battery;

21 (d) Section 784.041(1), relating to felony battery;

22 (e) Section 784.045, relating to aggravated battery; or

23 (f) Section 794.011, relating to sexual battery.

24 (3) (a) A misdemeanor of the second degree shall be  
25 reclassified as a misdemeanor of the first degree.

26 (b) A misdemeanor of the first degree shall be reclassified  
27 as a felony of the third degree.

28 (c) A felony of the third degree shall be reclassified as a  
29 felony of the second degree.

30 (d) A felony of the second degree shall be reclassified as  
31 a felony of the first degree.

32 (e) A felony of the first degree shall be reclassified as a  
33 life felony.

34 (4) For purposes of sentencing under chapter 921 and  
35 determining incentive gain-time eligibility under chapter 944, a  
36 felony offense that is reclassified under this section is ranked  
37 one level above the ranking under s. 921.0022 or s. 921.0023 of  
38 the offense committed.

39 Section 2. This act shall take effect October 1, 2016.



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===== 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 offenses against brokers, broker  
associates, or sales associates; creating s. 775.0863,  
F.S.; providing definitions; providing applicability;  
providing for reclassification of specified offenses  
committed against brokers, broker associates, or sales  
associates; providing an effective date.

By Senator Detert

28-00281-16

2016214\_\_

A bill to be entitled

An act relating to offenses committed on real estate agents; creating s. 775.0863, F.S.; providing definitions; providing applicability; providing for reclassification of specified offenses committed on real estate brokers, broker associates, or sales associates; providing an effective date.

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

Section 1. Section 775.0863, Florida Statutes, is created to read:

775.0863 Assault or battery on a real estate broker, broker associate, or sales associate; reclassification of offenses.-

(1) For purposes of this section, the terms "broker," "broker associate," and "sales associate" shall have the same meanings as provided in s. 475.01. This section applies to a broker, broker associate, or sales associate while he or she is engaged in the act of showing or holding an open house of real property.

(2) Whenever a person is charged with knowingly committing an assault, a battery, or a sexual battery in violation of s. 794.011 on a broker, broker associate, or sales associate, the offense for which the person is charged shall be reclassified as follows:

(a) A misdemeanor of the second degree shall be reclassified as a misdemeanor of the first degree.

(b) A misdemeanor of the first degree shall be reclassified as a felony of the third degree.

Page 1 of 2

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

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(c) A felony of the third degree shall be reclassified as a felony of the second degree.

(d) A felony of the second degree shall be reclassified as a felony of the first degree.

(e) A felony of the first degree shall be reclassified as a life felony.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, 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 2. This act shall take effect October 1, 2016.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice



**Subject:** Committee Agenda Request

**Date:** October 20, 2015

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I respectfully request that **Senate Bill #214**, relating to Offenses Committed on Real Estate Agents, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink that reads "Nancy Detert".

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Senator Nancy C. Detert  
Florida Senate, District 28

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02/05/2016  
Meeting Date

SB 214  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name VANI UNGAPEN

Job Title DIRECTOR OF LEGISLATIVE RESEARCH

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Speaking:  For  Against  Information

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

Representing FLORIDA REALTORS

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.

**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 Committee on Criminal Justice

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BILL: CS/SB 332

INTRODUCER: Transportation Committee and Senator Altman

SUBJECT: Highway Safety

DATE: February 5, 2016

REVISED: 02/08/16

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Pre-meeting</u>
3.	<u></u>	<u></u>	<u>FP</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 332 seeks to increase the safety of “vulnerable users of a public roadway.” The bill:

- Revises and creates various statutory provisions and penalties relating to traffic control laws and vulnerable users, such as pedestrians and bicyclists;
- Clarifies provisions relating to overtaking and passing vulnerable users, particularly with respect to maintaining the required distance between a passing vehicle and a vulnerable user;
- Sets requirements for making turns at certain locations when passing a vulnerable user;
- Allows drivers to cross the centerline in an identified no-passing zone when passing a vulnerable user;
- Requires appearance at a mandatory hearing for certain infractions contributing to the bodily injury of a vulnerable user;
- Provides a discretionary fine of \$2,500 for reckless driving infractions contributing to the bodily injury of a vulnerable user;
- Requires law enforcement officers issuing certain citations to note if the violation contributed to the bodily injury of a vulnerable user; and
- Revises cross-references to conform definitions.

The bill has an indeterminate impact on state and local government (see Section V.)

## II. Present Situation:

### Definitions

Current law defines certain relevant terms for purposes of ch. 316, F.S., relating to traffic control laws, as follows:

- “Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.<sup>1</sup>
- “Bicycle” means every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device.<sup>2</sup>
- “Roadway” means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.<sup>3</sup>

The term “bodily injury,” is defined identically in various sections of Florida Statutes to mean:

- A cut, abrasion, bruise, burn, or disfigurement;
- Physical pain;
- Illness;
- Impairment of the function of a bodily member, organ, or mental faculty; or
- Any other injury to the body, no matter how temporary.<sup>4</sup>

The term “vulnerable road user,” as used in provisions relating to crashes involving death or personal injuries, is defined to mean:

- A pedestrian, including a person actually engaged in work upon a highway, upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;
- A person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal;
- A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway;
- A farm tractor or similar vehicle designed primarily for farm use;
- A skateboard, roller skates, or in-line skates;
- A horse-drawn carriage;
- An electric personal assistive mobility device; or
- A wheelchair.<sup>5</sup>

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<sup>1</sup> Section 316.003(75), F.S.

<sup>2</sup> Section 316.003(2), F.S.

<sup>3</sup> Section 316.003(42), F.S.

<sup>4</sup> See ss. 501.001(1)(c), F.S., 831.03(1), F.S., and 914.21(1), F.S.

<sup>5</sup> Section 316.027(1), F.S.

### **Driving on Right Side of Roadway**

Vehicles must generally be driven up the right half of the roadway, with certain exceptions, such as when overtaking and passing another vehicle proceeding in the same direction and when an obstruction exists making it necessary to drive to the left of the center of the highway.<sup>6</sup> Additionally, any vehicle traveling at less than the normal speed of traffic under existing conditions must be driven in the right-hand lane or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.<sup>7</sup> A violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60.<sup>8, 9</sup>

Similarly, any person operating a bicycle upon a roadway at less than normal speed of traffic under existing conditions must be ridden in the lane marked for bicycle use or, if no marked lane exists, as close as practicable to the right-hand curb or edge of the roadway except when:

- Overtaking and passing another bicycle or vehicle traveling in the same direction;
- Preparing for a left turn at an intersection or into a private road or driveway; or
- Reasonably necessary to avoid any condition or potential conflict, including a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.<sup>10</sup>

### **Overtaking and Passing**

Section 316.083, F.S., requires the driver of a vehicle overtaking another proceeding in the same direction to appropriately signal,<sup>11</sup> pass to the left at a safe distance, and not again drive to the right side of the roadway until safely clear of the overtaken vehicle.<sup>12</sup> When overtaking a bicycle or other nonmotorized vehicle, the driver of the overtaking vehicle must pass at a safe distance of not less than three feet between the vehicle and the bicycle or nonmotorized vehicle.<sup>13</sup>

### **Right Turns on Red**

Generally, a vehicle facing a red signal must stop before entering a crosswalk on the near side of an intersection or, if none, then before entering the intersection, and remain stopped until a green indication is shown. Right turns on red are authorized, but a driver must yield the right-of-way to pedestrians and other traffic. Cities and counties may prohibit right-turns-on-red at any

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<sup>6</sup> Section 316.081(1), F.S.

<sup>7</sup> Section 316.081(2), F.S.

<sup>8</sup> Sections 316.081(5) and 318.18(3), F.S.

<sup>9</sup> A person convicted of a noncriminal violation may not be sentenced to a term of imprisonment or to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in ch. 316, F.S., or by ordinance of any city or county. Section 775.082(5), F.S.

<sup>10</sup> Section 316.2065(5)(a), F.S.

<sup>11</sup> Generally, by means of the hand and arm or by signal lamps. See ss. 316.155, 316.156, and 316.157, F.S.

<sup>12</sup> Section 316.083(1), F.S.

<sup>13</sup> Id.

intersection with notice of the prohibition erected in a location visible to traffic approaching the intersection.<sup>14</sup>

### **No-Passing Zones**

A driver is prohibited from driving on the left side of a roadway if signs or markings are in place to define a no-passing zone, or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.<sup>15</sup> The prohibition does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, or to the driver of a vehicle turning left into or from an alley, private road, or driveway.<sup>16</sup> A no-passing zone violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60.<sup>17</sup>

### **Infractions Requiring Mandatory Hearing**

Current law requires appearance at a mandatory hearing for any person cited for the following:

- Any infraction resulting in a crash that causes the death of another;
- Any infraction resulting in a crash that causes “serious bodily injury” of another as defined in s. 316.1933(1), F.S.;<sup>18</sup>
- Any infraction for passing a school bus displaying a stop signal, when passing on the side that children enter or exit;
- Any infraction for failure to secure the load being hauled on a vehicle; or
- Any infraction for exceeding certain speed limits by 30 miles per hour or more.<sup>19</sup>

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

**Section 1** amends s. 316.003, F.S., to re-define the term “vulnerable user of a public roadway” or “vulnerable user” as:

- A pedestrian, including a person actually engaged in work upon a highway, work upon utility facilities along a highway, or the provision of emergency services within the right-of-way;
- A person operating, or who is a passenger on, a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal;
- A person lawfully operating on a public roadway, crosswalk, or shoulder of the roadway;
- A farm tractor or similar vehicle designed primarily for farm use;

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<sup>14</sup> Section 316.074(1), F.S., and s. 316.075(1)(c), F.S.

<sup>15</sup> Section 316.0875(2), F.S. Section 316.0875(1), F.S., authorizes the Florida Department of Transportation and local authorities to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be hazardous and, by appropriate signs or markings on the roadway, to indicate the beginning and end of such zones.

<sup>16</sup> Section 316.0875(3), F.S.

<sup>17</sup> Sections 316.0875(4) and 318.18(3), F.S.

<sup>18</sup> Section 316.1933(1)(b), F.S., defines “serious bodily injury” to mean an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

<sup>19</sup> Section 318.19, F.S.

- A horse-drawn carriage;
- An electric personal assistive mobility device; or
- A wheelchair.

The section also renumbers all of the definitions found in s. 316.003, F.S., to allow for them to be listed in alphabetical order.

**Section 2** amends s. 316.027(1)(b), F.S., to repeal the current definition of “vulnerable road user,” and strike “road” from the term to conform to the redefined “vulnerable user” in the broader definition created in s. 316.003, F.S.

**Section 3** amends s. 316.083, F.S., to require the driver of a *motor* vehicle overtaking a *person operating* a bicycle or other *vulnerable user* to pass at a safe distance of no less than three feet<sup>20</sup> *as measured from anything extending from the motor vehicle or trailer or other item towed by the motor vehicle*. A law enforcement officer issuing a citation for a violation must note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public roadway.

**Section 4** revises s. 316.084, F.S., to clarify that the criteria controlling when a vehicle may overtake another vehicle on the right do not prohibit a bicyclist in a bike lane or on the shoulder from passing another vehicle on the right.

**Section 5** amends s. 316.0875(3), F.S., to add an additional exclusion from the provisions relating to no-passing zones. The bill allows drivers to “safely and briefly” cross a double yellow striped centerline when passing a vulnerable user in order to provide at least three feet between the motor vehicle and the vulnerable user.

**Section 6** revises s. 316.151, F.S., to prohibit a driver overtaking and passing a vulnerable user traveling in the same direction from making a right or left turn unless the turn can be made at a safe distance from the vulnerable user and will not impede the travel of the vulnerable user. The provisions also require the driver to signal as provided in s. 316.155, F.S., and to yield the right of way to a bicycle or pedestrian when crossing a sidewalk, bicycle lane, or bicycle path. A law enforcement officer issuing a citation for a violation must note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public roadway.

**Section 7** amends s. 316.1925, F.S., relating to careless driving, to require a law enforcement officer issuing a citation for a violation to note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public roadway.

**Section 8** amends s. 316.2065, F.S., regarding bicycle regulations, to clarify that a bicycle is a vehicle to be operated in the same manner as other vehicles with all of the rights and all of the duties incumbent upon operators of other vehicles inured by ch. 316, F.S., except where regulations state otherwise or are clearly not applicable. The bill also extends the prohibition on riding bicycles more than two abreast in the road to bicycle lanes. A new provision is added

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<sup>20</sup> Section 316.209, F.S., provides that motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane.

allowing a group of four or more cyclists to proceed through a stop sign *as a group*, after coming to a complete stop.

**Section 9** creates s. 318.142, F.S., to allow the designated official to impose a fine of not more than \$2,500 for any violation that contributes to the bodily injury of a vulnerable user, in addition to any other penalties imposed under s. 316.192, F.S., relating to reckless driving.

**Section 10** amends s. 318.19, F.S., to require appearance at a mandatory hearing for any infraction of s. 316.083, s. 316.0833, or s. 316.1925, F.S., that contributes to the bodily injury of a vulnerable user of a public roadway.

**Sections 11 through 35** amend multiple sections of the Florida Statutes, to revise cross-references related to the relocated and revised definitions.

**Section 36** provides the bill takes effect on October 1, 2016.

A number of editorial and grammatical revisions to existing statutes are also made in the bill.

#### **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:

Offenders of the revised statutes will be subject to penalties including a fine of \$60 per violation. If an infraction of reckless driving results in bodily injury, a fine of up to \$2,500 is imposed. A decrease in personal injury and death for vulnerable users may be experienced, as well as a reduction in costs associated with litigating claims for such injury or death.

**C. Government Sector Impact:**

According to the Department of Highway Safety and Motor Vehicles (DHSMV), the bill's revisions to penalties associated with the rights and safety of vulnerable users for violations contributing to bodily injuries may result in positive fiscal impacts to local government. The amount of additional fines and resulting positive fiscal impact, as well as any negative fiscal impact due to the need for reprogramming local e-citation systems, is indeterminate at this time.

Similarly, the DHSMV suggests that the bill's revisions to penalties associated with the rights and safety of vulnerable users of public roadways and for violations contributing to bodily injuries may result in positive fiscal impacts to state government. The amount of additional fines and resulting revenues is indeterminate at this time. The DHSMV estimates that the bill will require program and software updates, costing \$57,520.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.027, 316.083, 316.084, 316.0875, 316.151, 316.1925, 316.2065, and 318.19.

This bill creates section 318.142 of the Florida Statutes.

This bill corrects cross-references in the following sections of the Florida Statutes: 215.05, 316.1303, 316.235, 316.545, 316.605, 316.6105, 316.613, 316.622, 316.650, 316.70, 320.01, 320.08, 320.084, 320.38, 322.0261, 322.031, 450.181, 559.903, 655.960, 732.402, 860.065, and 316.072.

The bill reenacts the following sections of the Florida Statutes for the purpose of incorporating amendments made by the act: 318.14 and 318.18.

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

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

**CS by Transportation on January 27, 2016:**

The CS:

- Renumbered all of the definitions in s. 316.003, F.S., to accommodate alphabetization which resulted in numerous cross-reference corrections;
- Deleted the definition of “bodily injury”;

- Deleted provisions creating s. 316.0833, F.S., related to turns by motor vehicles, and instead revised s. 316.151, F.S., to prohibit certain turns;
- Added revisions to s. 316.084, F.S., related to bicyclists' ability to pass on the right;
- Added revisions to s. 316.2065, F.S., allowing groups of cyclists to proceed from a stop sign; and
- Removed the \$2000 fine for violations involving bodily injury under ss. 316.083, 316.0833, and 316.1925, F.S., and replaced it with a \$2500 fine for violations of s. 316.192, F.S.

**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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196208

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .  
. .

House

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The Committee on Criminal Justice (Clemens) recommended the following:

**Senate Amendment**

Delete line 642  
and insert:  
bicycle, scooter, or moped lawfully on the roadway;

By the Committee on Transportation; and Senator Altman

596-02693-16

2016332c1

1 A bill to be entitled  
 2 An act relating to highway safety; amending s.  
 3 316.003, F.S.; providing definitions; amending s.  
 4 316.027, F.S.; deleting the definition of the term  
 5 "vulnerable road user"; conforming provisions to  
 6 changes made by the act; amending s. 316.083, F.S.;  
 7 revising provisions relating to the passing of a  
 8 vehicle; directing a law enforcement officer issuing a  
 9 citation for specified violations to note certain  
 10 information on the citation; amending s. 316.084,  
 11 F.S.; exempting bicycles from provisions for passing a  
 12 vehicle on the right under certain circumstances;  
 13 amending s. 316.0875, F.S.; revising exceptions to  
 14 provisions for designated no-passing zones; amending  
 15 s. 316.151, F.S.; revising provisions for turning at  
 16 intersections; directing a law enforcement officer  
 17 issuing a citation for specified violations to note  
 18 certain information on the citation; amending s.  
 19 316.1925, F.S.; revising provisions relating to  
 20 careless driving; directing a law enforcement officer  
 21 issuing a citation for specified violations to note  
 22 certain information on the citation; amending s.  
 23 316.2065, F.S.; revising provisions for operation of a  
 24 bicycle; requiring motor vehicle operators to allow a  
 25 group of bicycles to travel through an intersection  
 26 under certain circumstances; creating s. 318.142,  
 27 F.S.; providing penalties for specified infractions  
 28 contributing to bodily injury of a vulnerable user;  
 29 amending s. 318.19, F.S.; requiring a hearing for  
 30 specified offenses; directing a law enforcement  
 31 officer issuing a citation for specified violations to  
 32 note certain information on the citation; amending s.

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

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33 322.0261, F.S., relating to driver improvement  
 34 courses; revising the definition of "vulnerable road  
 35 users"; amending ss. 212.05, 316.1303, 316.235,  
 36 316.545, 316.605, 316.6105, 316.613, 316.622, 316.650,  
 37 316.70, 320.01, 320.08, 320.0801, 320.38, 322.031,  
 38 450.181, 559.903, 655.960, 732.402, and 860.065, F.S.;  
 39 conforming cross-references; reenacting ss.  
 40 316.072(4)(b), 316.1923(5), 318.14(2), and  
 41 318.18(1)(b), F.S., relating to obedience to and  
 42 effect of traffic laws, aggressive careless driving,  
 43 noncriminal traffic infractions, and amount of  
 44 penalties, respectively, to incorporate amendments  
 45 made by the act in references thereto; providing an  
 46 effective date.  
 47  
 48 WHEREAS, the Legislature recognizes that everyone must  
 49 share the road, and  
 50 WHEREAS, there are laws in place, such as ss. 316.2065 and  
 51 316.2068, Florida Statutes, that require certain vulnerable road  
 52 users to follow safe practices when operating on the roadways of  
 53 the state, and  
 54 WHEREAS, there are laws in place that similarly require  
 55 persons who operate a vehicle on the highways of the state to  
 56 operate the vehicle in a safe manner, and  
 57 WHEREAS, it is the intent of the Legislature to amend the  
 58 Florida Uniform Traffic Control laws to protect vulnerable road  
 59 users while balancing their rights against the rights of those  
 60 who choose to travel by motor vehicle, NOW, THEREFORE,  
 61

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

63  
64 Section 1. Section 316.003, Florida Statutes, is reordered  
65 and amended to read:

66 316.003 Definitions.—The following words and phrases, when  
67 used in this chapter, shall have the meanings respectively  
68 ascribed to them in this section, except where the context  
69 otherwise requires:

70 (1) AUTHORIZED EMERGENCY VEHICLES.—Vehicles of the fire  
71 department (fire patrol), police vehicles, and such ambulances  
72 and emergency vehicles of municipal departments, public service  
73 corporations operated by private corporations, the Fish and  
74 Wildlife Conservation Commission, the Department of  
75 Environmental Protection, the Department of Health, the  
76 Department of Transportation, and the Department of Corrections  
77 as are designated or authorized by their respective department  
78 or the chief of police of an incorporated city or any sheriff of  
79 any of the various counties.

80 (3)~~(2)~~ BICYCLE.—Every vehicle propelled solely by human  
81 power, and every motorized bicycle propelled by a combination of  
82 human power and an electric helper motor capable of propelling  
83 the vehicle at a speed of not more than 20 miles per hour on  
84 level ground upon which any person may ride, having two tandem  
85 wheels, and including any device generally recognized as a  
86 bicycle though equipped with two front or two rear wheels. The  
87 term does not include such a vehicle with a seat height of no  
88 more than 25 inches from the ground when the seat is adjusted to  
89 its highest position or a scooter or similar device. No person  
90 under the age of 16 may operate or ride upon a motorized

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91 bicycle.

92 (7)~~(3)~~ BUS.—Any motor vehicle designed for carrying more  
93 than 10 passengers and used for the transportation of persons  
94 and any motor vehicle, other than a taxicab, designed and used  
95 for the transportation of persons for compensation.

96 (8)~~(4)~~ BUSINESS DISTRICT.—The territory contiguous to, and  
97 including, a highway when 50 percent or more of the frontage  
98 thereon, for a distance of 300 feet or more, is occupied by  
99 buildings in use for business.

100 (4) BICYCLE LANE.—A portion of a roadway or highway that  
101 has been designated by pavement markings and signs for the  
102 preferential or exclusive use by bicycles.

103 (9)~~(5)~~ CANCELLATION.—Cancellation means that a license  
104 which was issued through error or fraud is declared void and  
105 terminated. A new license may be obtained only as permitted in  
106 this chapter.

107 (14)~~(6)~~ CROSSWALK.—

108 (a) That part of a roadway at an intersection included  
109 within the connections of the lateral lines of the sidewalks on  
110 opposite sides of the highway, measured from the curbs or, in  
111 the absence of curbs, from the edges of the traversable roadway.

112 (b) Any portion of a roadway at an intersection or  
113 elsewhere distinctly indicated for pedestrian crossing by lines  
114 or other markings on the surface.

115 (15)~~(7)~~ DAYTIME.—The period from a half hour before sunrise  
116 to a half hour after sunset. Nighttime means at any other hour.

117 (16)~~(8)~~ DEPARTMENT.—The Department of Highway Safety and  
118 Motor Vehicles as defined in s. 20.24. Any reference herein to  
119 Department of Transportation shall be construed as referring to

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2016332c1

120 the Department of Transportation, defined in s. 20.23, or the  
121 appropriate division thereof.

122 (17)~~(9)~~ DIRECTOR.—The Director of the Division of the  
123 Florida Highway Patrol of the Department of Highway Safety and  
124 Motor Vehicles.

125 (18)~~(10)~~ DRIVER.—Any person who drives or is in actual  
126 physical control of a vehicle on a highway or who is exercising  
127 control of a vehicle or steering a vehicle being towed by a  
128 motor vehicle.

129 (20)~~(11)~~ EXPLOSIVE.—Any chemical compound or mechanical  
130 mixture that is commonly used or intended for the purpose of  
131 producing an explosion and which contains any oxidizing and  
132 combustive units or other ingredients in such proportions,  
133 quantities, or packing that an ignition by fire, friction,  
134 concussion, percussion, or detonator of any part of the compound  
135 or mixture may cause such a sudden generation of highly heated  
136 gases that the resultant gaseous pressures are capable of  
137 producing destructive effect on contiguous objects or of  
138 destroying life or limb.

139 (22)~~(12)~~ FARM TRACTOR.—Any motor vehicle designed and used  
140 primarily as a farm implement for drawing plows, mowing  
141 machines, and other implements of husbandry.

142 (23)~~(13)~~ FLAMMABLE LIQUID.—Any liquid which has a flash  
143 point of 70 degrees Fahrenheit or less, as determined by a  
144 Tagliabue or equivalent closed-cup test device.

145 (25)~~(14)~~ GROSS WEIGHT.—The weight of a vehicle without load  
146 plus the weight of any load thereon.

147 (27)~~(15)~~ HOUSE TRAILER.—

148 (a) A trailer or semitrailer which is designed,

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149 constructed, and equipped as a dwelling place, living abode, or  
150 sleeping place (either permanently or temporarily) and is  
151 equipped for use as a conveyance on streets and highways, or

152 (b) A trailer or a semitrailer the chassis and exterior  
153 shell of which is designed and constructed for use as a house  
154 trailer, as defined in paragraph (a), but which is used instead,  
155 permanently or temporarily, for the advertising, sales, display,  
156 or promotion of merchandise or services or for any other  
157 commercial purpose except the transportation of property for  
158 hire or the transportation of property for distribution by a  
159 private carrier.

160 (28)~~(16)~~ IMPLEMENT OF HUSBANDRY.—Any vehicle designed and  
161 adapted exclusively for agricultural, horticultural, or  
162 livestock-raising operations or for lifting or carrying an  
163 implement of husbandry and in either case not subject to  
164 registration if used upon the highways.

165 (29)~~(17)~~ INTERSECTION.—

166 (a) The area embraced within the prolongation or connection  
167 of the lateral curblines; or, if none, then the lateral boundary  
168 lines of the roadways of two highways which join one another at,  
169 or approximately at, right angles; or the area within which  
170 vehicles traveling upon different highways joining at any other  
171 angle may come in conflict.

172 (b) Where a highway includes two roadways 30 feet or more  
173 apart, then every crossing of each roadway of such divided  
174 highway by an intersecting highway shall be regarded as a  
175 separate intersection. In the event such intersecting highway  
176 also includes two roadways 30 feet or more apart, then every  
177 crossing of two roadways of such highways shall be regarded as a

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178 separate intersection.

179 (30)~~(18)~~ LANED HIGHWAY.—A highway the roadway of which is  
180 divided into two or more clearly marked lanes for vehicular  
181 traffic.

182 (31)~~(19)~~ LIMITED ACCESS FACILITY.—A street or highway  
183 especially designed for through traffic and over, from, or to  
184 which owners or occupants of abutting land or other persons have  
185 no right or easement, or only a limited right or easement, of  
186 access, light, air, or view by reason of the fact that their  
187 property abuts upon such limited access facility or for any  
188 other reason. Such highways or streets may be parkways from  
189 which trucks, buses, and other commercial vehicles are excluded;  
190 or they may be freeways open to use by all customary forms of  
191 street and highway traffic.

192 (32)~~(20)~~ LOCAL AUTHORITIES.—Includes all officers and  
193 public officials of the several counties and municipalities of  
194 this state.

195 (38)~~(21)~~ MOTOR VEHICLE.—Except when used in s. 316.1001, a  
196 self-propelled vehicle not operated upon rails or guideway, but  
197 not including any bicycle, motorized scooter, electric personal  
198 assistive mobility device, swamp buggy, or moped. For purposes  
199 of s. 316.1001, "motor vehicle" has the same meaning as in s.  
200 320.01(1)(a).

201 (39)~~(22)~~ MOTORCYCLE.—Any motor vehicle having a seat or  
202 saddle for the use of the rider and designed to travel on not  
203 more than three wheels in contact with the ground, but excluding  
204 a tractor or a moped.

205 (42)~~(23)~~ OFFICIAL TRAFFIC CONTROL DEVICES.—All signs,  
206 signals, markings, and devices, not inconsistent with this

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207 chapter, placed or erected by authority of a public body or  
208 official having jurisdiction for the purpose of regulating,  
209 warning, or guiding traffic.

210 (43)~~(24)~~ OFFICIAL TRAFFIC CONTROL SIGNAL.—Any device,  
211 whether manually, electrically, or mechanically operated, by  
212 which traffic is alternately directed to stop and permitted to  
213 proceed.

214 (44)~~(25)~~ OPERATOR.—Any person who is in actual physical  
215 control of a motor vehicle upon the highway, or who is  
216 exercising control over or steering a vehicle being towed by a  
217 motor vehicle.

218 (45)~~(26)~~ OWNER.—A person who holds the legal title of a  
219 vehicle, or, in the event a vehicle is the subject of an  
220 agreement for the conditional sale or lease thereof with the  
221 right of purchase upon performance of the conditions stated in  
222 the agreement and with an immediate right of possession vested  
223 in the conditional vendee or lessee, or in the event a mortgagor  
224 of a vehicle is entitled to possession, then such conditional  
225 vendee, or lessee, or mortgagor shall be deemed the owner, for  
226 the purposes of this chapter.

227 (46)~~(27)~~ PARK OR PARKING.—The standing of a vehicle,  
228 whether occupied or not, otherwise than temporarily for the  
229 purpose of and while actually engaged in loading or unloading  
230 merchandise or passengers as may be permitted by law under this  
231 chapter.

232 (47)~~(28)~~ PEDESTRIAN.—Any person afoot.

233 (48)~~(29)~~ PERSON.—Any natural person, firm, copartnership,  
234 association, or corporation.

235 (49)~~(30)~~ PNEUMATIC TIRE.—Any tire in which compressed air

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236 is designed to support the load.

237 ~~(50)(31)~~ POLE TRAILER.—Any vehicle without motive power  
238 designed to be drawn by another vehicle and attached to the  
239 towing vehicle by means of a reach or pole, or by being boomed  
240 or otherwise secured to the towing vehicle, and ordinarily used  
241 for transporting long or irregularly shaped loads such as poles,  
242 pipes, or structural members capable, generally, of sustaining  
243 themselves as beams between the supporting connections.

244 ~~(51)(32)~~ POLICE OFFICER.—Any officer authorized to direct  
245 or regulate traffic or to make arrests for violations of traffic  
246 regulations, including Florida highway patrol officers,  
247 sheriffs, deputy sheriffs, and municipal police officers.

248 ~~(52)(33)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise  
249 provided in paragraph (74)(b) ~~(53)(b)~~, any privately owned way  
250 or place used for vehicular travel by the owner and those having  
251 express or implied permission from the owner, but not by other  
252 persons.

253 ~~(53)(34)~~ RADIOACTIVE MATERIALS.—Any materials or  
254 combination of materials which emit ionizing radiation  
255 spontaneously in which the radioactivity per gram of material,  
256 in any form, is greater than 0.002 microcuries.

257 ~~(54)(35)~~ RAILROAD.—A carrier of persons or property upon  
258 cars operated upon stationary rails.

259 ~~(55)(36)~~ RAILROAD SIGN OR SIGNAL.—Any sign, signal, or  
260 device erected by authority of a public body or official, or by  
261 a railroad, and intended to give notice of the presence of  
262 railroad tracks or the approach of a railroad train.

263 ~~(56)(37)~~ RAILROAD TRAIN.—A steam engine, electric or other  
264 motor, with or without cars coupled thereto, operated upon

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265 rails, except a streetcar.

266 ~~(57)(38)~~ RESIDENCE DISTRICT.—The territory contiguous to,  
267 and including, a highway, not comprising a business district,  
268 when the property on such highway, for a distance of 300 feet or  
269 more, is, in the main, improved with residences or residences  
270 and buildings in use for business.

271 ~~(58)(39)~~ REVOCATION.—Revocation means that a licensee's  
272 privilege to drive a motor vehicle is terminated. A new license  
273 may be obtained only as permitted by law.

274 ~~(59)(40)~~ RIGHT-OF-WAY.—The right of one vehicle or  
275 pedestrian to proceed in a lawful manner in preference to  
276 another vehicle or pedestrian approaching under such  
277 circumstances of direction, speed, and proximity as to give rise  
278 to danger of collision unless one grants precedence to the  
279 other.

280 ~~(60)(41)~~ ROAD TRACTOR.—Any motor vehicle designed and used  
281 for drawing other vehicles and not so constructed as to carry  
282 any load thereon, either independently or as any part of the  
283 weight of a vehicle or load so drawn.

284 ~~(61)(42)~~ ROADWAY.—That portion of a highway improved,  
285 designed, or ordinarily used for vehicular travel, exclusive of  
286 the berm or shoulder. In the event a highway includes two or  
287 more separate roadways, the term "roadway" as used herein refers  
288 to any such roadway separately, but not to all such roadways  
289 collectively.

290 ~~(62)(43)~~ SADDLE MOUNT; FULL MOUNT.—An arrangement whereby  
291 the front wheels of one vehicle rest in a secured position upon  
292 another vehicle. All of the wheels of the towing vehicle are  
293 upon the ground, and only the rear wheels of the towed vehicle

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294 rest upon the ground. Such combinations may include one full  
295 mount, whereby a smaller transport vehicle is placed completely  
296 on the last towed vehicle.

297 (63)-(44) SAFETY ZONE.—The area or space officially set  
298 apart within a roadway for the exclusive use of pedestrians and  
299 protected or so marked by adequate signs or authorized pavement  
300 markings as to be plainly visible at all times while set apart  
301 as a safety zone.

302 (65)-(45) SCHOOL BUS.—Any motor vehicle that complies with  
303 the color and identification requirements of chapter 1006 and is  
304 used to transport children to or from public or private school  
305 or in connection with school activities, but not including buses  
306 operated by common carriers in urban transportation of school  
307 children. The term "school" includes all preelementary,  
308 elementary, secondary, and postsecondary schools.

309 (66)-(46) SEMITRAILER.—Any vehicle with or without motive  
310 power, other than a pole trailer, designed for carrying persons  
311 or property and for being drawn by a motor vehicle and so  
312 constructed that some part of its weight and that of its load  
313 rests upon, or is carried by, another vehicle.

314 (67)-(47) SIDEWALK.—That portion of a street between the  
315 curblineline, or the lateral line, of a roadway and the adjacent  
316 property lines, intended for use by pedestrians.

317 (68)-(48) SPECIAL MOBILE EQUIPMENT.—Any vehicle not designed  
318 or used primarily for the transportation of persons or property  
319 and only incidentally operated or moved over a highway,  
320 including, but not limited to, ditchdigging apparatus, well-  
321 boring apparatus, and road construction and maintenance  
322 machinery, such as asphalt spreaders, bituminous mixers, bucket

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323 loaders, tractors other than truck tractors, ditchers, leveling  
324 graders, finishing machines, motor graders, road rollers,  
325 scarifiers, earthmoving carryalls and scrapers, power shovels  
326 and draglines, and self-propelled cranes and earthmoving  
327 equipment. The term does not include house trailers, dump  
328 trucks, truck-mounted transit mixers, cranes or shovels, or  
329 other vehicles designed for the transportation of persons or  
330 property to which machinery has been attached.

331 (69)-(49) STAND OR STANDING.—The halting of a vehicle,  
332 whether occupied or not, otherwise than temporarily, for the  
333 purpose of, and while actually engaged in, receiving or  
334 discharging passengers, as may be permitted by law under this  
335 chapter.

336 (70)-(50) STATE ROAD.—Any highway designated as a state-  
337 maintained road by the Department of Transportation.

338 (71)-(51) STOP.—When required, complete cessation from  
339 movement.

340 (72)-(52) STOP OR STOPPING.—When prohibited, any halting,  
341 even momentarily, of a vehicle, whether occupied or not, except  
342 when necessary to avoid conflict with other traffic or to comply  
343 with the directions of a law enforcement officer or traffic  
344 control sign or signal.

345 (74)-(53) STREET OR HIGHWAY.—

346 (a) The entire width between the boundary lines of every  
347 way or place of whatever nature when any part thereof is open to  
348 the use of the public for purposes of vehicular traffic;

349 (b) The entire width between the boundary lines of any  
350 privately owned way or place used for vehicular travel by the  
351 owner and those having express or implied permission from the

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352 owner, but not by other persons, or any limited access road  
 353 owned or controlled by a special district, whenever, by written  
 354 agreement entered into under s. 316.006(2)(b) or (3)(b), a  
 355 county or municipality exercises traffic control jurisdiction  
 356 over said way or place;

357 (c) Any area, such as a runway, taxiway, ramp, clear zone,  
 358 or parking lot, within the boundary of any airport owned by the  
 359 state, a county, a municipality, or a political subdivision,  
 360 which area is used for vehicular traffic but which is not open  
 361 for vehicular operation by the general public; or

362 (d) Any way or place used for vehicular traffic on a  
 363 controlled access basis within a mobile home park recreation  
 364 district which has been created under s. 418.30 and the  
 365 recreational facilities of which district are open to the  
 366 general public.

367 (75)~~(54)~~ SUSPENSION.—Temporary withdrawal of a licensee's  
 368 privilege to drive a motor vehicle.

369 (81)~~(55)~~ THROUGH HIGHWAY.—Any highway or portion thereof on  
 370 which vehicular traffic is given the right-of-way and at the  
 371 entrances to which vehicular traffic from intersecting highways  
 372 is required to yield right-of-way to vehicles on such through  
 373 highway in obedience to either a stop sign or yield sign, or  
 374 otherwise in obedience to law.

375 (82)~~(56)~~ TIRE WIDTH.—Tire width is that width stated on the  
 376 surface of the tire by the manufacturer of the tire, if the  
 377 width stated does not exceed 2 inches more than the width of the  
 378 tire contacting the surface.

379 (83)~~(57)~~ TRAFFIC.—Pedestrians, ridden or herded animals,  
 380 and vehicles, streetcars, and other conveyances either singly or

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381 together while using any street or highway for purposes of  
 382 travel.

383 (86)~~(58)~~ TRAILER.—Any vehicle with or without motive power,  
 384 other than a pole trailer, designed for carrying persons or  
 385 property and for being drawn by a motor vehicle.

386 (89)~~(59)~~ TRUCK.—Any motor vehicle designed, used, or  
 387 maintained primarily for the transportation of property.

388 (90)~~(60)~~ TRUCK TRACTOR.—Any motor vehicle designed and used  
 389 primarily for drawing other vehicles and not so constructed as  
 390 to carry a load other than a part of the weight of the vehicle  
 391 and load so drawn.

392 (35)~~(61)~~ MIGRANT OR SEASONAL FARM WORKER.—Any person  
 393 employed in hand labor operations in planting, cultivation, or  
 394 harvesting agricultural crops.

395 (21)~~(62)~~ FARM LABOR VEHICLE.—Any vehicle equipped and used  
 396 for the transportation of nine or more migrant or seasonal farm  
 397 workers, in addition to the driver, to or from a place of  
 398 employment or employment-related activities. The term does not  
 399 include:

400 (a) Any vehicle carrying only members of the immediate  
 401 family of the owner or driver.

402 (b) Any vehicle being operated by a common carrier of  
 403 passengers.

404 (c) Any carpool as defined in s. 450.28(3).

405 (5)~~(63)~~ BICYCLE PATH.—Any road, path, or way that is open  
 406 to bicycle travel, which road, path, or way is physically  
 407 separated from motorized vehicular traffic by an open space or  
 408 by a barrier and is located either within the highway right-of-  
 409 way or within an independent right-of-way.

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410 (10)~~(64)~~ CHIEF ADMINISTRATIVE OFFICER.—The head, or his or  
411 her designee, of any law enforcement agency which is authorized  
412 to enforce traffic laws.

413 (11)~~(65)~~ CHILD.—A child as defined in s. 39.01, s. 984.03,  
414 or s. 985.03.

415 (12)~~(66)~~ COMMERCIAL MOTOR VEHICLE.—Any self-propelled or  
416 towed vehicle used on the public highways in commerce to  
417 transport passengers or cargo, if such vehicle:

418 (a) Has a gross vehicle weight rating of 10,000 pounds or  
419 more;

420 (b) Is designed to transport more than 15 passengers,  
421 including the driver; or

422 (c) Is used in the transportation of materials found to be  
423 hazardous for the purposes of the Hazardous Materials  
424 Transportation Act, as amended (49 U.S.C. ss. 1801 et seq.).

425

426 A vehicle that occasionally transports personal property to and  
427 from a closed-course motorsport facility, as defined in s.  
428 549.09(1)(a), is not a commercial motor vehicle if it is not  
429 used for profit and corporate sponsorship is not involved. As  
430 used in this subsection, the term "corporate sponsorship" means  
431 a payment, donation, gratuity, in-kind service, or other benefit  
432 provided to or derived by a person in relation to the underlying  
433 activity, other than the display of product or corporate names,  
434 logos, or other graphic information on the property being  
435 transported.

436 (13)~~(67)~~ COURT.—The court having jurisdiction over traffic  
437 offenses.

438 (24)~~(68)~~ GOLF CART.—A motor vehicle designed and

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439 manufactured for operation on a golf course for sporting or  
440 recreational purposes.

441 (26)~~(69)~~ HAZARDOUS MATERIAL.—Any substance or material  
442 which has been determined by the secretary of the United States  
443 Department of Transportation to be capable of imposing an  
444 unreasonable risk to health, safety, and property. This term  
445 includes hazardous waste as defined in s. 403.703(13).

446 (73)~~(70)~~ STRAIGHT TRUCK.—Any truck on which the cargo unit  
447 and the motive power unit are located on the same frame so as to  
448 form a single, rigid unit.

449 (78)~~(71)~~ TANDEM TRAILER TRUCK.—Any combination of a truck  
450 tractor, semitrailer, and trailer coupled together so as to  
451 operate as a complete unit.

452 (79)~~(72)~~ TANDEM TRAILER TRUCK HIGHWAY NETWORK.—A highway  
453 network consisting primarily of four or more lanes, including  
454 all interstate highways; highways designated by the United  
455 States Department of Transportation as elements of the National  
456 Network; and any street or highway designated by the Florida  
457 Department of Transportation for use by tandem trailer trucks,  
458 in accordance with s. 316.515, except roads on which truck  
459 traffic was specifically prohibited on January 6, 1983.

460 (80)~~(73)~~ TERMINAL.—Any location where:

461 (a) Freight either originates, terminates, or is handled in  
462 the transportation process; or

463 (b) Commercial motor carriers maintain operating  
464 facilities.

465 (87)~~(74)~~ TRANSPORTATION.—The conveyance or movement of  
466 goods, materials, livestock, or persons from one location to  
467 another on any road, street, or highway open to travel by the

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468 public.

469 (92)~~(75)~~ VEHICLE.—Every device, in, upon, or by which any  
470 person or property is or may be transported or drawn upon a  
471 highway, excepting devices used exclusively upon stationary  
472 rails or tracks.

473 (6)~~(76)~~ BRAKE HORSEPOWER.—The actual unit of torque  
474 developed per unit of time at the output shaft of an engine, as  
475 measured by a dynamometer.

476 (36)~~(77)~~ MOPED.—Any vehicle with pedals to permit  
477 propulsion by human power, having a seat or saddle for the use  
478 of the rider and designed to travel on not more than three  
479 wheels; with a motor rated not in excess of 2 brake horsepower  
480 and not capable of propelling the vehicle at a speed greater  
481 than 30 miles per hour on level ground; and with a power-drive  
482 system that functions directly or automatically without  
483 clutching or shifting gears by the operator after the drive  
484 system is engaged. If an internal combustion engine is used, the  
485 displacement may not exceed 50 cubic centimeters.

486 (41)~~(78)~~ NONPUBLIC SECTOR BUS.—Any bus which is used for  
487 the transportation of persons for compensation and which is not  
488 owned, leased, operated, or controlled by a municipal, county,  
489 or state government or a governmentally owned or managed  
490 nonprofit corporation.

491 (95)~~(79)~~ WORK ZONE AREA.—The area and its approaches on any  
492 state-maintained highway, county-maintained highway, or  
493 municipal street where construction, repair, maintenance, or  
494 other street-related or highway-related work is being performed  
495 or where one or more lanes is closed to traffic.

496 (34)~~(80)~~ MAXI-CUBE VEHICLE.—A specialized combination

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497 vehicle consisting of a truck carrying a separable cargo-  
498 carrying unit combined with a semitrailer designed so that the  
499 separable cargo-carrying unit is to be loaded and unloaded  
500 through the semitrailer. The entire combination may not exceed  
501 65 feet in length, and a single component of that combination  
502 may not exceed 34 feet in length.

503 (77)~~(81)~~ TANDEM AXLE.—Any two axles whose centers are more  
504 than 40 inches but not more than 96 inches apart and are  
505 individually attached to or articulated from, or both, a common  
506 attachment to the vehicle, including a connecting mechanism  
507 designed to equalize the load between axles.

508 (40)~~(82)~~ MOTORIZED SCOOTER.—Any vehicle not having a seat  
509 or saddle for the use of the rider, designed to travel on not  
510 more than three wheels, and not capable of propelling the  
511 vehicle at a speed greater than 30 miles per hour on level  
512 ground.

513 (19)~~(83)~~ ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.—Any  
514 self-balancing, two-nontandem-wheeled device, designed to  
515 transport only one person, with an electric propulsion system  
516 with average power of 750 watts (1 horsepower), the maximum  
517 speed of which, on a paved level surface when powered solely by  
518 such a propulsion system while being ridden by an operator who  
519 weighs 170 pounds, is less than 20 miles per hour. Electric  
520 personal assistive mobility devices are not vehicles as defined  
521 in this section.

522 (85)~~(84)~~ TRAFFIC SIGNAL PREEMPTION SYSTEM.—Any system or  
523 device with the capability of activating a control mechanism  
524 mounted on or near traffic signals which alters a traffic  
525 signal's timing cycle.

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526 (93)~~(85)~~ VICTIM SERVICES PROGRAMS.—Any community-based  
 527 organization whose primary purpose is to act as an advocate for  
 528 the victims and survivors of traffic crashes and for their  
 529 families. The victims services offered by these programs may  
 530 include grief and crisis counseling, assistance with preparing  
 531 victim compensation claims excluding third-party legal action,  
 532 or connecting persons with other service providers, and  
 533 providing emergency financial assistance.

534 (37)~~(86)~~ MOTOR CARRIER TRANSPORTATION CONTRACT.—  
 535 (a) A contract, agreement, or understanding covering:  
 536 1. The transportation of property for compensation or hire  
 537 by the motor carrier;  
 538 2. Entrance on property by the motor carrier for the  
 539 purpose of loading, unloading, or transporting property for  
 540 compensation or hire; or  
 541 3. A service incidental to activity described in  
 542 subparagraph 1. or subparagraph 2., including, but not limited  
 543 to, storage of property.

544 (b) "Motor carrier transportation contract" does not  
 545 include the Uniform Intermodal Interchange and Facilities Access  
 546 Agreement administered by the Intermodal Association of North  
 547 America or other agreements providing for the interchange, use,  
 548 or possession of intermodal chassis, containers, or other  
 549 intermodal equipment.

550 (84)~~(87)~~ TRAFFIC INFRACTION DETECTOR.—A vehicle sensor  
 551 installed to work in conjunction with a traffic control signal  
 552 and a camera or cameras synchronized to automatically record two  
 553 or more sequenced photographic or electronic images or streaming  
 554 video of only the rear of a motor vehicle at the time the

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555 vehicle fails to stop behind the stop bar or clearly marked stop  
 556 line when facing a traffic control signal steady red light. Any  
 557 notification under s. 316.0083(1)(b) or traffic citation issued  
 558 by the use of a traffic infraction detector must include a  
 559 photograph or other recorded image showing both the license tag  
 560 of the offending vehicle and the traffic control device being  
 561 violated.

562 (88) TRI-VEHICLE.—An enclosed three-wheeled passenger  
 563 vehicle that:  
 564 (a) Is designed to operate with three wheels in contact  
 565 with the ground;  
 566 (b) Has a minimum unladen weight of 900 pounds;  
 567 (c) Has a single, completely enclosed, occupant  
 568 compartment;  
 569 (d) Is produced in a minimum quantity of 300 in any  
 570 calendar year;  
 571 (e) Is capable of a speed greater than 60 miles per hour on  
 572 level ground; and  
 573 (f) Is equipped with:  
 574 1. Seats that are certified by the vehicle manufacturer to  
 575 meet the requirements of Federal Motor Vehicle Safety Standard  
 576 No. 207, "Seating systems" (49 C.F.R. s. 571.207);  
 577 2. A steering wheel used to maneuver the vehicle;  
 578 3. A propulsion unit located forward or aft of the enclosed  
 579 occupant compartment;  
 580 4. A seat belt for each vehicle occupant certified to meet  
 581 the requirements of Federal Motor Vehicle Safety Standard No.  
 582 209, "Seat belt assemblies" (49 C.F.R. s. 571.209);  
 583 5. A windshield and an appropriate windshield wiper and

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584 washer system that are certified by the vehicle manufacturer to  
 585 meet the requirements of Federal Motor Vehicle Safety Standard  
 586 No. 205, "Glazing Materials" (49 C.F.R. s. 571.205) and Federal  
 587 Motor Vehicle Safety Standard No. 104, "Windshield Wiping and  
 588 Washing Systems" (49 C.F.R. s. 571.104); and

589 6. A vehicle structure certified by the vehicle  
 590 manufacturer to meet the requirements of Federal Motor Vehicle  
 591 Safety Standard No. 216, "Rollover crush resistance" (49 C.F.R.  
 592 s. 571.216).

593 (76)~~(89)~~ SWAMP BUGGY.—A motorized off-road vehicle that is  
 594 designed or modified to travel over swampy or varied terrain and  
 595 that may use large tires or tracks operated from an elevated  
 596 platform. The term does not include any vehicle defined in  
 597 chapter 261 or otherwise defined or classified in this chapter.

598 (2)~~(90)~~ AUTONOMOUS VEHICLE.—Any vehicle equipped with  
 599 autonomous technology. The term "autonomous technology" means  
 600 technology installed on a motor vehicle that has the capability  
 601 to drive the vehicle on which the technology is installed  
 602 without the active control or monitoring by a human operator.  
 603 The term excludes a motor vehicle enabled with active safety  
 604 systems or driver assistance systems, including, without  
 605 limitation, a system to provide electronic blind spot  
 606 assistance, crash avoidance, emergency braking, parking  
 607 assistance, adaptive cruise control, lane keep assistance, lane  
 608 departure warning, or traffic jam and queuing assistant, unless  
 609 any such system alone or in combination with other systems  
 610 enables the vehicle on which the technology is installed to  
 611 drive without the active control or monitoring by a human  
 612 operator.

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613 (33)~~(91)~~ LOCAL HEARING OFFICER.—The person, designated by a  
 614 department, county, or municipality that elects to authorize  
 615 traffic infraction enforcement officers to issue traffic  
 616 citations under s. 316.0083(1)(a), who is authorized to conduct  
 617 hearings related to a notice of violation issued pursuant to s.  
 618 316.0083. The charter county, noncharter county, or municipality  
 619 may use its currently appointed code enforcement board or  
 620 special magistrate to serve as the local hearing officer. The  
 621 department may enter into an interlocal agreement to use the  
 622 local hearing officer of a county or municipality.

623 (64)~~(92)~~ SANITATION VEHICLE.—A motor vehicle that bears an  
 624 emblem that is visible from the roadway and clearly identifies  
 625 that the vehicle belongs to or is under contract with a person,  
 626 entity, cooperative, board, commission, district, or unit of  
 627 local government that provides garbage, trash, refuse, or  
 628 recycling collection.

629 (91)~~(93)~~ UTILITY SERVICE VEHICLE.—A motor vehicle that  
 630 bears an emblem that is visible from the roadway and clearly  
 631 identifies that the vehicle belongs to or is under contract with  
 632 a person, entity, cooperative, board, commission, district, or  
 633 unit of local government that provides electric, natural gas,  
 634 water, wastewater, cable, telephone, or communications services.

635 (94) VULNERABLE USER OF A PUBLIC ROADWAY OR VULNERABLE  
 636 USER.—

637 (a) A pedestrian, including a person actually engaged in  
 638 work upon a highway, work upon utility facilities along a  
 639 highway, or the provision of emergency services within the  
 640 right-of-way;

641 (b) A person operating, or who is a passenger on, a

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642 bicycle, motorcycle, scooter, or moped lawfully on the roadway;

643 (c) A person riding an animal; or

644 (d) A person lawfully operating on a public roadway,  
645 crosswalk, or shoulder of the roadway;

646 1. A farm tractor or similar vehicle designed primarily for  
647 farm use;

648 2. A horse-drawn carriage;

649 3. An electric personal assistive mobility device; or

650 4. A wheelchair.

651 Section 2. Subsection (1) and paragraphs (e) and (f) of  
652 subsection (2) of section 316.027, Florida Statutes, are amended  
653 to read:

654 316.027 Crash involving death or personal injuries.—

655 (1) As used in this section, the term+

656 ~~(a)~~ "serious bodily injury" means an injury to a person,  
657 including the driver, which consists of a physical condition  
658 that creates a substantial risk of death, serious personal  
659 disfigurement, or protracted loss or impairment of the function  
660 of a bodily member or organ.

661 ~~(b) "Vulnerable road user" means:~~

662 ~~1. A pedestrian, including a person actually engaged in~~  
663 ~~work upon a highway, or in work upon utility facilities along a~~  
664 ~~highway, or engaged in the provision of emergency services~~  
665 ~~within the right-of-way;~~

666 ~~2. A person operating a bicycle, motorcycle, scooter, or~~  
667 ~~moped lawfully on the roadway;~~

668 ~~3. A person riding an animal; or~~

669 ~~4. A person lawfully operating on a public right-of-way,~~  
670 ~~crosswalk, or shoulder of the roadway;~~

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671 ~~a. A farm tractor or similar vehicle designed primarily for~~  
672 ~~farm use;~~

673 ~~b. A skateboard, roller skates, or in-line skates;~~

674 ~~c. A horse-drawn carriage;~~

675 ~~d. An electric personal assistive mobility device; or~~

676 ~~e. A wheelchair.~~

677 (2)

678 (e) A driver who violates paragraph (a), paragraph (b), or  
679 paragraph (c) shall have his or her driver license revoked for  
680 at least 3 years as provided in s. 322.28(4).

681 1. A person convicted of violating paragraph (a), paragraph  
682 (b), or paragraph (c) shall, before his or her driving privilege  
683 may be reinstated, present to the department proof of completion  
684 of a victim's impact panel session in a judicial circuit if such  
685 a panel exists, or if such a panel does not exist, a department-  
686 approved driver improvement course relating to the rights of  
687 vulnerable ~~road~~ users relative to vehicles on the roadway as  
688 provided in s. 322.0261(2).

689 2. The department may reinstate an offender's driving  
690 privilege after he or she satisfies the 3-year revocation period  
691 as provided in s. 322.28(4) and successfully completes either a  
692 victim's impact panel session or a department-approved driver  
693 improvement course relating to the rights of vulnerable ~~road~~  
694 users relative to vehicles on the roadway as provided in s.  
695 322.0261(2).

696 3. For purposes of this paragraph, an offender's driving  
697 privilege may be reinstated only after the department verifies  
698 that the offender participated in and successfully completed a  
699 victim's impact panel session or a department-approved driver

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700 improvement course.

701 (f) For purposes of sentencing under chapter 921 and  
702 determining incentive gain-time eligibility under chapter 944,  
703 an offense listed in this subsection is ranked one level above  
704 the ranking specified in s. 921.0022 or s. 921.0023 for the  
705 offense committed if the victim of the offense was a vulnerable  
706 ~~read~~ user.

707 Section 3. Section 316.083, Florida Statutes, is amended to  
708 read:

709 316.083 Overtaking and passing a vehicle.—The following  
710 provisions ~~rules shall~~ govern the overtaking and passing of a  
711 vehicle ~~vehicles~~ proceeding in the same direction, ~~subject to~~  
712 ~~those limitations, exceptions, and special rules hereinafter~~  
713 ~~stated:~~

714 (1) The driver of a vehicle overtaking another vehicle  
715 proceeding in the same direction shall give an appropriate  
716 signal as provided for in s. 316.156, shall pass to the left  
717 thereof at a safe distance, and shall not again drive to the  
718 right side of the roadway until safely clear of the overtaken  
719 vehicle.

720 (2) The driver of a motor vehicle overtaking a person  
721 operating a bicycle or other vulnerable user of a public roadway  
722 ~~nonmotorized vehicle~~ must pass the person operating the bicycle  
723 or other vulnerable user ~~nonmotorized vehicle~~ at a safe distance  
724 of not less than 3 feet between any part of or attachment to the  
725 motor vehicle, anything extending from the motor vehicle, or any  
726 trailer or other thing being towed by the motor vehicle and the  
727 bicycle, the person operating the bicycle, or other vulnerable  
728 user ~~nonmotorized vehicle~~.

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729 ~~(3)(2)~~ Except when overtaking and passing on the right is  
730 permitted, the driver of an overtaken vehicle shall give way to  
731 the right in favor of the overtaking vehicle, on audible signal  
732 or upon the visible blinking of the headlamps of the overtaking  
733 vehicle if such overtaking is being attempted at nighttime, and  
734 shall not increase the speed of his or her vehicle until  
735 completely passed by the overtaking vehicle.

736 ~~(4)(3)~~ A violation of this section is a noncriminal traffic  
737 infraction, punishable as a moving violation as provided in  
738 chapter 318. If a violation of this section contributed to the  
739 bodily injury of a vulnerable user of a public roadway, the law  
740 enforcement officer issuing the citation for the violation shall  
741 note such information on the citation.

742 Section 4. Section 316.084, Florida Statutes, is amended to  
743 read:

744 316.084 When overtaking on the right is permitted.—

745 (1) The driver of a vehicle may overtake and pass on the  
746 right of another vehicle only under the following conditions:

747 (a) When the vehicle overtaken is making or about to make a  
748 left turn;

749 (b) Upon a street or highway with unobstructed pavement not  
750 occupied by parked vehicles of sufficient width for two or more  
751 lines of moving traffic in each direction;

752 (c) Upon a one-way street, or upon any roadway on which  
753 traffic is restricted to one direction of movement, where the  
754 roadway is free from obstructions and of sufficient width for  
755 two or more lines of moving vehicles.

756 (2) The driver of a vehicle may overtake and pass another  
757 vehicle on the right only under conditions permitting such

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758 movement in safety. In no event shall such movement be made by  
759 driving off the pavement or main-traveled portion of the  
760 roadway.

761 (3) This section does not prohibit a bicycle that is in a  
762 bicycle lane or on the shoulder of a roadway or highway from  
763 passing another vehicle on the right.

764 ~~(4)(3)~~ A violation of this section is a noncriminal traffic  
765 infraction, punishable as a moving violation as provided in  
766 chapter 318.

767 Section 5. Section 316.0875, Florida Statutes, is amended  
768 to read:

769 316.0875 No-passing zones.—

770 (1) The Department of Transportation and local authorities  
771 are authorized to determine those portions of any highway under  
772 their respective jurisdiction where overtaking and passing or  
773 driving to the left of the roadway would be especially hazardous  
774 and may, by appropriate signs or markings on the roadway,  
775 indicate the beginning and end of such zones, and, when such  
776 signs or markings are in place and clearly visible to an  
777 ordinarily observant person, each ~~every~~ driver of a vehicle  
778 shall obey the directions thereof.

779 (2) Where signs or markings are in place to define a no-  
780 passing zone as set forth in subsection (1), ~~a~~ ~~no~~ driver may  
781 not, shall at any time, drive on the left side of the roadway  
782 with such no-passing zone or on the left side of any pavement  
783 striping designed to mark such no-passing zone throughout its  
784 length.

785 (3) This section does not apply to a person who safely and  
786 briefly drives to the left of the center of the roadway or

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787 pavement striping only to the extent necessary to:

788 (a) Avoid ~~When an obstruction; exists making it necessary~~  
789 ~~to drive to the left of the center of the highway, nor~~

790 (b) Turn ~~To the driver of a vehicle turning left into or~~  
791 ~~from an alley, private road, or driveway; or~~

792 (c) Comply with the requirements regarding a safe distance  
793 to pass a vulnerable user, as required by s. 316.083(2).

794 (4) A violation of this section is a noncriminal traffic  
795 infraction, punishable as a moving violation as provided in  
796 chapter 318.

797 Section 6. Section 316.151, Florida Statutes, is amended to  
798 read:

799 316.151 Required position and method of turning at  
800 intersections.—

801 (1) (a) Right turn.—The driver of a vehicle intending to  
802 turn right at an intersection onto a highway, public or private  
803 roadway, or driveway shall do so as follows:

804 ~~1. (a) Right turn.~~—Both the approach for a right turn and a  
805 right turn shall be made as close as practicable to the right-  
806 hand curb or edge of the roadway.

807 2. When overtaking and passing a bicycle or other  
808 vulnerable user proceeding in the same direction, the driver of  
809 a motor vehicle shall give an appropriate signal as provided for  
810 in s. 316.155 and shall make the right turn only if it can be  
811 made at a safe distance from the bicycle or other vulnerable  
812 user.

813 3. When crossing a sidewalk, bicycle lane, or bicycle path  
814 to turn right, the driver of a motor vehicle shall yield the  
815 right-of-way to a bicycle or pedestrian.

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816 (b) *Left turn.*—The driver of a vehicle intending to turn  
 817 left at an any intersection onto a highway, public or private  
 818 roadway, or driveway shall do so as follows:

819 1. The driver shall approach the intersection in the  
 820 extreme left-hand lane lawfully available to traffic moving in  
 821 the direction of travel of such vehicle. ~~Thereafter, and, after~~  
 822 ~~entering the intersection,~~ the left turn shall be made so as to  
 823 leave the intersection in a lane lawfully available to traffic  
 824 moving in such direction upon the roadway being entered.

825 2. A person riding a bicycle and intending to turn left in  
 826 accordance with this section is entitled to the full use of the  
 827 lane from which the turn may legally be made. Whenever  
 828 practicable the left turn shall be made in that portion of the  
 829 intersection to the left of the center of the intersection.

830 ~~(c) Left turn by bicycle.~~—In addition ~~to the method of~~  
 831 ~~making a left turn described in paragraph (b),~~ a person riding a  
 832 bicycle and intending to turn left may do so as follows ~~has the~~  
 833 ~~option of following the course described hereafter:~~

834 a. The rider shall approach the turn as close as  
 835 practicable to the right curb or edge of the roadway;

836 b. After proceeding across the intersecting roadway, the  
 837 turn shall be made as close as practicable to the curb or edge  
 838 of the roadway on the far side of the intersection; and—

839 c. Before proceeding, the bicyclist shall comply with any  
 840 official traffic control device or police officer regulating  
 841 traffic on the highway along which the bicyclist intends to  
 842 proceed.

843 (2) The state, county, and local authorities in their  
 844 respective jurisdictions may cause official traffic control

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845 devices to be placed within or adjacent to intersections and  
 846 thereby require and direct that a different course from that  
 847 specified in this section be traveled by vehicles turning at an  
 848 intersection. When such devices are so placed, ~~the~~ no driver of  
 849 a vehicle may not turn a vehicle at an intersection other than  
 850 as directed and required by such devices.

851 (3) A violation of this section is a noncriminal traffic  
 852 infraction, punishable as a moving violation as provided in  
 853 chapter 318. If a violation of this section contributes to the  
 854 bodily injury of a vulnerable user of a public roadway, the law  
 855 enforcement officer issuing the citation for the violation shall  
 856 note such information on the citation.

857 Section 7. Section 316.1925, Florida Statutes, is amended  
 858 to read:

859 316.1925 Careless driving.—

860 (1) A Any person operating a vehicle upon the streets or  
 861 highways within the state shall drive the same in a careful and  
 862 prudent manner, having regard for the width, grade, curves,  
 863 corners, traffic, and all other attendant circumstances, so as  
 864 not to endanger the life, limb, or property of any person. A  
 865 person who fails ~~Failure~~ to drive in such manner commits shall  
 866 constitute careless driving and a violation of this section.

867 ~~(2) Any person who violates this section shall be cited for~~  
 868 a moving violation, punishable as provided in chapter 318.

869 (2) If a violation under subsection (1) contributed to the  
 870 bodily injury of a vulnerable user of a public roadway, the law  
 871 enforcement officer issuing the citation for the violation shall  
 872 note such information on the citation.

873 Section 8. Subsections (1), (5), and (6) of section

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874 316.2065, Florida Statutes, are amended to read:

875 316.2065 Bicycle regulations.—

876 (1) A bicycle is a vehicle under Florida law and shall be  
 877 operated in the same manner as any other vehicle and every  
 878 person operating a bicycle propelling a vehicle by human power  
 879 has all of the rights and all of the duties applicable to the  
 880 driver of any other vehicle under this chapter, except as to  
 881 special regulations in this chapter, and except as to provisions  
 882 of this chapter which by their nature can have no application.

883 (5) (a) Any person operating a bicycle upon a roadway at  
 884 less than the normal speed of traffic at the time and place and  
 885 under the conditions then existing shall ride in the bicycle  
 886 lane marked for bicycle use or, if there is no bicycle lane in  
 887 the roadway is marked for bicycle use, as close as practicable  
 888 to the right-hand curb or edge of the roadway except under any  
 889 of the following situations:

890 1. When overtaking and passing another bicycle or vehicle  
 891 proceeding in the same direction.

892 2. When preparing for a left turn at an intersection or  
 893 into a private road or driveway.

894 3. When reasonably necessary to avoid any condition or  
 895 potential conflict, including, but not limited to, a fixed or  
 896 moving object, parked or moving vehicle, bicycle, pedestrian,  
 897 animal, surface hazard, turn lane, or substandard-width lane,  
 898 which makes it unsafe to continue along the right-hand curb or  
 899 edge or within a bicycle lane. For the purposes of this  
 900 subsection, a "substandard-width lane" is a lane that is too  
 901 narrow for a bicycle and another vehicle to travel safely side  
 902 by side within the lane.

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903 (b) Any person operating a bicycle upon a one-way highway  
 904 with two or more marked traffic lanes may ride as near the left-  
 905 hand curb or edge of such roadway as practicable.

906 (6) (a) Persons riding bicycles upon a roadway or in a  
 907 bicycle lane may not ride more than two abreast except on  
 908 bicycle paths or parts of roadways set aside for the exclusive  
 909 use of bicycles. Persons riding two abreast may not impede  
 910 traffic when traveling at less than the normal speed of traffic  
 911 at the time and place and under the conditions then existing and  
 912 shall ride within a single lane.

913 (b) When stopping at a stop sign, persons riding bicycles  
 914 in groups of four or more, after coming to a full stop and  
 915 obeying all traffic laws, may proceed through the stop sign in a  
 916 group and motor vehicle operators shall allow the entire group  
 917 to travel through the intersection before moving forward.

918 Section 9. Section 318.142, Florida Statutes, is created to  
 919 read:

920 318.142 Infractions contributing to bodily injury of a  
 921 vulnerable user of a public roadway.—In addition to any other  
 922 penalty imposed for a violation under s. 316.192, if the  
 923 violation contributed to the bodily injury of a vulnerable user  
 924 of a public roadway as defined in s. 316.003, the law  
 925 enforcement officer issuing the citation for the infraction  
 926 shall note such information on the citation and the designated  
 927 official may impose a fine of not more than \$2,500.

928 Section 10. Section 318.19, Florida Statutes, is amended to  
 929 read:

930 318.19 Infractions requiring a mandatory hearing.—Any  
 931 person cited for the infractions listed in this section shall

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932 not have the provisions of s. 318.14(2), (4), and (9) available  
 933 to him or her but must appear before the designated official at  
 934 the time and location of the scheduled hearing:

935 (1) Any infraction which results in a crash that causes the  
 936 death of another;

937 (2) Any infraction which results in a crash that causes  
 938 "serious bodily injury" of another as defined in s. 316.1933(1);

939 (3) Any infraction of s. 316.172(1)(b);

940 (4) Any infraction of s. 316.520(1) or (2); ~~or~~

941 (5) Any infraction of s. 316.183(2), s. 316.187, or s.  
 942 316.189 of exceeding the speed limit by 30 m.p.h. or more; or

943 (6) Any infraction of s. 316.083, s. 316.151, or s.  
 944 316.1925 which contributes to bodily injury of a vulnerable user  
 945 of a public roadway as defined in s. 316.003. If an infraction  
 946 listed in this subsection contributes to the bodily injury of a  
 947 vulnerable user of a public roadway, the law enforcement officer  
 948 issuing the citation for the infraction shall note such  
 949 information on the citation.

950 Section 11. Paragraph (c) of subsection (1) of section  
 951 212.05, Florida Statutes, is amended to read:

952 212.05 Sales, storage, use tax.—It is hereby declared to be  
 953 the legislative intent that every person is exercising a taxable  
 954 privilege who engages in the business of selling tangible  
 955 personal property at retail in this state, including the  
 956 business of making mail order sales, or who rents or furnishes  
 957 any of the things or services taxable under this chapter, or who  
 958 stores for use or consumption in this state any item or article  
 959 of tangible personal property as defined herein and who leases  
 960 or rents such property within the state.

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961 (1) For the exercise of such privilege, a tax is levied on  
 962 each taxable transaction or incident, which tax is due and  
 963 payable as follows:

964 (c) At the rate of 6 percent of the gross proceeds derived  
 965 from the lease or rental of tangible personal property, as  
 966 defined herein; however, the following special provisions apply  
 967 to the lease or rental of motor vehicles:

968 1. When a motor vehicle is leased or rented for a period of  
 969 less than 12 months:

970 a. If the motor vehicle is rented in Florida, the entire  
 971 amount of such rental is taxable, even if the vehicle is dropped  
 972 off in another state.

973 b. If the motor vehicle is rented in another state and  
 974 dropped off in Florida, the rental is exempt from Florida tax.

975 2. Except as provided in subparagraph 3., for the lease or  
 976 rental of a motor vehicle for a period of not less than 12  
 977 months, sales tax is due on the lease or rental payments if the  
 978 vehicle is registered in this state; provided, however, that no  
 979 tax shall be due if the taxpayer documents use of the motor  
 980 vehicle outside this state and tax is being paid on the lease or  
 981 rental payments in another state.

982 3. The tax imposed by this chapter does not apply to the  
 983 lease or rental of a commercial motor vehicle as defined in s.  
 984 316.003(12)(a) ~~316.003(66)(a)~~ to one lessee or rentee for a  
 985 period of not less than 12 months when tax was paid on the  
 986 purchase price of such vehicle by the lessor. To the extent tax  
 987 was paid with respect to the purchase of such vehicle in another  
 988 state, territory of the United States, or the District of  
 989 Columbia, the Florida tax payable shall be reduced in accordance

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990 with the provisions of s. 212.06(7). This subparagraph shall  
 991 only be available when the lease or rental of such property is  
 992 an established business or part of an established business or  
 993 the same is incidental or germane to such business.

994 Section 12. Subsection (1) of section 316.1303, Florida  
 995 Statutes, is amended to read:

996 316.1303 Traffic regulations to assist mobility-impaired  
 997 persons.—

998 (1) Whenever a pedestrian who is mobility impaired is in  
 999 the process of crossing a public street or highway with the  
 1000 assistance of a guide dog or service animal designated as such  
 1001 with a visible means of identification, a walker, a crutch, an  
 1002 orthopedic cane, or a wheelchair, the driver of a vehicle  
 1003 approaching the intersection, as defined in s. 316.003  
 1004 ~~316.003(17)~~, shall bring his or her vehicle to a full stop  
 1005 before arriving at the intersection and, before proceeding,  
 1006 shall take precautions necessary to avoid injuring the  
 1007 pedestrian.

1008 Section 13. Subsection (5) of section 316.235, Florida  
 1009 Statutes, is amended to read:

1010 316.235 Additional lighting equipment.—

1011 (5) A bus, as defined in s. 316.003 ~~316.003(3)~~, may be  
 1012 equipped with a deceleration lighting system which cautions  
 1013 following vehicles that the bus is slowing, preparing to stop,  
 1014 or is stopped. Such lighting system shall consist of amber  
 1015 lights mounted in horizontal alignment on the rear of the  
 1016 vehicle at or near the vertical centerline of the vehicle, not  
 1017 higher than the lower edge of the rear window or, if the vehicle  
 1018 has no rear window, not higher than 72 inches from the ground.

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1019 Such lights shall be visible from a distance of not less than  
 1020 300 feet to the rear in normal sunlight. Lights are permitted to  
 1021 light and flash during deceleration, braking, or standing and  
 1022 idling of the bus. Vehicular hazard warning flashers may be used  
 1023 in conjunction with or in lieu of a rear-mounted deceleration  
 1024 lighting system.

1025 Section 14. Paragraph (b) of subsection (2) and paragraph  
 1026 (a) of subsection (4) of section 316.545, Florida Statutes, are  
 1027 amended to read:

1028 316.545 Weight and load unlawful; special fuel and motor  
 1029 fuel tax enforcement; inspection; penalty; review.—

1030 (2)

1031 (b) The officer or inspector shall inspect the license  
 1032 plate or registration certificate of the commercial motor  
 1033 vehicle, as defined in s. 316.003 ~~316.003(66)~~, to determine if  
 1034 its gross weight is in compliance with the declared gross  
 1035 vehicle weight. If its gross weight exceeds the declared weight,  
 1036 the penalty shall be 5 cents per pound on the difference between  
 1037 such weights. In those cases when the commercial motor vehicle,  
 1038 as defined in s. 316.003 ~~316.003(66)~~, is being operated over the  
 1039 highways of the state with an expired registration or with no  
 1040 registration from this or any other jurisdiction or is not  
 1041 registered under the applicable provisions of chapter 320, the  
 1042 penalty herein shall apply on the basis of 5 cents per pound on  
 1043 that scaled weight which exceeds 35,000 pounds on laden truck  
 1044 tractor-semitrailer combinations or tandem trailer truck  
 1045 combinations, 10,000 pounds on laden straight trucks or straight  
 1046 truck-trailer combinations, or 10,000 pounds on any unladen  
 1047 commercial motor vehicle. If the license plate or registration

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1048 has not been expired for more than 90 days, the penalty imposed  
 1049 under this paragraph may not exceed \$1,000. In the case of  
 1050 special mobile equipment as defined in s. 316.003 ~~316.003(48)~~,  
 1051 which qualifies for the license tax provided for in s.  
 1052 320.08(5)(b), being operated on the highways of the state with  
 1053 an expired registration or otherwise not properly registered  
 1054 under the applicable provisions of chapter 320, a penalty of \$75  
 1055 shall apply in addition to any other penalty which may apply in  
 1056 accordance with this chapter. A vehicle found in violation of  
 1057 this section may be detained until the owner or operator  
 1058 produces evidence that the vehicle has been properly registered.  
 1059 Any costs incurred by the retention of the vehicle shall be the  
 1060 sole responsibility of the owner. A person who has been assessed  
 1061 a penalty pursuant to this paragraph for failure to have a valid  
 1062 vehicle registration certificate pursuant to the provisions of  
 1063 chapter 320 is not subject to the delinquent fee authorized in  
 1064 s. 320.07 if such person obtains a valid registration  
 1065 certificate within 10 working days after such penalty was  
 1066 assessed.

1067 (4)(a) No commercial motor vehicle, as defined in s.  
 1068 316.003 ~~316.003(66)~~, shall be operated over the highways of this  
 1069 state unless it has been properly registered under the  
 1070 provisions of s. 207.004. Whenever any law enforcement officer  
 1071 identified in s. 207.023(1), upon inspecting the vehicle or  
 1072 combination of vehicles, determines that the vehicle is in  
 1073 violation of s. 207.004, a penalty in the amount of \$50 shall be  
 1074 assessed, and the vehicle may be detained until payment is  
 1075 collected by the law enforcement officer.

1076 Section 15. Subsection (2) of section 316.605, Florida

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1077 Statutes, is amended to read:  
 1078 316.605 Licensing of vehicles.—  
 1079 (2) Any commercial motor vehicle, as defined in s. 316.003  
 1080 ~~316.003(66)~~, operating over the highways of this state with an  
 1081 expired registration, with no registration from this or any  
 1082 other jurisdiction, or with no registration under the applicable  
 1083 provisions of chapter 320 shall be in violation of s. 320.07(3)  
 1084 and shall subject the owner or operator of such vehicle to the  
 1085 penalty provided. In addition, a commercial motor vehicle found  
 1086 in violation of this section may be detained by any law  
 1087 enforcement officer until the owner or operator produces  
 1088 evidence that the vehicle has been properly registered and that  
 1089 any applicable delinquent penalties have been paid.

1090 Section 16. Subsection (6) of section 316.6105, Florida  
 1091 Statutes, is amended to read:  
 1092 316.6105 Violations involving operation of motor vehicle in  
 1093 unsafe condition or without required equipment; procedure for  
 1094 disposition.—  
 1095 (6) This section does not apply to commercial motor  
 1096 vehicles as defined in s. 316.003 ~~316.003(66)~~ or transit buses  
 1097 owned or operated by a governmental entity.

1098 Section 17. Paragraph (a) of subsection (2) of section  
 1099 316.613, Florida Statutes, is amended to read:  
 1100 316.613 Child restraint requirements.—  
 1101 (2) As used in this section, the term "motor vehicle" means  
 1102 a motor vehicle as defined in s. 316.003 that is operated on the  
 1103 roadways, streets, and highways of the state. The term does not  
 1104 include:  
 1105 (a) A school bus as defined in s. 316.003 ~~316.003(45)~~.

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1106 Section 18. Subsection (8) of section 316.622, Florida  
 1107 Statutes, is amended to read:  
 1108 316.622 Farm labor vehicles.—  
 1109 (8) The department shall provide to the Department of  
 1110 Business and Professional Regulation each quarter a copy of each  
 1111 accident report involving a farm labor vehicle, as defined in s.  
 1112 316.003 ~~316.003(62)~~, commencing with the first quarter of the  
 1113 2006-2007 fiscal year.  
 1114 Section 19. Paragraph (b) of subsection (1) of section  
 1115 316.650, Florida Statutes, is amended to read:  
 1116 316.650 Traffic citations.—  
 1117 (1)  
 1118 (b) The department shall prepare, and supply to every  
 1119 traffic enforcement agency in the state, an appropriate  
 1120 affidavit-of-compliance form that shall be issued along with the  
 1121 form traffic citation for any violation of s. 316.610 and that  
 1122 indicates the specific defect needing to be corrected. However,  
 1123 such affidavit of compliance shall not be issued in the case of  
 1124 a violation of s. 316.610 by a commercial motor vehicle as  
 1125 defined in s. 316.003 ~~316.003(66)~~. Such affidavit-of-compliance  
 1126 form shall be distributed in the same manner and to the same  
 1127 parties as is the form traffic citation.  
 1128 Section 20. Subsection (1) of section 316.70, Florida  
 1129 Statutes, is amended to read:  
 1130 316.70 Nonpublic sector buses; safety rules.—  
 1131 (1) The Department of Transportation shall establish and  
 1132 revise standards to assure the safe operation of nonpublic  
 1133 sector buses, as defined in s. 316.003 ~~316.003(78)~~, which  
 1134 standards shall be those contained in 49 C.F.R. parts 382, 385,

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1135 and 390-397 and which shall be directed towards assuring that:  
 1136 (a) Nonpublic sector buses are safely maintained, equipped,  
 1137 and operated.  
 1138 (b) Nonpublic sector buses are carrying the insurance  
 1139 required by law and carrying liability insurance on the checked  
 1140 baggage of passengers not to exceed the standard adopted by the  
 1141 United States Department of Transportation.  
 1142 (c) Florida license tags are purchased for nonpublic sector  
 1143 buses pursuant to s. 320.38.  
 1144 (d) The driving records of drivers of nonpublic sector  
 1145 buses are checked by their employers at least once each year to  
 1146 ascertain whether the driver has a suspended or revoked driver  
 1147 license.  
 1148 Section 21. Paragraph (a) of subsection (1) of section  
 1149 320.01, Florida Statutes, is amended to read:  
 1150 320.01 Definitions, general.—As used in the Florida  
 1151 Statutes, except as otherwise provided, the term:  
 1152 (1) "Motor vehicle" means:  
 1153 (a) An automobile, motorcycle, truck, trailer, semitrailer,  
 1154 truck tractor and semitrailer combination, or any other vehicle  
 1155 operated on the roads of this state, used to transport persons  
 1156 or property, and propelled by power other than muscular power,  
 1157 but the term does not include traction engines, road rollers,  
 1158 special mobile equipment as defined in s. 316.003 ~~316.003(48)~~,  
 1159 vehicles that run only upon a track, bicycles, swamp buggies, or  
 1160 mopeds.  
 1161 Section 22. Section 320.08, Florida Statutes, is amended to  
 1162 read:  
 1163 320.08 License taxes.—Except as otherwise provided herein,

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1164 there are hereby levied and imposed annual license taxes for the  
 1165 operation of motor vehicles, mopeds, motorized bicycles as  
 1166 defined in s. ~~316.003~~ 316.003(2), tri-vehicles as defined in s.  
 1167 316.003, and mobile homes, as defined in s. 320.01, which shall  
 1168 be paid to and collected by the department or its agent upon the  
 1169 registration or renewal of registration of the following:

1170 (1) MOTORCYCLES AND MOPEDS.—

1171 (a) Any motorcycle: \$10 flat.

1172 (b) Any moped: \$5 flat.

1173 (c) Upon registration of a motorcycle, motor-driven cycle,  
 1174 or moped, in addition to the license taxes specified in this  
 1175 subsection, a nonrefundable motorcycle safety education fee in  
 1176 the amount of \$2.50 shall be paid. The proceeds of such  
 1177 additional fee shall be deposited in the Highway Safety  
 1178 Operating Trust Fund to fund a motorcycle driver improvement  
 1179 program implemented pursuant to s. 322.025, the Florida  
 1180 Motorcycle Safety Education Program established in s. 322.0255,  
 1181 or the general operations of the department.

1182 (d) An ancient or antique motorcycle: \$7.50 flat, of which  
 1183 \$2.50 shall be deposited into the General Revenue Fund.

1184 (2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

1185 (a) An ancient or antique automobile, as defined in s.  
 1186 320.086, or a street rod, as defined in s. 320.0863: \$7.50 flat.

1187 (b) Net weight of less than 2,500 pounds: \$14.50 flat.

1188 (c) Net weight of 2,500 pounds or more, but less than 3,500  
 1189 pounds: \$22.50 flat.

1190 (d) Net weight of 3,500 pounds or more: \$32.50 flat.

1191 (3) TRUCKS.—

1192 (a) Net weight of less than 2,000 pounds: \$14.50 flat.

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1193 (b) Net weight of 2,000 pounds or more, but not more than  
 1194 3,000 pounds: \$22.50 flat.

1195 (c) Net weight more than 3,000 pounds, but not more than  
 1196 5,000 pounds: \$32.50 flat.

1197 (d) A truck defined as a "goat," or other vehicle if used  
 1198 in the field by a farmer or in the woods for the purpose of  
 1199 harvesting a crop, including naval stores, during such  
 1200 harvesting operations, and which is not principally operated  
 1201 upon the roads of the state: \$7.50 flat. The term "goat" means a  
 1202 motor vehicle designed, constructed, and used principally for  
 1203 the transportation of citrus fruit within citrus groves or for  
 1204 the transportation of crops on farms, and which can also be used  
 1205 for hauling associated equipment or supplies, including required  
 1206 sanitary equipment, and the towing of farm trailers.

1207 (e) An ancient or antique truck, as defined in s. 320.086:  
 1208 \$7.50 flat.

1209 (4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS  
 1210 VEHICLE WEIGHT.—

1211 (a) Gross vehicle weight of 5,001 pounds or more, but less  
 1212 than 6,000 pounds: \$60.75 flat, of which \$15.75 shall be  
 1213 deposited into the General Revenue Fund.

1214 (b) Gross vehicle weight of 6,000 pounds or more, but less  
 1215 than 8,000 pounds: \$87.75 flat, of which \$22.75 shall be  
 1216 deposited into the General Revenue Fund.

1217 (c) Gross vehicle weight of 8,000 pounds or more, but less  
 1218 than 10,000 pounds: \$103 flat, of which \$27 shall be deposited  
 1219 into the General Revenue Fund.

1220 (d) Gross vehicle weight of 10,000 pounds or more, but less  
 1221 than 15,000 pounds: \$118 flat, of which \$31 shall be deposited

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1222 into the General Revenue Fund.

1223 (e) Gross vehicle weight of 15,000 pounds or more, but less  
1224 than 20,000 pounds: \$177 flat, of which \$46 shall be deposited  
1225 into the General Revenue Fund.

1226 (f) Gross vehicle weight of 20,000 pounds or more, but less  
1227 than 26,001 pounds: \$251 flat, of which \$65 shall be deposited  
1228 into the General Revenue Fund.

1229 (g) Gross vehicle weight of 26,001 pounds or more, but less  
1230 than 35,000: \$324 flat, of which \$84 shall be deposited into the  
1231 General Revenue Fund.

1232 (h) Gross vehicle weight of 35,000 pounds or more, but less  
1233 than 44,000 pounds: \$405 flat, of which \$105 shall be deposited  
1234 into the General Revenue Fund.

1235 (i) Gross vehicle weight of 44,000 pounds or more, but less  
1236 than 55,000 pounds: \$773 flat, of which \$201 shall be deposited  
1237 into the General Revenue Fund.

1238 (j) Gross vehicle weight of 55,000 pounds or more, but less  
1239 than 62,000 pounds: \$916 flat, of which \$238 shall be deposited  
1240 into the General Revenue Fund.

1241 (k) Gross vehicle weight of 62,000 pounds or more, but less  
1242 than 72,000 pounds: \$1,080 flat, of which \$280 shall be  
1243 deposited into the General Revenue Fund.

1244 (l) Gross vehicle weight of 72,000 pounds or more: \$1,322  
1245 flat, of which \$343 shall be deposited into the General Revenue  
1246 Fund.

1247 (m) Notwithstanding the declared gross vehicle weight, a  
1248 truck tractor used within a 150-mile radius of its home address  
1249 is eligible for a license plate for a fee of \$324 flat if:

1250 1. The truck tractor is used exclusively for hauling

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1251 forestry products; or

1252 2. The truck tractor is used primarily for the hauling of  
1253 forestry products, and is also used for the hauling of  
1254 associated forestry harvesting equipment used by the owner of  
1255 the truck tractor.

1256  
1257 Of the fee imposed by this paragraph, \$84 shall be deposited  
1258 into the General Revenue Fund.

1259 (n) A truck tractor or heavy truck, not operated as a for-  
1260 hire vehicle, which is engaged exclusively in transporting raw,  
1261 unprocessed, and nonmanufactured agricultural or horticultural  
1262 products within a 150-mile radius of its home address, is  
1263 eligible for a restricted license plate for a fee of:

1264 1. If such vehicle's declared gross vehicle weight is less  
1265 than 44,000 pounds, \$87.75 flat, of which \$22.75 shall be  
1266 deposited into the General Revenue Fund.

1267 2. If such vehicle's declared gross vehicle weight is  
1268 44,000 pounds or more and such vehicle only transports from the  
1269 point of production to the point of primary manufacture; to the  
1270 point of assembling the same; or to a shipping point of a rail,  
1271 water, or motor transportation company, \$324 flat, of which \$84  
1272 shall be deposited into the General Revenue Fund.

1273  
1274 Such not-for-hire truck tractors and heavy trucks used  
1275 exclusively in transporting raw, unprocessed, and  
1276 nonmanufactured agricultural or horticultural products may be  
1277 incidentally used to haul farm implements and fertilizers  
1278 delivered direct to the growers. The department may require any  
1279 documentation deemed necessary to determine eligibility prior to

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1280 issuance of this license plate. For the purpose of this  
 1281 paragraph, "not-for-hire" means the owner of the motor vehicle  
 1282 must also be the owner of the raw, unprocessed, and  
 1283 nonmanufactured agricultural or horticultural product, or the  
 1284 user of the farm implements and fertilizer being delivered.

1285 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;  
 1286 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

1287 (a)1. A semitrailer drawn by a GVW truck tractor by means  
 1288 of a fifth-wheel arrangement: \$13.50 flat per registration year  
 1289 or any part thereof, of which \$3.50 shall be deposited into the  
 1290 General Revenue Fund.

1291 2. A semitrailer drawn by a GVW truck tractor by means of a  
 1292 fifth-wheel arrangement: \$68 flat per permanent registration, of  
 1293 which \$18 shall be deposited into the General Revenue Fund.

1294 (b) A motor vehicle equipped with machinery and designed  
 1295 for the exclusive purpose of well drilling, excavation,  
 1296 construction, spraying, or similar activity, and which is not  
 1297 designed or used to transport loads other than the machinery  
 1298 described above over public roads: \$44 flat, of which \$11.50  
 1299 shall be deposited into the General Revenue Fund.

1300 (c) A school bus used exclusively to transport pupils to  
 1301 and from school or school or church activities or functions  
 1302 within their own county: \$41 flat, of which \$11 shall be  
 1303 deposited into the General Revenue Fund.

1304 (d) A wrecker, as defined in s. 320.01, which is used to  
 1305 tow a vessel as defined in s. 327.02, a disabled, abandoned,  
 1306 stolen-recovered, or impounded motor vehicle as defined in s.  
 1307 320.01, or a replacement motor vehicle as defined in s. 320.01:  
 1308 \$41 flat, of which \$11 shall be deposited into the General

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1309 Revenue Fund.

1310 (e) A wrecker that is used to tow any nondisabled motor  
 1311 vehicle, a vessel, or any other cargo unless used as defined in  
 1312 paragraph (d), as follows:

1313 1. Gross vehicle weight of 10,000 pounds or more, but less  
 1314 than 15,000 pounds: \$118 flat, of which \$31 shall be deposited  
 1315 into the General Revenue Fund.

1316 2. Gross vehicle weight of 15,000 pounds or more, but less  
 1317 than 20,000 pounds: \$177 flat, of which \$46 shall be deposited  
 1318 into the General Revenue Fund.

1319 3. Gross vehicle weight of 20,000 pounds or more, but less  
 1320 than 26,000 pounds: \$251 flat, of which \$65 shall be deposited  
 1321 into the General Revenue Fund.

1322 4. Gross vehicle weight of 26,000 pounds or more, but less  
 1323 than 35,000 pounds: \$324 flat, of which \$84 shall be deposited  
 1324 into the General Revenue Fund.

1325 5. Gross vehicle weight of 35,000 pounds or more, but less  
 1326 than 44,000 pounds: \$405 flat, of which \$105 shall be deposited  
 1327 into the General Revenue Fund.

1328 6. Gross vehicle weight of 44,000 pounds or more, but less  
 1329 than 55,000 pounds: \$772 flat, of which \$200 shall be deposited  
 1330 into the General Revenue Fund.

1331 7. Gross vehicle weight of 55,000 pounds or more, but less  
 1332 than 62,000 pounds: \$915 flat, of which \$237 shall be deposited  
 1333 into the General Revenue Fund.

1334 8. Gross vehicle weight of 62,000 pounds or more, but less  
 1335 than 72,000 pounds: \$1,080 flat, of which \$280 shall be  
 1336 deposited into the General Revenue Fund.

1337 9. Gross vehicle weight of 72,000 pounds or more: \$1,322

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1338 flat, of which \$343 shall be deposited into the General Revenue  
 1339 Fund.

1340 (f) A hearse or ambulance: \$40.50 flat, of which \$10.50  
 1341 shall be deposited into the General Revenue Fund.

1342 (6) MOTOR VEHICLES FOR HIRE.—

1343 (a) Under nine passengers: \$17 flat, of which \$4.50 shall  
 1344 be deposited into the General Revenue Fund; plus \$1.50 per cwt,  
 1345 of which 50 cents shall be deposited into the General Revenue  
 1346 Fund.

1347 (b) Nine passengers and over: \$17 flat, of which \$4.50  
 1348 shall be deposited into the General Revenue Fund; plus \$2 per  
 1349 cwt, of which 50 cents shall be deposited into the General  
 1350 Revenue Fund.

1351 (7) TRAILERS FOR PRIVATE USE.—

1352 (a) Any trailer weighing 500 pounds or less: \$6.75 flat per  
 1353 year or any part thereof, of which \$1.75 shall be deposited into  
 1354 the General Revenue Fund.

1355 (b) Net weight over 500 pounds: \$3.50 flat, of which \$1  
 1356 shall be deposited into the General Revenue Fund; plus \$1 per  
 1357 cwt, of which 25 cents shall be deposited into the General  
 1358 Revenue Fund.

1359 (8) TRAILERS FOR HIRE.—

1360 (a) Net weight under 2,000 pounds: \$3.50 flat, of which \$1  
 1361 shall be deposited into the General Revenue Fund; plus \$1.50 per  
 1362 cwt, of which 50 cents shall be deposited into the General  
 1363 Revenue Fund.

1364 (b) Net weight 2,000 pounds or more: \$13.50 flat, of which  
 1365 \$3.50 shall be deposited into the General Revenue Fund; plus  
 1366 \$1.50 per cwt, of which 50 cents shall be deposited into the

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1367 General Revenue Fund.

1368 (9) RECREATIONAL VEHICLE-TYPE UNITS.—

1369 (a) A travel trailer or fifth-wheel trailer, as defined by  
 1370 s. 320.01(1)(b), that does not exceed 35 feet in length: \$27  
 1371 flat, of which \$7 shall be deposited into the General Revenue  
 1372 Fund.

1373 (b) A camping trailer, as defined by s. 320.01(1)(b)2.:  
 1374 \$13.50 flat, of which \$3.50 shall be deposited into the General  
 1375 Revenue Fund.

1376 (c) A motor home, as defined by s. 320.01(1)(b)4.:  
 1377 1. Net weight of less than 4,500 pounds: \$27 flat, of which  
 1378 \$7 shall be deposited into the General Revenue Fund.  
 1379 2. Net weight of 4,500 pounds or more: \$47.25 flat, of  
 1380 which \$12.25 shall be deposited into the General Revenue Fund.

1381 (d) A truck camper as defined by s. 320.01(1)(b)3.:  
 1382 1. Net weight of less than 4,500 pounds: \$27 flat, of which  
 1383 \$7 shall be deposited into the General Revenue Fund.  
 1384 2. Net weight of 4,500 pounds or more: \$47.25 flat, of  
 1385 which \$12.25 shall be deposited into the General Revenue Fund.

1386 (e) A private motor coach as defined by s. 320.01(1)(b)5.:  
 1387 1. Net weight of less than 4,500 pounds: \$27 flat, of which  
 1388 \$7 shall be deposited into the General Revenue Fund.  
 1389 2. Net weight of 4,500 pounds or more: \$47.25 flat, of  
 1390 which \$12.25 shall be deposited into the General Revenue Fund.

1391 (10) PARK TRAILERS; TRAVEL TRAILERS; FIFTH-WHEEL TRAILERS;  
 1392 35 FEET TO 40 FEET.—

1393 (a) Park trailers.—Any park trailer, as defined in s.  
 1394 320.01(1)(b)7.: \$25 flat.

1395 (b) A travel trailer or fifth-wheel trailer, as defined in

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1396 s. 320.01(1)(b), that exceeds 35 feet: \$25 flat.  
 1397 (11) MOBILE HOMES.—  
 1398 (a) A mobile home not exceeding 35 feet in length: \$20  
 1399 flat.  
 1400 (b) A mobile home over 35 feet in length, but not exceeding  
 1401 40 feet: \$25 flat.  
 1402 (c) A mobile home over 40 feet in length, but not exceeding  
 1403 45 feet: \$30 flat.  
 1404 (d) A mobile home over 45 feet in length, but not exceeding  
 1405 50 feet: \$35 flat.  
 1406 (e) A mobile home over 50 feet in length, but not exceeding  
 1407 55 feet: \$40 flat.  
 1408 (f) A mobile home over 55 feet in length, but not exceeding  
 1409 60 feet: \$45 flat.  
 1410 (g) A mobile home over 60 feet in length, but not exceeding  
 1411 65 feet: \$50 flat.  
 1412 (h) A mobile home over 65 feet in length: \$80 flat.  
 1413 (12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised  
 1414 motor vehicle dealer, independent motor vehicle dealer, marine  
 1415 boat trailer dealer, or mobile home dealer and manufacturer  
 1416 license plate: \$17 flat, of which \$4.50 shall be deposited into  
 1417 the General Revenue Fund.  
 1418 (13) EXEMPT OR OFFICIAL LICENSE PLATES.—Any exempt or  
 1419 official license plate: \$4 flat, of which \$1 shall be deposited  
 1420 into the General Revenue Fund.  
 1421 (14) LOCALLY OPERATED MOTOR VEHICLES FOR HIRE.—A motor  
 1422 vehicle for hire operated wholly within a city or within 25  
 1423 miles thereof: \$17 flat, of which \$4.50 shall be deposited into  
 1424 the General Revenue Fund; plus \$2 per cwt, of which 50 cents

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1425 shall be deposited into the General Revenue Fund.  
 1426 (15) TRANSPORTER.—Any transporter license plate issued to a  
 1427 transporter pursuant to s. 320.133: \$101.25 flat, of which  
 1428 \$26.25 shall be deposited into the General Revenue Fund.  
 1429 Section 23. Subsection (1) of section 320.0801, Florida  
 1430 Statutes, is amended to read:  
 1431 320.0801 Additional license tax on certain vehicles.—  
 1432 (1) In addition to the license taxes specified in s. 320.08  
 1433 and in subsection (2), there is hereby levied and imposed an  
 1434 annual license tax of 10 cents for the operation of a motor  
 1435 vehicle, as defined in s. 320.01, and moped, as defined in s.  
 1436 316.003 ~~316.003(77)~~, which tax shall be paid to the department  
 1437 or its agent upon the registration or renewal of registration of  
 1438 the vehicle. Notwithstanding the provisions of s. 320.20,  
 1439 revenues collected from the tax imposed in this subsection shall  
 1440 be deposited in the Emergency Medical Services Trust Fund and  
 1441 used solely for the purpose of carrying out the provisions of  
 1442 ss. 395.401, 395.4015, 395.404, and 395.4045 and s. 11, chapter  
 1443 87-399, Laws of Florida.  
 1444 Section 24. Section 320.38, Florida Statutes, is amended to  
 1445 read:  
 1446 320.38 When nonresident exemption not allowed.—The  
 1447 provisions of s. 320.37 authorizing the operation of motor  
 1448 vehicles over the roads of this state by nonresidents of this  
 1449 state when such vehicles are duly registered or licensed under  
 1450 the laws of some other state or foreign country do not apply to  
 1451 any nonresident who accepts employment or engages in any trade,  
 1452 profession, or occupation in this state, except a nonresident  
 1453 migrant or seasonal farm worker as defined in s. 316.003

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1454 ~~316.003(61)~~. In every case in which a nonresident, except a  
 1455 nonresident migrant or seasonal farm worker as defined in s.  
 1456 316.003 ~~316.003(61)~~, accepts employment or engages in any trade,  
 1457 profession, or occupation in this state or enters his or her  
 1458 children to be educated in the public schools of this state,  
 1459 such nonresident shall, within 10 days after the commencement of  
 1460 such employment or education, register his or her motor vehicles  
 1461 in this state if such motor vehicles are proposed to be operated  
 1462 on the roads of this state. Any person who is enrolled as a  
 1463 student in a college or university and who is a nonresident but  
 1464 who is in this state for a period of up to 6 months engaged in a  
 1465 work-study program for which academic credits are earned from a  
 1466 college whose credits or degrees are accepted for credit by at  
 1467 least three accredited institutions of higher learning, as  
 1468 defined in s. 1005.02, is not required to have a Florida  
 1469 registration for the duration of the work-study program if the  
 1470 person's vehicle is properly registered in another jurisdiction.  
 1471 Any nonresident who is enrolled as a full-time student in such  
 1472 institution of higher learning is also exempt for the duration  
 1473 of such enrollment.

1474 Section 25. Subsection (2) of section 322.0261, Florida  
 1475 Statutes, is amended to read:

1476 322.0261 Driver improvement course; requirement to maintain  
 1477 driving privileges; failure to complete; department approval of  
 1478 course.—

1479 (2) With respect to an operator convicted of, or who  
 1480 pleaded nolo contendere to, a traffic offense giving rise to a  
 1481 crash identified in paragraph (1) (a) or paragraph (1) (b), the  
 1482 department shall require that the operator, in addition to other

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1483 applicable penalties, attend a department-approved driver  
 1484 improvement course in order to maintain his or her driving  
 1485 privileges. The department shall include in the course  
 1486 curriculum instruction specifically addressing the rights of  
 1487 vulnerable ~~road~~ users as defined in s. 316.003 ~~316.027~~ relative  
 1488 to vehicles on the roadway. If the operator fails to complete  
 1489 the course within 90 days after receiving notice from the  
 1490 department, the operator's driver license shall be canceled by  
 1491 the department until the course is successfully completed.

1492 Section 26. Subsection (1) of section 322.031, Florida  
 1493 Statutes, is amended to read:

1494 322.031 Nonresident; when license required.—

1495 (1) In each case in which a nonresident, except a  
 1496 nonresident migrant or seasonal farm worker as defined in s.  
 1497 316.003 ~~316.003(61)~~, accepts employment or engages in a trade,  
 1498 profession, or occupation in this state or enters his or her  
 1499 children to be educated in the public schools of this state,  
 1500 such nonresident shall, within 30 days after beginning such  
 1501 employment or education, be required to obtain a Florida driver  
 1502 license if such nonresident operates a motor vehicle on the  
 1503 highways of this state. The spouse or dependent child of such  
 1504 nonresident shall also be required to obtain a Florida driver  
 1505 license within that 30-day period before operating a motor  
 1506 vehicle on the highways of this state.

1507 Section 27. Subsection (3) of section 450.181, Florida  
 1508 Statutes, is amended to read:

1509 450.181 Definitions.—As used in part II, unless the context  
 1510 clearly requires a different meaning:

1511 (3) The term "migrant laborer" has the same meaning as

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1512 migrant or seasonal farm workers as defined in s. 316.003  
 1513 ~~316.003(61)~~.  
 1514 Section 28. Subsection (5) of section 559.903, Florida  
 1515 Statutes, is amended to read:  
 1516 559.903 Definitions.—As used in this act:  
 1517 (5) "Motor vehicle" means any automobile, truck, bus,  
 1518 recreational vehicle, motorcycle, motor scooter, or other motor  
 1519 powered vehicle, but does not include trailers, mobile homes,  
 1520 travel trailers, trailer coaches without independent motive  
 1521 power, watercraft or aircraft, or special mobile equipment as  
 1522 defined in s. 316.003 ~~316.003(48)~~.  
 1523 Section 29. Subsection (1) of section 655.960, Florida  
 1524 Statutes, is amended to read:  
 1525 655.960 Definitions; ss. 655.960-655.965.—As used in this  
 1526 section and ss. 655.961-655.965, unless the context otherwise  
 1527 requires:  
 1528 (1) "Access area" means any paved walkway or sidewalk which  
 1529 is within 50 feet of any automated teller machine. The term does  
 1530 not include any street or highway open to the use of the public,  
 1531 as defined in s. 316.003(74) (a) or (b) ~~316.003(53) (a) or (b)~~,  
 1532 including any adjacent sidewalk, as defined in s. 316.003  
 1533 ~~316.003(47)~~.  
 1534 Section 30. Paragraph (b) of subsection (2) of section  
 1535 732.402, Florida Statutes, is amended to read:  
 1536 732.402 Exempt property.—  
 1537 (2) Exempt property shall consist of:  
 1538 (b) Two motor vehicles as defined in s. 316.003  
 1539 ~~316.003(21)~~, which do not, individually as to either such motor  
 1540 vehicle, have a gross vehicle weight in excess of 15,000 pounds,

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1541 held in the decedent's name and regularly used by the decedent  
 1542 or members of the decedent's immediate family as their personal  
 1543 motor vehicles.  
 1544 Section 31. Subsection (1) of section 860.065, Florida  
 1545 Statutes, is amended to read:  
 1546 860.065 Commercial transportation; penalty for use in  
 1547 commission of a felony.—  
 1548 (1) It is unlawful for any person to attempt to obtain,  
 1549 solicit to obtain, or obtain any means of public or commercial  
 1550 transportation or conveyance, including vessels, aircraft,  
 1551 railroad trains, or commercial motor vehicles as defined in s.  
 1552 316.003 ~~316.003(66)~~, with the intent to use such public or  
 1553 commercial transportation or conveyance to commit any felony or  
 1554 to facilitate the commission of any felony.  
 1555 Section 32. For the purpose of incorporating the amendment  
 1556 made by this act to section 316.1925, Florida Statutes, in a  
 1557 reference thereto, paragraph (b) of subsection (4) of section  
 1558 316.072, Florida Statutes, is reenacted to read:  
 1559 316.072 Obedience to and effect of traffic laws.—  
 1560 (4) PUBLIC OFFICERS AND EMPLOYEES TO OBEY CHAPTER;  
 1561 EXCEPTIONS.—  
 1562 (b) Unless specifically made applicable, the provisions of  
 1563 this chapter, except those contained in ss. 316.192, 316.1925,  
 1564 and 316.193, shall not apply to persons, teams, or motor  
 1565 vehicles and other equipment while actually engaged in work upon  
 1566 the surface of a highway, but shall apply to such persons and  
 1567 vehicles when traveling to or from such work.  
 1568 Section 33. For the purpose of incorporating the amendment  
 1569 made by this act to sections 316.083 and 316.084, Florida

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1570 Statutes, in references thereto, subsection (5) of section  
 1571 316.1923, Florida Statutes, is reenacted to read:  
 1572 316.1923 Aggressive careless driving.—“Aggressive careless  
 1573 driving” means committing two or more of the following acts  
 1574 simultaneously or in succession:  
 1575 (5) Improperly passing as defined in s. 316.083, s.  
 1576 316.084, or s. 316.085.  
 1577 Section 34. For the purpose of incorporating the amendment  
 1578 made by this act to section 318.19, Florida Statutes, in a  
 1579 reference thereto, subsection (2) of section 318.14, Florida  
 1580 Statutes, is reenacted to read:  
 1581 318.14 Noncriminal traffic infractions; exception;  
 1582 procedures.—  
 1583 (2) Except as provided in ss. 316.1001(2) and 316.0083, any  
 1584 person cited for a violation requiring a mandatory hearing  
 1585 listed in s. 318.19 or any other criminal traffic violation  
 1586 listed in chapter 316 must sign and accept a citation indicating  
 1587 a promise to appear. The officer may indicate on the traffic  
 1588 citation the time and location of the scheduled hearing and must  
 1589 indicate the applicable civil penalty established in s. 318.18.  
 1590 For all other infractions under this section, except for  
 1591 infractions under s. 316.1001, the officer must certify by  
 1592 electronic, electronic facsimile, or written signature that the  
 1593 citation was delivered to the person cited. This certification  
 1594 is prima facie evidence that the person cited was served with  
 1595 the citation.  
 1596 Section 35. For the purpose of incorporating the amendment  
 1597 made by this act to section 316.2065, Florida Statutes, in a  
 1598 reference thereto, paragraph (b) of subsection (1) of section

Page 55 of 56

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

596-02693-16 2016332c1

1599 318.18, Florida Statutes, is reenacted to read:  
 1600 318.18 Amount of penalties.—The penalties required for a  
 1601 noncriminal disposition pursuant to s. 318.14 or a criminal  
 1602 offense listed in s. 318.17 are as follows:  
 1603 (1) Fifteen dollars for:  
 1604 (b) All infractions of s. 316.2065, unless otherwise  
 1605 specified.  
 1606 Section 36. This act shall take effect October 1, 2016.

Page 56 of 56

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*  
Children, Families, and Elder Affairs, *Vice-Chair*  
Appropriations  
Appropriations Subcommittee on General Government  
Environmental Preservation and Conservation  
Finance and Tax

**SENATOR THAD ALTMAN**  
16th District

January 29, 2016

The Honorable Greg Evers  
Senate Committee on Criminal Justice, Chair  
510 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Evers:

I respectfully request that SB 332, related to *Highway Safety*, 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 that reads "Thad Altman".

Thad Altman

CC: Amanda Cannon, Staff Director, 510 Knott Building  
Sue Arnold, Committee Administrative Assistant

TA/dw

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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)

2-8-16  
Meeting Date

332  
Bill Number (if applicable)

Topic Highway Safety

196208  
Amendment Barcode (if applicable)

Name James D. "Doc" Reichenbacher

Job Title State President

Address PO Box 712

Phone 352-362-2158

Silver Springs, FL 34489  
City State Zip

Email abatef@aatt.net

Speaking:  For  Against  Information

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

Representing ABATE of Florida, 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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-8-16  
Meeting Date

332  
Bill Number (if applicable)

Topic Highway Safety

Amendment Barcode (if applicable)

Name James D. "Doc" Reichenbach

Job Title State President

Address PO Box 712

Phone 352-362-2150

Street

Silver Springs, FL 34489

Email abate@fla.net

City

State

Zip

Speaking:  For  Against  Information

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

Representing ABATE OF Florida, 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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

332  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic HWY SAFETY

Amendment Barcode (if applicable) \_\_\_\_\_

Name KEVIN SWEENEY

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

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLORIDA JUSTICE 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.**

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-8-16

Meeting Date

332

Bill Number (if applicable)

Topic BIKE SAFETY

Amendment Barcode (if applicable)

Name JEFF SHARKEY

Job Title LOBBYIST

Address 106 E. COLLEGE AVE SUITE 640 Phone 813-224-1660

Street

Tallahassee FL 32301

City

State

Zip

Email JEFFREYSHARKEY@gmail.com

Speaking:  For  Against  Information

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

Representing FLORIDA BICYCLE 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.

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

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

FEB 8, 2016

332

*Meeting Date*

*Bill Number (if applicable)*

Topic Highway Safety

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-274-3599

*Street*

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

*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)

2/8/16  
Meeting Date

~~302~~ 332  
Bill Number (if applicable)

Topic Highway Safety

Amendment Barcode (if applicable)

Name Laura Cantwell

Job Title Associate State Director

Address 400 Carillon Pkwy, Suite 100

Phone 850-570-2110

St. Petersburg FL 33716  
City State Zip

Email lcantwell@aarps.org

Speaking:  For  Against  Information

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

Representing AARP

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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-8-16

Meeting Date

SB 332

Bill Number (if applicable)

Topic Bike Safety

Amendment Barcode (if applicable)

Name Taylor Biehl

Job Title Lobbyist

Address 106 E. COLLEGE AVE SUITE 640

Phone 850-224-1660

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 BICYCLE 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.)

---

Prepared By: The Professional Staff of the Committee on Criminal Justice

---

BILL: SB 360

INTRODUCER: Senator Clemens

SUBJECT: Victim Assistance

DATE: February 5, 2016

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

---

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	ACJ	_____
3.	_____	_____	FP	_____

---

**I. Summary:**

SB 360 amends s. 960.001(1)(h), F.S., to require a law enforcement agency to promptly make reasonable efforts to notify the victim if the victim's property is determined to be in the possession of a pawnbroker. The agency is also required to give the victim the following information:

- The name and location of the pawn shop;
- Instructions outlining the process for an action of replevin; and
- Procedures specified in s. 539.001(15), F.S., for obtaining the property.

**II. Present Situation:**

**Victim Notification**

Florida law currently provides for notifying victims regarding a variety of matters that affect them. Section 944.605(1), F.S., requires the state attorney or Department of Corrections to notify victims within six months before the release of an inmate from the Department of Corrections, a private correctional facility, a release program, or parole. Additionally, s. 394.926(1), F.S., requires the Department of Children and Families to notify the victim as soon as practicable when a person is released from involuntary civil commitment under ch. 394, F.S.

Section 960.001, F.S., places a number of requirements on various government entities to ensure that victims are treated fairly and notified of important matters. For example:

- Victims are generally provided the right to be informed, be present,<sup>1</sup> and be heard when relevant, at all crucial stages of criminal and juvenile proceedings.<sup>2</sup>

---

<sup>1</sup> Victims who are incarcerated are provided the right to be informed and to submit written statements. s. 960.001(1)(a)6., F.S.

<sup>2</sup> Section 960.001(1)(a)5., F.S.

- In cases involving specified offenses,<sup>3</sup> the arresting law enforcement officer or victim assistance personnel must request the victim or the victim's next of kin to complete a victim notification card with various contact information.<sup>4</sup> The appropriate party<sup>5</sup> shall make a reasonable attempt to notify the alleged victim or next of kin of the alleged victim within four hours following the defendant's release.<sup>6</sup>
- A victim or witness must be provided information explaining the steps available to law enforcement officers and state attorneys to shield the victim or witness from intimidation.<sup>7</sup>
- Law enforcement agencies and the state attorney shall promptly return the victim's property when there is no compelling law enforcement reason for retaining it.<sup>8</sup>

While Florida requires victim notification for a variety of circumstances, it does not currently require any entity to notify a victim that his or her property has been located in the possession of a pawnbroker.

### **Florida Pawnbroker Act**

“Pawn” means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained in this section.<sup>9</sup>

“Pawnbroker” means any person who is engaged in the business of making pawns; who makes a public display containing the term “pawn,” “pawnbroker,” or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.<sup>10</sup>

A Pawnbroker must maintain a copy of each completed pawnbroker transaction form for at least one year after the date of the transaction. On or before the end of each business day, the pawnbroker delivers the original transaction forms for the previous business day to law enforcement. If the original transaction form is lost or destroyed by a law enforcement official, a copy may be used by the pawnbroker as evidence in court. When an electronic image of a pledgor or seller identification is accepted for a transaction, the pawnbroker must maintain the electronic image in order to meet the same recordkeeping requirements as for the original transaction form. If a criminal investigation occurs, the pawnbroker shall, upon request, provide a clear and legible copy of the image to the appropriate law enforcement official.

---

<sup>3</sup> This requirement applies in the case of a homicide, pursuant to ch. 782, F.S.; a sexual offense, pursuant to ch. 794, F.S.; an attempted murder or sexual offense, pursuant to ch. 777, F.S.; stalking, pursuant to s. 784.048, F.S.; or domestic violence, pursuant to s. 25.385, F.S.

<sup>4</sup> Section 960.001(1)(b)1., F.S.

<sup>5</sup> The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility is the appropriate party to provide notice under this subparagraph. s. 960.001(1)(b)3., F.S.

<sup>6</sup> Section 960.001(1)(b)3., F.S.

<sup>7</sup> Section 960.001(1)(c), F.S.

<sup>8</sup> Section 960.001(1)(h), F.S.

<sup>9</sup> Section 539.001(2)(h), F.S.

<sup>10</sup> Section 539.001(2)(i), F.S.

To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated:

- The claimant must notify the pawnbroker by certified mail or in person of the claim to the goods and must be accompanied by the law enforcement report concerning the misappropriation of the goods.<sup>11</sup>
- If the claim isn't settled within 10 days of the notice, the claimant may file a lawsuit, and must serve the pawnbroker with a copy of the petition.<sup>12</sup>
- If the court finds that the claimant failed to comply with the above procedures,<sup>13</sup> or finds against the claimant on any basis, the claimant is liable for the defendant's costs, including attorney fees.<sup>14</sup>
- If the court finds that the property was misappropriated, the claimant may recover the cost of the action, including attorney's fees from the pawnbroker.

### III. Effect of Proposed Changes:

The bill amends s. 960.001(1)(h), F.S., to require a law enforcement agency to promptly make reasonable efforts to notify the victim if the victim's property is determined to be in the possession of a pawnbroker. The agency is also required to give the victim the following information:

- The name and location of the pawn shop;
- Instructions outlining the process for an action of replevin; and
- Procedures specified in s. 539.001(15), F.S., for obtaining the property.

### 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.

---

<sup>11</sup> Section 539.001(15)(a), F.S.

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

<sup>13</sup> The procedures that must be complied with are described in detail in s. 539.001(15)(a), F.S.

<sup>14</sup> Section 539.001(15)(c), F.S.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill requires law enforcement agencies to comply with new victim notice requirements. To the extent that state and local law enforcement agencies must carry out the new notification requirements, the bill may have a minimal fiscal impact on local government expenditures.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 960.001 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.)

None.

**B. Amendments:**

None.



258592

LEGISLATIVE ACTION

Senate

.  
. .  
. .  
. .  
. .

House

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The Committee on Criminal Justice (Clemens) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 38 - 40

and insert:

2. A law enforcement agency shall promptly make reasonable efforts to notify the victim if the victim's property is determined to be in the possession of a pawnbroker as defined in s. 539.001(2). The law enforcement agency shall give the victim the



258592

11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13       Delete line 4

14 and insert:

15       promptly make reasonable efforts to notify a victim if

16       his or her property is

By Senator Clemens

27-00453-16

2016360\_\_

1 A bill to be entitled  
2 An act relating to victim assistance; amending s.  
3 960.001, F.S.; requiring a law enforcement agency to  
4 immediately notify a victim if his or her property is  
5 determined to be in the possession of a pawnbroker;  
6 requiring the law enforcement agency to provide  
7 specified information to the victim; providing an  
8 effective date.

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

11 Section 1. Paragraph (h) of subsection (1) of section  
12 960.001, Florida Statutes, is amended to read:

13 960.001 Guidelines for fair treatment of victims and  
14 witnesses in the criminal justice and juvenile justice systems.-

15 (1) The Department of Legal Affairs, the state attorneys,  
16 the Department of Corrections, the Department of Juvenile  
17 Justice, the Florida Commission on Offender Review, the State  
18 Courts Administrator and circuit court administrators, the  
19 Department of Law Enforcement, and every sheriff's department,  
20 police department, or other law enforcement agency as defined in  
21 s. 943.10(4) shall develop and implement guidelines for the use  
22 of their respective agencies, which guidelines are consistent  
23 with the purposes of this act and s. 16(b), Art. I of the State  
24 Constitution and are designed to implement s. 16(b), Art. I of  
25 the State Constitution and to achieve the following objectives:

26 (h) *Return of property to victim.*-

27 1. A law enforcement agency ~~agencies~~ and the state attorney  
28 shall promptly return a victim's property held for evidentiary  
29

Page 1 of 2

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

27-00453-16

2016360\_\_

30 purposes unless there is a compelling law enforcement reason for  
31 retaining it. The trial or juvenile court exercising  
32 jurisdiction over the criminal or juvenile proceeding may enter  
33 appropriate orders to implement this subsection, including  
34 allowing photographs of the victim's property to be used as  
35 evidence at the criminal trial or the juvenile proceeding in  
36 place of the victim's property if no related substantial  
37 evidentiary issue ~~related thereto~~ is in dispute.

38 2. A law enforcement agency shall immediately notify the  
39 victim if the victim's property is determined to be in the  
40 possession of a pawnbroker. The agency shall give the victim the  
41 name and location of the pawnshop and instructions outlining the  
42 process for a replevin action and the procedures specified in s.  
43 539.001(15) for obtaining possession of the property.

44 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development, *Vice Chair*  
Banking and Insurance  
Criminal Justice  
Education Pre-K-12  
Ethics and Elections  
Fiscal Policy

**SENATOR JEFF CLEMENS**  
27th District

January 25, 2016

Senator Greg Evers, Chair  
Senate Committee on Criminal Justice  
510 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Evers:

I respectfully request that SB 360 – Victim Assistance be added to the agenda for the next Senate Committee on Criminal Justice meeting.

SB 360 provides for the immediate notification to victims of stolen property on their Right to the Replevin Process as soon as law enforcement locates the property at a Pawn shop.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens  
Florida Senate District 27

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**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 Committee on Criminal Justice

---

BILL: SB 408

INTRODUCER: Senator Altman and others

SUBJECT: Juvenile Civil Citations

DATE: February 5, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Pre-meeting</b>
2.			CF	
3.			RC	

---

**I. Summary:**

SB 408 requires, rather than allows, a law enforcement officer to issue a warning to a youth or inform the youth's parents of the misdemeanor, or issue a civil citation or require participation in a similar diversion program if the youth admits to committing a misdemeanor. (These options are currently discretionary for law enforcement.) The law enforcement officer will also be required to receive prior approval from a supervisor before arresting a youth who admits to committing a first-time misdemeanor under the bill.

**II. Present Situation:**

Section 985.12, F.S., establishes a civil citation process that provides an efficient and innovative alternative to the Department of Juvenile Justice's (DJJ) custody for youth who commit nonserious delinquent acts.<sup>1</sup> The DJJ is required to encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs around the state.<sup>2</sup>

The DJJ must also develop guidelines for civil citation which include intervention services based upon proven civil citation or similar diversion programs within the state.<sup>3</sup> These programs are to be established at the local level in concurrence with the chief judge, state attorney, public defender, and head of each local law enforcement agency.<sup>4</sup>

---

<sup>1</sup> Section 985.12(1), F.S.

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

<sup>3</sup> Section 985.12(2), F.S.

<sup>4</sup> Section 985.12(1), F.S.

The statute provides that a law enforcement officer may issue a civil citation to a youth who admits to committing a misdemeanor<sup>5</sup> without taking the youth into custody.<sup>6</sup> Last session, the Legislature amended the law to allow a law enforcement officer to issue a simple warning to the youth or inform the youth's parents of the misdemeanor, or issue a civil citation or require participation in a similar diversion program.<sup>7</sup>

Another significant change to the statute last session was allowing a law enforcement officer to issue a civil citation to a youth who admits committing a second or third misdemeanor. (Civil citation was previously limited to the commission of a first-time misdemeanor.) If an arrest is made, the law enforcement officer is required to provide written documentation as to why the arrest is warranted under another amendment to the law last session.<sup>8</sup>

The law enforcement officer must send a copy of the citation to the department, sheriff, state attorney, DJJ's intake office or the community service performance monitor, parent or guardian of the youth, and the victim.<sup>9</sup> The issuance of a civil citation is not considered a referral to the department.<sup>10</sup>

A civil citation program or similar diversion program may be operated by law enforcement, the DJJ, a juvenile assessment center, a county or municipality, or an entity selected by the county or municipality. Operations must be in consultation and agreement with the state attorney and local law enforcement agencies.<sup>11</sup> According to the DJJ, since law enforcement agencies are not required to issue civil citations, there is variation in the use of civil citation programs among agencies and counties statewide.<sup>12</sup>

Youth issued a civil citation may be assigned up to 50 hours of community service and must participate in intervention services as indicated by a needs assessment. Intervention services include family counseling, urinalysis monitoring, substance abuse and mental health treatment services.<sup>13</sup> At the time a civil citation is issued, the law enforcement officer must advise the youth that he or she has the option of refusing the civil citation and of being referred to DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.<sup>14</sup>

The youth is required to report to a community service performance monitor within seven working days after the civil citation has been issued. The youth must also complete at least five community service hours per week. The monitor reports information to DJJ regarding the

---

<sup>5</sup> Misdemeanors involving sexual or firearm offenses are currently ineligible for civil citation programs under the *DJJ Civil Citation Model Plan*. Department of Juvenile Justice, *2016 Bill Analysis for SB 408* (February 2, 2016) (on file with the Senate Criminal Justice Committee).

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

<sup>7</sup> Ch. 2015-46, s. 1, Laws of Fla. (amending s. 985.12, F.S., effective October 1, 2015).

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

<sup>9</sup> Section 985.12(3), F.S.

<sup>10</sup> Section 985.12(1), F.S.

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

<sup>12</sup> Department of Juvenile Justice, *2016 Bill Analysis for SB 408* (February 2, 2016) (on file with the Senate Criminal Justice Committee).

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

<sup>14</sup> Section 985.12(6), F.S.

youth's service hour completion and the expected completion date.<sup>15</sup> If the youth fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or if the youth commits a subsequent misdemeanor, the law enforcement officer must issue a report to DJJ alleging that the youth has committed a delinquent act, thereby initiating formal judicial processing.<sup>16</sup>

According to the DJJ, there are 61 counties that have implemented a civil citation program in Florida. Taylor County has committed to implementing one. Bradford, Calhoun, Gulf, Hardee, and Washington counties use a similar diversion program without the civil citation overlay.<sup>17</sup>

In Fiscal Year 2014-15, there were 20,833 youth who were eligible to receive a civil citation (first-time misdemeanants who were not accused of a firearm or sexual offense). Statewide, 8,961 eligible youth (43% of eligible first-time misdemeanants) were issued a civil citation, according to DJJ.<sup>18</sup>

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

The bill requires, rather than allows, a law enforcement officer to issue a warning to a youth or inform the youth's parents of the misdemeanor, or issue a civil citation or require participation in a similar diversion program if the youth admits to committing a misdemeanor. (These options are currently discretionary for law enforcement.)

The law enforcement officer will also be required to receive prior approval from a supervisor before arresting a youth who admits to committing a first-time misdemeanor under the bill. The current statutory requirement of providing written documentation justifying why the arrest is warranted is unchanged by the bill so a law enforcement officer will still be required to provide that documentation.

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.

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<sup>15</sup> Section 985.12(4), F.S.

<sup>16</sup> Section 985.12(5), F.S.

<sup>17</sup> Department of Juvenile Justice, *2016 Bill Analysis for SB 408* (February 2, 2016) (on file with the Senate Criminal Justice Committee).

<sup>18</sup> *Id.*

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

None.

**B. Private Sector Impact:**

Expanding the use of civil citation programs could result in more youth having future opportunities for employment since these youth will not have the hurdle of an arrest record.

**C. Government Sector Impact:**

The increase in civil citations under the bill could result in a potential cost savings to the state as youth are diverted from the more costly juvenile justice system.

According to DJJ, the workload and resources for providing assessment and diversion-type services to youth in civil citation programs will likely be relatively stable, but these services will be provided primarily pre-arrest rather than post-arrest under the bill.<sup>19</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 985.12 of the Florida Statutes.

The bill reenacts sections 943.051 and 985.11 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.)

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>19</sup> *Id.*



854832

LEGISLATIVE ACTION

Senate

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House

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The Committee on Criminal Justice (Clemens) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 985.12, Florida Statutes, is amended to  
read:

985.12 Civil citation and similar diversion programs.—

(1) (a) There is established a process for the use of  
juvenile civil citation and similar diversion programs to  
provide ~~process for the purpose of providing~~ an efficient and



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11 innovative alternative to custody by the department ~~of Juvenile~~  
12 ~~Justice~~ for juveniles ~~children~~ who commit nonserious delinquent  
13 acts and to ensure swift and appropriate consequences. The  
14 department shall encourage and assist in the implementation and  
15 improvement of civil citation and ~~programs or other~~ similar  
16 diversion programs in ~~around~~ the state.

17 (b) One or more ~~The~~ civil citation or similar diversion  
18 programs ~~program~~ shall be established in each county which must  
19 individually or collectively serve all juveniles who are alleged  
20 to have committed a violation of law which would be a  
21 misdemeanor offense if committed by an adult. Such programs must  
22 be established at the local level with the concurrence of the  
23 chief judge of the circuit, state attorney, public defender, and  
24 the head of each local law enforcement agency involved and. ~~The~~  
25 ~~program~~ may be operated by an entity such as a law enforcement  
26 agency, the department, a juvenile assessment center, the county  
27 or municipality, or another entity selected by the county or  
28 municipality. An entity operating such a ~~the civil citation or~~  
29 ~~similar diversion~~ program must do so in consultation and  
30 agreement with the state attorney and local law enforcement  
31 agencies.

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

33 (a) "Misdemeanor offense" means one or more misdemeanor  
34 violations of law arising out of the same criminal episode, act,  
35 or transaction.

36 (b) "Law enforcement officer" has the same meaning as  
37 provided in s. 943.10.

38 (3) Under such a juvenile civil citation or similar  
39 diversion program, a law enforcement officer that makes, ~~upon~~



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40 ~~making~~ contact with a juvenile who admits having committed a  
41 ~~first-time misdemeanor: misdemeanor, may choose to issue a~~  
42 ~~simple warning or inform the child's guardian or parent of the~~  
43 ~~child's infraction, or may~~

44 (a) Shall issue a civil citation to the juvenile or require  
45 the juvenile's participation in a similar diversion program if  
46 each violation of law in the misdemeanor offense is one of the  
47 following:

48 1. Section 562.111, relating to possession of alcoholic  
49 beverages by persons under age 21;

50 2. Section 784.03(1), relating to battery, if the victim  
51 approves the juvenile's participation in a civil citation or  
52 similar diversion program;

53 3. Section 812.014(2)(e) or s. 812.014(3)(a), relating to  
54 theft;

55 4. Section 812.015(2), relating to retail and farm theft;

56 5. Section 870.01(1), relating to affrays and riots;

57 6. Section 877.03, relating to disorderly conduct;

58 7. Section 893.13(6)(b), relating to possession of certain  
59 amounts of cannabis or controlled substances;

60 8. Section 893.147, relating to use, possession,  
61 manufacture, delivery, transportation, advertisement, or retail  
62 sale of drug paraphernalia; or

63 9. Section 843.02, relating to resisting an officer without  
64 violence.

65 (b) May issue a civil citation to the juvenile or require  
66 the juvenile's participation in a similar diversion program if  
67 the violations of law are not enumerated in subparagraph (a).

68 (4) Under such a juvenile civil citation or similar



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69 diversion program, a law enforcement officer that makes contact  
70 with a juvenile who admits having committed a second-time or  
71 third-time misdemeanor offense may issue a civil citation to the  
72 juvenile or require the juvenile's participation in a similar  
73 diversion program, regardless of whether the violations of law  
74 are enumerated in subparagraph (3) (a).

75 (5) If an arrest is made for a misdemeanor offense subject  
76 to paragraph (3) (b) or subsection (4), a law enforcement officer  
77 must provide written documentation as to why the arrest was  
78 warranted.

79 (6) A law enforcement officer shall advise a juvenile who  
80 is subject to subsection (3) or subsection (4) that the juvenile  
81 has the option to refuse the civil citation or other similar  
82 diversion program and be referred to the department. This option  
83 may be exercised at any time before completion of the community  
84 service assignment required under subsection (8). Participation  
85 in a civil citation or similar diversion program is not  
86 considered a referral to the department.

87 (7) Upon issuance of the civil citation or documentation  
88 requiring a similar diversion program, the law enforcement  
89 officer shall send a copy to the county sheriff, state attorney,  
90 the appropriate intake office of the department or the community  
91 service performance monitor designated by the department, the  
92 parent or guardian of the child, and the victim. The department  
93 shall enter such information into the juvenile offender  
94 information system.

95 (8) A juvenile that elects to participate in a civil  
96 citation or similar diversion program shall complete, and assess  
97 up to 50 community service hours, and participate require



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98 ~~participation~~ in intervention services as indicated by an  
99 assessment of the needs of the juvenile, including family  
100 counseling, urinalysis monitoring, and substance abuse and  
101 mental health treatment services.

102 (a) The juvenile shall report to the community service  
103 performance monitor within 7 business days after the date of  
104 issuance of the civil citation or documentation for a similar  
105 diversion program. The juvenile shall spend a minimum of 5 hours  
106 per week completing the community service assignment. The  
107 monitor shall immediately notify the intake office of the  
108 department that a juvenile has reported to the monitor and the  
109 expected date on which the juvenile will complete the community  
110 service assignment ~~A copy of each citation issued under this~~  
111 ~~section shall be provided to the department, and the department~~  
112 ~~shall enter appropriate information into the juvenile offender~~  
113 ~~information system. Use of the civil citation or similar~~  
114 ~~diversion program is not limited to first-time misdemeanors and~~  
115 ~~may be used in up to two subsequent misdemeanors. If an arrest~~  
116 ~~is made, a law enforcement officer must provide written~~  
117 ~~documentation as to why an arrest was warranted.~~

118 (b) At the conclusion of a juvenile's civil citation  
119 ~~program~~ or similar diversion program, the entity agency  
120 operating the program shall report the outcome of the program to  
121 the department.

122 (c) If the juvenile fails to timely report for a community  
123 service assignment, complete such assignment, or comply with  
124 assigned intervention services within the prescribed time, or if  
125 the juvenile commits a subsequent misdemeanor, the law  
126 enforcement officer shall issue a report alleging the juvenile



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127 has committed a delinquent act, at which time a juvenile  
128 probation officer shall process the original delinquent act as a  
129 referral to the department and refer the report to the state  
130 attorney for review ~~The issuance of a civil citation is not~~  
131 ~~considered a referral to the department.~~

132 (9) ~~(2)~~ The department shall develop guidelines for the  
133 civil citation and similar diversion programs ~~program~~ which  
134 include intervention services that are based on ~~upon~~ proven  
135 civil citation or similar diversion programs in ~~within~~ the  
136 state.

137 (10) This section does not apply to:

138 (a) A juvenile who is currently alleged to have committed,  
139 or is currently charged with, and awaiting final disposition of  
140 an offense that would be a felony if committed by an adult.

141 (b) A juvenile who has entered a plea of nolo contendere or  
142 guilty to, or has been found to have committed, an offense that  
143 would be a felony if committed by an adult.

144 (c) A misdemeanor arising out of an episode in which the  
145 juvenile is also alleged to have committed an offense that would  
146 be a felony if committed by an adult.

147 (11) This section does not modify the authority of a law  
148 enforcement officer who comes into contact with a juvenile who  
149 is alleged to have committed a misdemeanor to issue only a  
150 simple warning to the juvenile or notice to a juvenile's parent  
151 or guardian of the alleged offense.

152 ~~(3) Upon issuing such citation, the law enforcement officer~~  
153 ~~shall send a copy to the county sheriff, state attorney, the~~  
154 ~~appropriate intake office of the department, or the community~~  
155 ~~service performance monitor designated by the department, the~~



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156 ~~parent or guardian of the child, and the victim.~~

157 ~~(4) The child shall report to the community service~~  
158 ~~performance monitor within 7 working days after the date of~~  
159 ~~issuance of the citation. The work assignment shall be~~  
160 ~~accomplished at a rate of not less than 5 hours per week. The~~  
161 ~~monitor shall advise the intake office immediately upon~~  
162 ~~reporting by the child to the monitor, that the child has in~~  
163 ~~fact reported and the expected date upon which completion of the~~  
164 ~~work assignment will be accomplished.~~

165 ~~(5) If the child fails to report timely for a work~~  
166 ~~assignment, complete a work assignment, or comply with assigned~~  
167 ~~intervention services within the prescribed time, or if the~~  
168 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~  
169 ~~officer shall issue a report alleging the child has committed a~~  
170 ~~delinquent act, at which point a juvenile probation officer~~  
171 ~~shall process the original delinquent act as a referral to the~~  
172 ~~department and refer the report to the state attorney for~~  
173 ~~review.~~

174 ~~(6) At the time of issuance of the citation by the law~~  
175 ~~enforcement officer, such officer shall advise the child that~~  
176 ~~the child has the option to refuse the citation and to be~~  
177 ~~referred to the intake office of the department. That option may~~  
178 ~~be exercised at any time before completion of the work~~  
179 ~~assignment.~~

180 Section 2. Paragraph (b) of subsection (3) of section  
181 943.051, Florida Statutes, is amended to read:

182 943.051 Criminal justice information; collection and  
183 storage; fingerprinting.—

184 (3)



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185 (b) A minor who is charged with or found to have committed  
186 the following offenses shall be fingerprinted and the  
187 fingerprints shall be submitted electronically to the  
188 department, unless the minor participates in ~~is issued~~ a civil  
189 citation or similar diversion program pursuant to s. 985.12:

- 190 1. Assault, as defined in s. 784.011.
- 191 2. Battery, as defined in s. 784.03.
- 192 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 193 4. Unlawful use of destructive devices or bombs, as defined  
194 in s. 790.1615(1).
- 195 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 196 6. Assault or battery on a law enforcement officer, a  
197 firefighter, or other specified officers, as defined in s.  
198 784.07(2)(a) and (b).
- 199 7. Open carrying of a weapon, as defined in s. 790.053.
- 200 8. Exposure of sexual organs, as defined in s. 800.03.
- 201 9. Unlawful possession of a firearm, as defined in s.  
202 790.22(5).
- 203 10. Petit theft, as defined in s. 812.014(3).
- 204 11. Cruelty to animals, as defined in s. 828.12(1).
- 205 12. Arson, as defined in s. 806.031(1).
- 206 13. Unlawful possession or discharge of a weapon or firearm  
207 at a school-sponsored event or on school property, as provided  
208 in s. 790.115.

209 Section 3. Paragraph (b) of subsection (1) of section  
210 985.11, Florida Statutes, is amended to read:

211 985.11 Fingerprinting and photographing.—

212 (1)

213 (b) Unless the child is participating in ~~is issued~~ a civil



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214 citation or ~~is participating in a~~ similar diversion program  
215 pursuant to s. 985.12, a child who is charged with or found to  
216 have committed one of the following offenses shall be  
217 fingerprinted, and the fingerprints shall be submitted to the  
218 Department of Law Enforcement as provided in s. 943.051(3)(b):

- 219 1. Assault, as defined in s. 784.011.
- 220 2. Battery, as defined in s. 784.03.
- 221 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 222 4. Unlawful use of destructive devices or bombs, as defined  
223 in s. 790.1615(1).
- 224 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 225 6. Assault on a law enforcement officer, a firefighter, or  
226 other specified officers, as defined in s. 784.07(2)(a).
- 227 7. Open carrying of a weapon, as defined in s. 790.053.
- 228 8. Exposure of sexual organs, as defined in s. 800.03.
- 229 9. Unlawful possession of a firearm, as defined in s.  
230 790.22(5).
- 231 10. Petit theft, as defined in s. 812.014.
- 232 11. Cruelty to animals, as defined in s. 828.12(1).
- 233 12. Arson, resulting in bodily harm to a firefighter, as  
234 defined in s. 806.031(1).
- 235 13. Unlawful possession or discharge of a weapon or firearm  
236 at a school-sponsored event or on school property as defined in  
237 s. 790.115.

238  
239 A law enforcement agency may fingerprint and photograph a child  
240 taken into custody upon probable cause that such child has  
241 committed any other violation of law, as the agency deems  
242 appropriate. Such fingerprint records and photographs shall be



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243 retained by the law enforcement agency in a separate file, and  
244 these records and all copies thereof must be marked "Juvenile  
245 Confidential." These records are not available for public  
246 disclosure and inspection under s. 119.07(1) except as provided  
247 in ss. 943.053 and 985.04(2), but shall be available to other  
248 law enforcement agencies, criminal justice agencies, state  
249 attorneys, the courts, the child, the parents or legal  
250 custodians of the child, their attorneys, and any other person  
251 authorized by the court to have access to such records. In  
252 addition, such records may be submitted to the Department of Law  
253 Enforcement for inclusion in the state criminal history records  
254 and used by criminal justice agencies for criminal justice  
255 purposes. These records may, in the discretion of the court, be  
256 open to inspection by anyone upon a showing of cause. The  
257 fingerprint and photograph records shall be produced in the  
258 court whenever directed by the court. Any photograph taken  
259 pursuant to this section may be shown by a law enforcement  
260 officer to any victim or witness of a crime for the purpose of  
261 identifying the person who committed such crime.

262 Section 4. This act shall take effect July 1, 2016.

263  
264 ===== T I T L E A M E N D M E N T =====

265 And the title is amended as follows:

266 Delete everything before the enacting clause  
267 and insert:

268 A bill to be entitled  
269 An act relating to juvenile civil citation and similar  
270 diversion programs; amending s. 985.12, F.S.;  
271 requiring the establishment of civil citation or



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272 similar diversion programs for juveniles; providing  
273 definitions; specifying program eligibility,  
274 participation, and implementation requirements;  
275 providing exceptions; providing applicability;  
276 amending ss. 943.051 and 985.11, F.S.; conforming  
277 provisions to changes made by the act; providing an  
278 effective date.

By Senator Altman

16-00515-16

2016408\_\_

A bill to be entitled

An act relating to juvenile civil citations; amending s. 985.12, F.S.; requiring, rather than authorizing, a law enforcement officer to issue a civil citation or require participation in a similar diversion program if the officer does not issue a warning or inform a child's guardian or parent of the infraction; requiring a law enforcement officer to receive approval from a supervisor before arresting a child for a first-time misdemeanor; reenacting ss. 943.051(3)(b) and 985.11(1)(b), F.S., relating to fingerprinting and photographing a minor, to incorporate the amendments made to s. 985.12, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1) of section 985.12, Florida Statutes, is amended to read:

985.12 Civil citation.—

(1) There is established a juvenile civil citation process for the purpose of providing an efficient and innovative alternative to custody by the Department of Juvenile Justice for children who commit nonserious delinquent acts and to ensure swift and appropriate consequences. The department shall encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs around the state. The civil citation or similar diversion program shall be established at the local level with the

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

16-00515-16

2016408\_\_

concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved. The program may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, the county or municipality, or another entity selected by the county or municipality. An entity operating the civil citation or similar diversion program must do so in consultation and agreement with the state attorney and local law enforcement agencies. Under such a juvenile civil citation or similar diversion program, a law enforcement officer, upon making contact with a juvenile who admits having committed a misdemeanor, shall ~~may choose to~~ issue a simple warning or inform the child's guardian or parent of the child's infraction, or shall ~~may~~ issue a civil citation or require participation in a similar diversion program, and assess up to 50 community service hours, and require participation in intervention services as indicated by an assessment of the needs of the juvenile, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services. A copy of each citation issued under this section shall be provided to the department, and the department shall enter appropriate information into the juvenile offender information system. Use of the civil citation or similar diversion program is not limited to first-time misdemeanors and may be used in up to two subsequent misdemeanors. Before ~~If~~ an arrest is made for a first-time misdemeanor, a law enforcement officer must receive approval from a supervisor and provide written documentation as to why an arrest was warranted rather than a civil citation. At the conclusion of a juvenile's civil citation program or similar

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59 diversion program, the agency operating the program shall report  
60 the outcome to the department. The issuance of a civil citation  
61 is not considered a referral to the department.

62 Section 2. For the purpose of incorporating the amendment  
63 made by this act to section 985.12, Florida Statutes, in a  
64 reference thereto, paragraph (b) of subsection (3) of section  
65 943.051, Florida Statutes, is reenacted to read:

66 943.051 Criminal justice information; collection and  
67 storage; fingerprinting.—

68 (3)

69 (b) A minor who is charged with or found to have committed  
70 the following offenses shall be fingerprinted and the  
71 fingerprints shall be submitted electronically to the  
72 department, unless the minor is issued a civil citation pursuant  
73 to s. 985.12:

- 74 1. Assault, as defined in s. 784.011.
- 75 2. Battery, as defined in s. 784.03.
- 76 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 77 4. Unlawful use of destructive devices or bombs, as defined  
78 in s. 790.1615(1).
- 79 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 80 6. Assault or battery on a law enforcement officer, a  
81 firefighter, or other specified officers, as defined in s.  
82 784.07(2)(a) and (b).
- 83 7. Open carrying of a weapon, as defined in s. 790.053.
- 84 8. Exposure of sexual organs, as defined in s. 800.03.
- 85 9. Unlawful possession of a firearm, as defined in s.  
86 790.22(5).
- 87 10. Petit theft, as defined in s. 812.014(3).

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88 11. Cruelty to animals, as defined in s. 828.12(1).

89 12. Arson, as defined in s. 806.031(1).

90 13. Unlawful possession or discharge of a weapon or firearm  
91 at a school-sponsored event or on school property, as provided  
92 in s. 790.115.

93 Section 3. For the purpose of incorporating the amendment  
94 made by this act to section 985.12, Florida Statutes, in a  
95 reference thereto, paragraph (b) of subsection (1) of section  
96 985.11, Florida Statutes, is reenacted to read:

97 985.11 Fingerprinting and photographing.—

98 (1)

99 (b) Unless the child is issued a civil citation or is  
100 participating in a similar diversion program pursuant to s.  
101 985.12, a child who is charged with or found to have committed  
102 one of the following offenses shall be fingerprinted, and the  
103 fingerprints shall be submitted to the Department of Law  
104 Enforcement as provided in s. 943.051(3)(b):

- 105 1. Assault, as defined in s. 784.011.
- 106 2. Battery, as defined in s. 784.03.
- 107 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 108 4. Unlawful use of destructive devices or bombs, as defined  
109 in s. 790.1615(1).
- 110 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 111 6. Assault on a law enforcement officer, a firefighter, or  
112 other specified officers, as defined in s. 784.07(2)(a).
- 113 7. Open carrying of a weapon, as defined in s. 790.053.
- 114 8. Exposure of sexual organs, as defined in s. 800.03.
- 115 9. Unlawful possession of a firearm, as defined in s.  
116 790.22(5).

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117 10. Petit theft, as defined in s. 812.014.  
 118 11. Cruelty to animals, as defined in s. 828.12(1).  
 119 12. Arson, resulting in bodily harm to a firefighter, as  
 120 defined in s. 806.031(1).  
 121 13. Unlawful possession or discharge of a weapon or firearm  
 122 at a school-sponsored event or on school property as defined in  
 123 s. 790.115.  
 124  
 125 A law enforcement agency may fingerprint and photograph a child  
 126 taken into custody upon probable cause that such child has  
 127 committed any other violation of law, as the agency deems  
 128 appropriate. Such fingerprint records and photographs shall be  
 129 retained by the law enforcement agency in a separate file, and  
 130 these records and all copies thereof must be marked "Juvenile  
 131 Confidential." These records are not available for public  
 132 disclosure and inspection under s. 119.07(1) except as provided  
 133 in ss. 943.053 and 985.04(2), but shall be available to other  
 134 law enforcement agencies, criminal justice agencies, state  
 135 attorneys, the courts, the child, the parents or legal  
 136 custodians of the child, their attorneys, and any other person  
 137 authorized by the court to have access to such records. In  
 138 addition, such records may be submitted to the Department of Law  
 139 Enforcement for inclusion in the state criminal history records  
 140 and used by criminal justice agencies for criminal justice  
 141 purposes. These records may, in the discretion of the court, be  
 142 open to inspection by anyone upon a showing of cause. The  
 143 fingerprint and photograph records shall be produced in the  
 144 court whenever directed by the court. Any photograph taken  
 145 pursuant to this section may be shown by a law enforcement

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146 officer to any victim or witness of a crime for the purpose of  
 147 identifying the person who committed such crime.  
 148 Section 4. This act shall take effect July 1, 2016.

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## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*  
Children, Families, and Elder Affairs, *Vice-Chair*  
Appropriations  
Appropriations Subcommittee on General Government  
Environmental Preservation and Conservation  
Finance and Tax

### SENATOR THAD ALTMAN

16th District

October 26, 2015

The Honorable Greg Evers  
Senate Committee on Criminal Justice, Chair  
510 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Evers:

I respectfully request that SB 408, related to *Juvenile Civil Citations*, 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 that reads "Thad Altman".

Thad Altman

CC: Amanda Cannon, Staff Director, 510 Knott Building  
Sue Arnold, Committee Administrative Assistant

TA/dw

#### REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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)

Feb 8, 2016  
Meeting Date

S 408  
Bill Number (if applicable)

Topic Juvenile Civil Citations

Amendment Barcode (if applicable)

Name Rev. Bernice Powell Jackson

Job Title Pastor, First United Church of Tampa

Address 7308 E. Fowler Ave.  
Street

Phone 813-988-4321

Tampa FL 33617  
City State Zip

Email revbpjackson@yahoo.com

Speaking:  For  Against  Information

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

Representing Hillsborough Organization for Progress + Equality

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.

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

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

FEB 8, 2016

408

*Meeting Date*

*Bill Number (if applicable)*

Topic Juvenile Citations

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-274-3599

*Street*

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

*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)

S.408  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic Sen 408 CIVIL CITATIONS

Amendment Barcode (if applicable) \_\_\_\_\_

Name MARY STRICKLAND

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

Address 1589 COUNTRY WALK  
Street

Phone \_\_\_\_\_

FLORING ISLAND FL  
City State Zip

Email RUMOWICZ@CONTACT.MET

Speaking:  For  Against  Information

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

Representing ICARE / JACKSONVILLE

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/2015  
Meeting Date

SB 408  
Bill Number (if applicable)

Topic Juvenile Civil Citation

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham Drive  
Street

Phone 850-219-3631

Tallahassee FL 32308  
City State Zip

Email amercer@fpca.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

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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)

2/8/16  
Meeting Date

408  
Bill Number (if applicable)

Topic Juvenile Civil Citations

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title LOBBYIST

Address 115 S. ANDREWS AVE, Rm. 426  
Street

Phone 954-253-7320

FT. LAUDERDALE FL 33301  
City State Zip

Email dsainvil@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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16

Meeting Date

408

Bill Number (if applicable)

Topic Juvenile Civil Citations

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Ave  
Street

Phone \_\_\_\_\_

Tallahassee FL  
City State 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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

SB 408  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic Mandatory Civil Citation

Amendment Barcode (if applicable) \_\_\_\_\_

Name David Johnson

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

Address 2301 Plainfield Ave  
Street

Phone 904-278-7558

Orange Park FL 32073  
City State Zip

Email dj.jj@icloud.com

Speaking:  For  Against  Information

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

Representing Unitarian Universalist Justice FL  
ICARE - Jacksonville

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16

Meeting Date

408

Bill Number (if applicable)

85-4832

Amendment Barcode (if applicable)

Topic Civil Citation

Name Vern Pickup-Crawford

Job Title Legislative Liaison

Address 571 Kingsbury Terrace

Street

Phone 561-644-2439

Wellington

City

FL

State

33414

Zip

Email VERCP@WORLDNET.COM

Speaking:  For  Against  Information

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

Representing Palm Beach County School District

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/2016  
Meeting Date

408  
Bill Number (if applicable)

Topic Civil Citations

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Tallahassee FL 32301  
Street City State Zip

Email jorge@flapartners.com

Speaking:  For  Against  Information

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

Representing Fla Association of Crim-Defense Lawyers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16

Meeting Date

408

Bill Number (if applicable)

Topic Juvenile Civil Citations

Amendment Barcode (if applicable)

Name Jim Livingston

Job Title Major

Address 2008 E. 8th Avenue

Phone 813 363-0375

Street

Tampa FL

Email L.Bowden@HCSO.

City

State

33605

Zip

Tampa, FL, US

Speaking:  For  Against  Information

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

*the Bill*

Representing Hillsborough County Sheriffs Association

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.

**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 Committee on Criminal Justice

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BILL: SB 1182

INTRODUCER: Senator Latvala

SUBJECT: Controlled Substances

DATE: February 5, 2016

REVISED: 02/09/16

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 1182 makes mitragynine and 7-hydroxymitragynine Schedule I controlled substances. These substances are “pharmacologically active constituents” of the plant kratom (*Mitragyna speciosa*).<sup>1</sup> An exception is created for FDA-approved drugs. The bill also makes it a first degree misdemeanor to possess, purchase, sell, deliver, manufacture, or bring into this state these substances.

**II. Present Situation:**

**Schedule I Controlled Substances**

A substance is a “controlled substance” if it is listed in any of five schedules in s. 893.03, F.S. The particular scheduling determines penalties which may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. Relevant to the bill, a substance in Schedule I is considered to have a high potential for abuse<sup>2</sup> and no currently accepted medical use in treatment in the United States and, in its use under medical supervision, does not meet accepted safety standards.<sup>3</sup>

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<sup>1</sup> Prozialeck WC, Jivan JK, Andurkar SV. Pharmacology of kratom: an emerging botanical agent with stimulant, analgesic and opioid-like effects. *J Am Osteopath Assoc.* 2012 Dec; 112(12): 792-9, at p. 792 (abstract). This article is available at <http://www.jaoa.osteopathic.org/content/112/12/792.full.pdf> (last visited on February 2, 2016).

<sup>2</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. Section 893.02(20), F.S.

<sup>3</sup> Section 893.03(1), F.S.

## Non-Trafficking Controlled Substance Offenses

The bill does not amend s. 893.135, F.S., the drug trafficking statute. Section 893.13, F.S., contains the general penalties for possession, sale, etc., of controlled substances.<sup>4</sup>

Under the bill, mitragynine and 7-hydroxymitragynine are listed in s. 893.03(1)(c), F.S. (Schedule I(c) of the controlled substance schedules). The bill also makes it a first degree misdemeanor to possess, purchase, sell, deliver, manufacture, or bring into this state these substances. Generally, selling, manufacturing, delivering, or possessing with intent to sell, manufacture, or deliver, a controlled substance listed in s. 893.03(1)(c), F.S., is a third degree felony.<sup>5</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>6</sup> For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.<sup>7</sup>

Possessing, purchasing, or possessing with intent to purchase, a controlled substance listed in s. 893.13(1)(c), F.S., is a third degree felony.<sup>8</sup>

## Kratom

The Florida Department of Law Enforcement (FDLE) has provided the following information regarding kratom:

Mitragynine and 7-Hydroxymitragynine are the major active alkaloids found in the Kratom plant (*Mitragyna speciosa* korth), a tropical tree which is indigenous to areas of Southeast Asia (e.g. Thailand, Malaysia, and Myanmar). The ingestion of Kratom involves the use of the leaves either whole or crushed, prepared as a tea, smoked and/or chewed; it can also be found in the form of an extract, and/or encapsulated powder. Neither Mitragynine nor 7-Hydroxymitragynine is currently enumerated as a controlled substance under federal law (Controlled Substances Act);<sup>9</sup> or within Florida under Florida Statute 893 (Drug Abuse Prevention and Control). This means that all parts of the plant and its extracts are legal to cultivate, buy, possess, and distribute without a license or prescription. The U. S. Food and Drug Administration (FDA) issued an Import Alert regarding shipments of dietary supplements and bulk dietary ingredients that are, or

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<sup>4</sup> Section 893.13(9), F.S., provides an exception to the unlawful acts specified in s. 893.13(1)-(8), F.S., for delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in 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.

<sup>5</sup> Section 893.13(1)(a)2., F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

<sup>6</sup> Section 893.13(1)(c)-(f) and (h), F.S.

<sup>7</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. Sections 775.082 and 775.083, F.S.

<sup>8</sup> Section 893.13(2)(a)2. and (6)(a), F.S.

<sup>9</sup> Kratom is on the Drug Enforcement Administration's list of Drugs or Chemicals of Concern. *Drugs of Abuse* (2015), p. 84, Drug Enforcement Administration, U.S. Department of Justice, available at [http://www.dea.gov/pr/multimedia-library/publications/drug\\_of\\_abuse.pdf#page=8](http://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=8) (last visited on February 2, 2016).

contain *Mitragyna speciosa* or Kratom. Import Alert 54-15,<sup>10</sup> was issued by the FDA regarding the detention (by FDA Inspectors) without physical examination of specified products from identified firms. The specified dietary supplements and bulk dietary ingredients from the identified firms within the Import Alert were found to contain Kratom. The FDA has not approved Kratom for human consumption.<sup>11</sup> The substance is available on the Internet and in some instances is marketed as a legal psychoactive product with alleged medicinal benefits. Some literature suggests that Kratom/Mitragynine may have a role in treating the withdrawal symptoms of opiate addiction. Academic studies including research by University of Mississippi, School of Pharmacy, are ongoing.

Kratom has been described as producing both stimulant and sedative effects. At low doses it produces stimulant effects with users reporting increased alertness, physical energy, talkativeness and sociable behavior. At high doses, opiate effects<sup>12</sup> are produced in addition to sedative and euphoric effects. Acute side effects include nausea, itching, sweating, dry mouth, constipation, increased urination and loss of appetite. Kratom consumption can lead to addiction (study of Thai Kratom addicts who chewed Kratom leaves daily from 3 to 30 years).<sup>13</sup>

Information on the illicit use of Kratom in the U.S. is anecdotal. In a notable study (Sweden) the primary chemical component found in Kratom (Mitragynine) was one of the components found to be present in nine (9) incidents of fatal intoxication involving a product sold on the internet called “Krypton”. In the reporting, “Krypton” consisted of powdered Kratom leaves together with a more potent substance (O-Desmethyltramadol). Two deaths in 2013 reference Kratom as a factor. A Colorado man died from what was reportedly apparent acute Mitragynine toxicity; and in Washington, a woman who had reportedly ingested Kratom also died, but in that case, no determination could be made that Kratom was a key factor that led to the death because another potent substance was also present in the toxicology. In a Florida death (2014), the family of a subject who committed suicide attributed the death to an addiction to Kratom. In that case, Mitragynine quantification was not available. The presence of other controlled substances may have contributed to the subject’s state of mind at the time of the suicide. A few states have banned or restricted the sale, possession, and/or use of Kratom. Sarasota County is among a few counties in Florida that have enacted ordinances focused on the marketing,

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<sup>10</sup> As a result of this alert, specified products from firms listed in the alert can be detained without physical examination. Import Alert 54-15 (February 12, 2015), U.S. Food and Drug Administration, available at [http://www.accessdata.fda.gov/cms\\_ia/importalert\\_1137.html](http://www.accessdata.fda.gov/cms_ia/importalert_1137.html) (last visited on February 2, 2016).

<sup>11</sup> According to the DEA, there is no legitimate medical use for kratom in the United States. *Id.*

<sup>12</sup> “Most of the opioid-like activity of kratom has been attributed to the presence of the indole alkaloids, mitragynine and 7-hydroxymitragynine. Both compounds have been shown to have analgesic and antinociceptive effects in animals, although 7-hydroxymitragynine is more potent.” Prozialeck WC, Jivan JK, Andurkar SV. Pharmacology of kratom: an emerging botanical agent with stimulant, analgesic and opioid-like effects. *J Am Osteopath Assoc.* 2012 Dec; 112(12): 792-9, at p. 792 (abstract). This article is available at <http://www.jaoa.osteopathic.org/content/112/12/792.full.pdf> (last visited on February 2, 2016).

<sup>13</sup> An article by the Natural Standard Research Collaboration provides an extensive discussion of the scientific literature. Ulbricht C, Costa D, Dao J, Isaac R., LeBlanc YC, Rhoades J, Windsor RC. An evidence-based systematic review of kratom (*Mitragyna speciosa*) by the Natural Standard Research Collaboration. *Journal of Dietary Supplements*, 2013; 10:2: 152-170. (This article is on file with the Senate Committee on Criminal Justice).

packaging and sale of so called “designer drugs” by regulating retail establishments to attack the abuse of synthetic drugs rather than focusing on the chemical components of designer drugs which can be modified molecularly nearly as fast as the chemical components are scheduled. Kratom was included in the Sarasota County ordinance though Kratom itself is not a synthetic. To date, FDLE laboratory submissions from 2011 – 2015 have been low; 2011 (1); 2012 (0); 2013 (4), 2014 (3); and through 1st and 2nd Quarter 2015 (5).<sup>14</sup>

In a 2015 drug report on kratom, the FDLE stated:

A review of information currently available through identified law enforcement and laboratory sources in Florida indicates that Kratom does not constitute a significant risk to the safety and welfare of Florida residents. The Florida Department of Health (DOH) reports no pervasive health issues attributed to the ingestion of Kratom products in Florida, though diagnostic tests that would reveal the presence of Mitragynine are not routinely performed on patients during emergency room visits. It is unclear how many Mitragynine exposures resulted in harm. Kratom use or abuse is not monitored by any national drug abuse surveys and much of the information regarding possible deleterious effects of Kratom use or abuse remains anecdotal.<sup>15</sup>

### III. Effect of Proposed Changes:

The bill makes mitragynine and 7-hydroxymitragynine Schedule I controlled substances. These substances are “pharmacologically active constituents” of the plant kratom (*Mitragyna speciosa*).<sup>16</sup> The bill also schedules in Schedule I isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of these substances. An exception is created for FDA-approved drugs.

The bill also makes it a first degree misdemeanor<sup>17</sup> to possess, purchase, sell, deliver, manufacture, or bring into this state these substances.

The bill takes effect on October 1, 2016.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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

None.

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<sup>14</sup> Analysis of SB 1182 (January 15, 2016), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

<sup>15</sup> *Kratom – Mitragyna speciosa (The Impact to Florida)* (December 2015), Office of Statewide Intelligence, Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

<sup>16</sup> See footnote 1.

<sup>17</sup> A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Businesses in Florida could be subject to first degree misdemeanor penalties for selling any product containing mitragynine and 7-hydroxymitragynine.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will not have a prison bed impact. The bill only provides for a first degree misdemeanor penalty, which means there is no state prison sentence.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Based on available information, legislative staff was able to confirm that the following states prohibit or impose restrictions on kratom or constituents of kratom:

- Illinois (prohibits minors from purchasing or possessing kratom and prohibits selling kratom to minors);<sup>18</sup>
- Indiana (schedules 7-hydroxymitragynine and mitragynine in Schedule I);<sup>19</sup>
- Louisiana (prohibits distribution of products containing *Mitragyna speciosa* to minors);<sup>20</sup>
- Tennessee (prohibits possession, sale, etc., of mitragynine and hydroxymitragynine);<sup>21</sup>
- Vermont (7-hydroxymitragynine is listed as a regulated drug);<sup>22</sup> and
- Wisconsin (places mitragynine and 7-hydroxymitragynine in Schedule I).<sup>23</sup>

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<sup>18</sup> 720 Ill. Comp. Stat. § 642/5.

<sup>19</sup> Sec. 4.(d)(35) of IC 35-48-2-4, lists synthetic drugs as defined in IC 35-31.5-2-321 as Schedule I controlled substances. IC 35-31.5-2-321 (1)(LL) and (HHH) lists 7-hydroxymitragynine and mitragynine as synthetic drugs.

<sup>20</sup> La. Rev. Stat. Ann. § 40:989.3.

<sup>21</sup> Tenn. Code Ann. § 39-17-452.

<sup>22</sup> See [http://healthvermont.gov/hc/med\\_board/2013/documents/Agenda\\_bmp\\_010213.pdf](http://healthvermont.gov/hc/med_board/2013/documents/Agenda_bmp_010213.pdf) and [http://healthvermont.gov/regs/documents/regulated\\_drugs\\_rule.pdf](http://healthvermont.gov/regs/documents/regulated_drugs_rule.pdf) (last visited on February 2, 2016). See also Vt. Stat. Ann. tit. 18, § 4205.

<sup>23</sup> Wis. Stat. § 961.14.

**VIII. Statutes Affected:**

This bill substantially amends sections 893.03 and 893.13 of the Florida Statutes.

This bill also reenacts the following sections or provisions of sections of the Florida Statutes: 39.01, 316.193, 322.2616, 327.35, 440.102, 458.3265, 459.0137, 782.04, 787.06, 817.563, 831.31, 856.015, 893.02, 893.035, 893.0356, 893.05, 893.12, 893.13, and 921.0022.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial 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 Latvala

20-01317-16

20161182\_\_

1 A bill to be entitled  
 2 An act relating to controlled substances; amending s.  
 3 893.03, F.S.; scheduling Mitragynine and 7-  
 4 Hydroxymitragynine, constituents of Kratom, in a  
 5 schedule of controlled substances; scheduling isomers,  
 6 esters, ethers, salts, and salts of isomers, esters,  
 7 and ethers of Mitragynine and 7-Hydroxymitragynine in  
 8 a schedule of controlled substances; providing an  
 9 exception from scheduling for any drug product  
 10 approved by the United States Food and Drug  
 11 Administration which contains Mitragynine or 7-  
 12 Hydroxymitragynine; amending s. 893.13, F.S.;  
 13 providing a criminal penalty; reenacting s.  
 14 39.01(30) (a) and (g), F.S., relating to definitions  
 15 used in chapter 39, F.S., s. 316.193(5), F.S.,  
 16 relating to driving under the influence, s.  
 17 322.2616(2) (c), F.S., relating to suspension of driver  
 18 licenses, s. 327.35(5), F.S., relating to boating  
 19 under the influence, s. 440.102(11) (b), F.S., relating  
 20 to drug-free workplace programs, ss. 458.3265(1) (e)  
 21 and 459.0137(1) (e), F.S., relating to pain-management  
 22 clinics, s. 782.04(1) (a) and (4), F.S., relating to  
 23 murder, s. 787.06(2) (a), F.S., relating to human  
 24 trafficking, s. 817.563, F.S., relating to sale of  
 25 substance in lieu of a controlled substance, s.  
 26 831.31(1) (a) and (2), F.S., relating to counterfeit  
 27 controlled substance, s. 856.015(1) (c), F.S., relating  
 28 to open house parties, s. 893.02(4), F.S., relating to  
 29 definitions, ss. 893.035(2), (7) (a), and (8) (a), and  
 30 893.0356(2) (a) and (5), F.S., relating to control of  
 31 new substances, s. 893.05(1), F.S., relating to  
 32 practitioners and persons administering controlled

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

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20161182\_\_

33 substances in their absence, s. 893.12(2) (b), (c), and  
 34 (d), F.S., relating to contraband, seizure,  
 35 forfeiture, and sale, s. 893.13(1) (a), (c), (d), (e),  
 36 (f), and (h), (2) (a), (4) (b), (5) (b), and (7) (a),  
 37 F.S., relating to prohibited acts and penalties, and  
 38 921.0022(3) (b), (c), and (e), F.S., relating to the  
 39 offense severity ranking chart of the Criminal  
 40 Punishment Code, to incorporate the amendment made by  
 41 the act to s. 893.03, F.S., in references thereto;  
 42 providing an effective date.  
 43  
 44 Be It Enacted by the Legislature of the State of Florida:  
 45  
 46 Section 1. Paragraph (c) of subsection (1) of section  
 47 893.03, Florida Statutes, is amended to read:  
 48 893.03 Standards and schedules.—The substances enumerated  
 49 in this section are controlled by this chapter. The controlled  
 50 substances listed or to be listed in Schedules I, II, III, IV,  
 51 and V are included by whatever official, common, usual,  
 52 chemical, or trade name designated. The provisions of this  
 53 section shall not be construed to include within any of the  
 54 schedules contained in this section any excluded drugs listed  
 55 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
 56 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
 57 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
 58 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
 59 Anabolic Steroid Products."  
 60 (1) SCHEDULE I.—A substance in Schedule I has a high  
 61 potential for abuse and has no currently accepted medical use in

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

20-01317-16

20161182\_\_

62 treatment in the United States and in its use under medical  
 63 supervision does not meet accepted safety standards. The  
 64 following substances are controlled in Schedule I:  
 65 (c) Unless specifically excepted or unless listed in  
 66 another schedule, any material, compound, mixture, or  
 67 preparation that contains any quantity of the following  
 68 hallucinogenic substances or that contains any of their salts,  
 69 isomers, including optical, positional, or geometric isomers,  
 70 and salts of isomers, if the existence of such salts, isomers,  
 71 and salts of isomers is possible within the specific chemical  
 72 designation:

- 73 1. Alpha-ethyltryptamine.
- 74 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-  
 75 methylaminorex).
- 76 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
- 77 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 78 5. 4-Bromo-2,5-dimethoxyphenethylamine.
- 79 6. Bufotenine.
- 80 7. Cannabis.
- 81 8. Cathinone.
- 82 9. Diethyltryptamine.
- 83 10. 2,5-Dimethoxyamphetamine.
- 84 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
- 85 12. Dimethyltryptamine.
- 86 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine  
 87 analog of phencyclidine).
- 88 14. N-Ethyl-3-piperidyl benzilate.
- 89 15. N-ethylamphetamine.
- 90 16. Fenethylamine.

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91 17. N-Hydroxy-3,4-methylenedioxyamphetamine.  
 92 18. Ibogaine.  
 93 19. Lysergic acid diethylamide (LSD).  
 94 20. Mescaline.  
 95 21. Methcathinone.  
 96 22. 5-Methoxy-3,4-methylenedioxyamphetamine.  
 97 23. 4-methoxyamphetamine.  
 98 24. 4-methoxymethamphetamine.  
 99 25. 4-Methyl-2,5-dimethoxyamphetamine.  
 100 26. 3,4-Methylenedioxy-N-ethylamphetamine.  
 101 27. 3,4-Methylenedioxyamphetamine.  
 102 28. N-Methyl-3-piperidyl benzilate.  
 103 29. N,N-dimethylamphetamine.  
 104 30. Parahexyl.  
 105 31. Peyote.  
 106 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine  
 107 analog of phencyclidine).  
 108 33. Psilocybin.  
 109 34. Psilocyn.  
 110 35. *Salvia divinorum*, except for any drug product approved  
 111 by the United States Food and Drug Administration which contains  
 112 *Salvia divinorum* or its isomers, esters, ethers, salts, and  
 113 salts of isomers, esters, and ethers, if the existence of such  
 114 isomers, esters, ethers, and salts is possible within the  
 115 specific chemical designation.  
 116 36. Salvinorin A, except for any drug product approved by  
 117 the United States Food and Drug Administration which contains  
 118 Salvinorin A or its isomers, esters, ethers, salts, and salts of  
 119 isomers, esters, and ethers, if the existence of such isomers,

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120 esters, ethers, and salts is possible within the specific  
 121 chemical designation.

122 37. Tetrahydrocannabinols.

123 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)  
 124 (Thiophene analog of phencyclidine).

125 39. 3,4,5-Trimethoxyamphetamine.

126 40. 3,4-Methylenedioxymethcathinone.

127 41. 3,4-Methylenedioxypyrovalerone (MDPV).

128 42. Methylenedioxymethcathinone.

129 43. Methoxymethcathinone.

130 44. Fluoromethcathinone.

131 45. Methylethcathinone.

132 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-  
 133 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)  
 134 homologue.

135 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-  
 136 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,  
 137 also known as HU-210.

138 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.

139 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.

140 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole, also  
 141 known as JWH-200.

142 51. BZP (Benzylpiperazine).

143 52. Fluorophenylpiperazine.

144 53. Methylphenylpiperazine.

145 54. Chlorophenylpiperazine.

146 55. Methoxyphenylpiperazine.

147 56. DBZP (1,4-dibenzylpiperazine).

148 57. TFMPP (3-Trifluoromethylphenylpiperazine).

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149 58. MBDB (Methylbenzodioxolylbutanamine).

150 59. 5-Hydroxy-alpha-methyltryptamine.

151 60. 5-Hydroxy-N-methyltryptamine.

152 61. 5-Methoxy-N-methyl-N-isopropyltryptamine.

153 62. 5-Methoxy-alpha-methyltryptamine.

154 63. Methyltryptamine.

155 64. 5-Methoxy-N,N-dimethyltryptamine.

156 65. 5-Methyl-N,N-dimethyltryptamine.

157 66. Tyramine (4-Hydroxyphenethylamine).

158 67. 5-Methoxy-N,N-Diisopropyltryptamine.

159 68. DiPT (N,N-Diisopropyltryptamine).

160 69. DPT (N,N-Dipropyltryptamine).

161 70. 4-Hydroxy-N,N-diisopropyltryptamine.

162 71. N,N-Diallyl-5-Methoxytryptamine.

163 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).

164 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).

165 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).

166 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).

167 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).

168 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).

169 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).

170 79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).

171 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).

172 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).

173 82. Ethcathinone.

174 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).

175 84. Naphyrone (naphthylpyrovalerone).

176 85. N-N-Dimethyl-3,4-methylenedioxycathinone.

177 86. N-N-Diethyl-3,4-methylenedioxycathinone.

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178 87. 3,4-methylenedioxy-propiofenone.  
 179 88. 2-Bromo-3,4-Methylenedioxypropiofenone.  
 180 89. 3,4-methylenedioxy-propiofenone-2-oxime.  
 181 90. N-Acetyl-3,4-methylenedioxcathinone.  
 182 91. N-Acetyl-N-Methyl-3,4-Methylenedioxcathinone.  
 183 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone.  
 184 93. Bromomethcathinone.  
 185 94. Buphedrone (alpha-methylamino-butyrophenone).  
 186 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).  
 187 96. Dimethylcathinone.  
 188 97. Dimethylmethcathinone.  
 189 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).  
 190 99. (MDPPP) 3,4-Methylenedioxy-alpha-  
 191 pyrrolidinopropiofenone.  
 192 100. (MDPBP) 3,4-Methylenedioxy-alpha-  
 193 pyrrolidinobutiophenone.  
 194 101. Methoxy-alpha-pyrrolidinopropiofenone (MOPPP).  
 195 102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).  
 196 103. Benocyclidine (BCP) or  
 197 benzothiophenylcyclohexylpiperidine (BTCP).  
 198 104. Fluoromethylaminobutyrophenone (F-MABP).  
 199 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).  
 200 106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).  
 201 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).  
 202 108. Methyl-ethylaminobutyrophenone (Me-EABP).  
 203 109. Methylamino-butyrophenone (MABP).  
 204 110. Pyrrolidinopropiofenone (PPP).  
 205 111. Pyrrolidinobutiophenone (PBP).  
 206 112. Pyrrolidinovalerophenone (PVP).

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207 113. Methyl-alpha-pyrrolidinopropiofenone (MPPP).  
 208 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).  
 209 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-  
 210 naphthalenylmethanone).  
 211 116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-  
 212 yl)methanone).  
 213 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).  
 214 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-  
 215 yl)methanone).  
 216 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-  
 217 yl)methanone).  
 218 120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).  
 219 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-  
 220 tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).  
 221 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-  
 222 indole).  
 223 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).  
 224 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-  
 225 yl)ethanone).  
 226 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-  
 227 yl)methanone).  
 228 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-  
 229 yl)ethanone).  
 230 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-  
 231 yl)ethanone).  
 232 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).  
 233 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).  
 234 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-  
 235 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-

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236 ol).

237 131. HU-308 ([ (1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-

238 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]

239 methanol).

240 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-

241 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-

242 1,4-dione).

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

244 yl)methanone).

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

246 undecanamide).

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

248 undecanamide).

249 136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-

250 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).

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

252 iodophenyl)methanone).

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

254 (naphthalen-1-yl)methanone).

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

256 yl)methanone).

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

258 methoxyphenylethanone).

259 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-

260 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

261 naphthalenylmethanone).

262 142. WIN55,212-3 ([ (3S)-2,3-Dihydro-5-methyl-3-(4-

263 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

264 naphthalenylmethanone).

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265 143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).

266 144. Fluoroamphetamine.

267 145. Fluoromethamphetamine.

268 146. Methoxetamine.

269 147. Methiopropamine.

270 148. 4-Methylbuphedrone (2-Methylamino-1-(4-

271 methylphenyl)butan-1-one).

272 149. APB ((2-aminopropyl)benzofuran).

273 150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).

274 151. UR-144 ((1-pentyl-1H-indol-3-yl) (2,2,3,3-

275 tetramethylcyclopropyl)methanone).

276 152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl) (2,2,3,3-

277 tetramethylcyclopropyl)methanone).

278 153. (1-(5-chloropentyl)-1H-indol-3-yl) (2,2,3,3-

279 tetramethylcyclopropyl)methanone).

280 154. AKB48 (1-pentyl-N-tricyclo[3.3.1.1<sup>3</sup>,7]dec-1-yl-1H-

281 indazole-3-carboxamide).

282 155. AM-2233 ((2-iodophenyl) [1-[(1-methyl-2-

283 piperidinyl)methyl]-1H-indol-3-yl]-methanone).

284 156. STS-135 (1-(5-fluoropentyl)-N-tricyclo[3.3.1.1<sup>3</sup>,7]dec-

285 1-yl-1H-indole-3-carboxamide).

286 157. URB-597 ((3'-(aminocarbonyl) [1,1'-biphenyl]-3-yl)-

287 cyclohexylcarbamate).

288 158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid,

289 cyclohexyl ester).

290 159. URB-754 (6-methyl-2-[(4-methylphenyl)amino]-1-

291 benzoxazin-4-one).

292 160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).

293 161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).

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294 162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).  
 295 163. 2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine).  
 296 164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-  
 297 methoxyphenyl)methyl]-benzeneethanamine).  
 298 165. 3,4-Methylenedioxyamphetamine (MDMA).  
 299 166. PB-22 (1-pentyl-8-quinolinyl ester-1H-indole-3-  
 300 carboxylic acid).  
 301 167. 5-Fluoro PB-22 (8-quinolinyl ester-1-(5-fluoropentyl)-  
 302 1H-indole-3-carboxylic acid).  
 303 168. BB-22 (1-(cyclohexylmethyl)-8-quinolinyl ester-1H-  
 304 indole-3-carboxylic acid).  
 305 169. 5-Fluoro AKB48 (N-((3s,5s,7s)-adamantan-1-yl)-1-(5-  
 306 fluoropentyl)-1H-indazole-3-carboxamide).  
 307 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-  
 308 pentyl-1H-indazole-3-carboxamide).  
 309 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-  
 310 (4-fluorobenzyl)-1H-indazole-3-carboxamide).  
 311 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-  
 312 1-pentyl-1H-indazole-3-carboxamide).  
 313 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-  
 314 yl)-1-(fluoropentyl)-1H-indole-3-carboxamide).  
 315 174. 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-  
 316 methoxyphenyl)methyl]-benzeneethanamine).  
 317 175. 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-  
 318 methoxyphenyl)methyl]-benzeneethanamine).  
 319 176. AB-CHMINACA: N-[1-(aminocarbonyl)-2-methylpropyl]-1-  
 320 (cyclohexylmethyl)-1H-indazole-3-carboxamide.  
 321 177. FUB-PB-22: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-  
 322 3-carboxylate.

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323 178. Fluoro-NNEI: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-  
 324 indole-3-carboxamide.  
 325 179. Fluoro-AMB: Methyl 2-(1-(fluoropentyl)-1H-indazole-3-  
 326 carboxamido)-3-methylbutanoate.  
 327 180. THJ-2201: [1-(5-Fluoropentyl)-1H-indazol-3-  
 328 yl](naphthalen-1-yl)methanone.  
 329 181. Mitragynine or 7-Hydroxymitragynine, except for any  
 330 drug product approved by the United States Food and Drug  
 331 Administration which contains Mitragynine or 7-  
 332 Hydroxymitragynine, including any of their isomers, esters,  
 333 ethers, salts, and salts of isomers, esters, and ethers, if the  
 334 existence of such isomers, esters, ethers, and salts is possible  
 335 within the specific chemical designation.  
 336 Section 2. Subsection (11) is added to section 893.13,  
 337 Florida Statutes, to read:  
 338 893.13 Prohibited acts; penalties.—  
 339 (11) Notwithstanding any other provision of this section, a  
 340 person who possesses, purchases, sells, delivers, manufactures,  
 341 or brings into this state a controlled substance described in s.  
 342 893.03(1)(c)181., commits a misdemeanor of the first degree,  
 343 punishable as provided in s. 775.082 or s. 775.083.  
 344 Section 3. For the purpose of incorporating the amendment  
 345 made by this act to section 893.03, Florida Statutes, in a  
 346 reference thereto, paragraphs (a) and (g) of subsection (30) of  
 347 section 39.01, Florida Statutes, are reenacted to read:  
 348 39.01 Definitions.—When used in this chapter, unless the  
 349 context otherwise requires:  
 350 (30) "Harm" to a child's health or welfare can occur when  
 351 any person:

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352 (a) Inflicts or allows to be inflicted upon the child  
 353 physical, mental, or emotional injury. In determining whether  
 354 harm has occurred, the following factors must be considered in  
 355 evaluating any physical, mental, or emotional injury to a child:  
 356 the age of the child; any prior history of injuries to the  
 357 child; the location of the injury on the body of the child; the  
 358 multiplicity of the injury; and the type of trauma inflicted.  
 359 Such injury includes, but is not limited to:

- 360 1. Willful acts that produce the following specific  
 361 injuries:
- 362 a. Sprains, dislocations, or cartilage damage.
  - 363 b. Bone or skull fractures.
  - 364 c. Brain or spinal cord damage.
  - 365 d. Intracranial hemorrhage or injury to other internal  
 366 organs.
  - 367 e. Asphyxiation, suffocation, or drowning.
  - 368 f. Injury resulting from the use of a deadly weapon.
  - 369 g. Burns or scalding.
  - 370 h. Cuts, lacerations, punctures, or bites.
  - 371 i. Permanent or temporary disfigurement.
  - 372 j. Permanent or temporary loss or impairment of a body part  
 373 or function.

374  
 375 As used in this subparagraph, the term "willful" refers to the  
 376 intent to perform an action, not to the intent to achieve a  
 377 result or to cause an injury.

- 378 2. Purposely giving a child poison, alcohol, drugs, or  
 379 other substances that substantially affect the child's behavior,  
 380 motor coordination, or judgment or that result in sickness or

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381 internal injury. For the purposes of this subparagraph, the term  
 382 "drugs" means prescription drugs not prescribed for the child or  
 383 not administered as prescribed, and controlled substances as  
 384 outlined in Schedule I or Schedule II of s. 893.03.

385 3. Leaving a child without adult supervision or arrangement  
 386 appropriate for the child's age or mental or physical condition,  
 387 so that the child is unable to care for the child's own needs or  
 388 another's basic needs or is unable to exercise good judgment in  
 389 responding to any kind of physical or emotional crisis.

390 4. Inappropriate or excessively harsh disciplinary action  
 391 that is likely to result in physical injury, mental injury as  
 392 defined in this section, or emotional injury. The significance  
 393 of any injury must be evaluated in light of the following  
 394 factors: the age of the child; any prior history of injuries to  
 395 the child; the location of the injury on the body of the child;  
 396 the multiplicity of the injury; and the type of trauma  
 397 inflicted. Corporal discipline may be considered excessive or  
 398 abusive when it results in any of the following or other similar  
 399 injuries:

- 400 a. Sprains, dislocations, or cartilage damage.
- 401 b. Bone or skull fractures.
- 402 c. Brain or spinal cord damage.
- 403 d. Intracranial hemorrhage or injury to other internal  
 404 organs.
- 405 e. Asphyxiation, suffocation, or drowning.
- 406 f. Injury resulting from the use of a deadly weapon.
- 407 g. Burns or scalding.
- 408 h. Cuts, lacerations, punctures, or bites.
- 409 i. Permanent or temporary disfigurement.

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410 j. Permanent or temporary loss or impairment of a body part  
411 or function.

412 k. Significant bruises or welts.

413 (g) Exposes a child to a controlled substance or alcohol.  
414 Exposure to a controlled substance or alcohol is established by:

415 1. A test, administered at birth, which indicated that the  
416 child's blood, urine, or meconium contained any amount of  
417 alcohol or a controlled substance or metabolites of such  
418 substances, the presence of which was not the result of medical  
419 treatment administered to the mother or the newborn infant; or

420 2. Evidence of extensive, abusive, and chronic use of a  
421 controlled substance or alcohol by a parent when the child is  
422 demonstrably adversely affected by such usage.

423

424 As used in this paragraph, the term "controlled substance" means  
425 prescription drugs not prescribed for the parent or not  
426 administered as prescribed and controlled substances as outlined  
427 in Schedule I or Schedule II of s. 893.03.

428 Section 4. For the purpose of incorporating the amendment  
429 made by this act to section 893.03, Florida Statutes, in a  
430 reference thereto, subsection (5) of section 316.193, Florida  
431 Statutes, is reenacted to read:

432 316.193 Driving under the influence; penalties.—

433 (5) The court shall place all offenders convicted of  
434 violating this section on monthly reporting probation and shall  
435 require completion of a substance abuse course conducted by a  
436 DUI program licensed by the department under s. 322.292, which  
437 must include a psychosocial evaluation of the offender. If the  
438 DUI program refers the offender to an authorized substance abuse

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439 treatment provider for substance abuse treatment, in addition to  
440 any sentence or fine imposed under this section, completion of  
441 all such education, evaluation, and treatment is a condition of  
442 reporting probation. The offender shall assume reasonable costs  
443 for such education, evaluation, and treatment. The referral to  
444 treatment resulting from a psychosocial evaluation shall not be  
445 waived without a supporting independent psychosocial evaluation  
446 conducted by an authorized substance abuse treatment provider  
447 appointed by the court, which shall have access to the DUI  
448 program's psychosocial evaluation before the independent  
449 psychosocial evaluation is conducted. The court shall review the  
450 results and recommendations of both evaluations before  
451 determining the request for waiver. The offender shall bear the  
452 full cost of this procedure. The term "substance abuse" means  
453 the abuse of alcohol or any substance named or described in  
454 Schedules I through V of s. 893.03. If an offender referred to  
455 treatment under this subsection fails to report for or complete  
456 such treatment or fails to complete the DUI program substance  
457 abuse education course and evaluation, the DUI program shall  
458 notify the court and the department of the failure. Upon receipt  
459 of the notice, the department shall cancel the offender's  
460 driving privilege, notwithstanding the terms of the court order  
461 or any suspension or revocation of the driving privilege. The  
462 department may temporarily reinstate the driving privilege on a  
463 restricted basis upon verification from the DUI program that the  
464 offender is currently participating in treatment and the DUI  
465 education course and evaluation requirement has been completed.  
466 If the DUI program notifies the department of the second failure  
467 to complete treatment, the department shall reinstate the

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468 driving privilege only after notice of completion of treatment  
 469 from the DUI program. The organization that conducts the  
 470 substance abuse education and evaluation may not provide  
 471 required substance abuse treatment unless a waiver has been  
 472 granted to that organization by the department. A waiver may be  
 473 granted only if the department determines, in accordance with  
 474 its rules, that the service provider that conducts the substance  
 475 abuse education and evaluation is the most appropriate service  
 476 provider and is licensed under chapter 397 or is exempt from  
 477 such licensure. A statistical referral report shall be submitted  
 478 quarterly to the department by each organization authorized to  
 479 provide services under this section.

480 Section 5. For the purpose of incorporating the amendment  
 481 made by this act to section 893.03, Florida Statutes, in a  
 482 reference thereto, paragraph (c) of subsection (2) of section  
 483 322.2616, Florida Statutes, is reenacted to read:

484 322.2616 Suspension of license; persons under 21 years of  
 485 age; right to review.-

486 (2)

487 (c) When a driver subject to this section has a blood-  
 488 alcohol or breath-alcohol level of 0.05 or higher, the  
 489 suspension shall remain in effect until such time as the driver  
 490 has completed a substance abuse course offered by a DUI program  
 491 licensed by the department. The driver shall assume the  
 492 reasonable costs for the substance abuse course. As part of the  
 493 substance abuse course, the program shall conduct a substance  
 494 abuse evaluation of the driver, and notify the parents or legal  
 495 guardians of drivers under the age of 19 years of the results of  
 496 the evaluation. The term "substance abuse" means the abuse of

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497 alcohol or any substance named or described in Schedules I  
 498 through V of s. 893.03. If a driver fails to complete the  
 499 substance abuse education course and evaluation, the driver  
 500 license shall not be reinstated by the department.

501 Section 6. For the purpose of incorporating the amendment  
 502 made by this act to section 893.03, Florida Statutes, in a  
 503 reference thereto, subsection (5) of section 327.35, Florida  
 504 Statutes, is reenacted to read:

505 327.35 Boating under the influence; penalties; "designated  
 506 drivers."-

507 (5) In addition to any sentence or fine, the court shall  
 508 place any offender convicted of violating this section on  
 509 monthly reporting probation and shall require attendance at a  
 510 substance abuse course specified by the court; and the agency  
 511 conducting the course may refer the offender to an authorized  
 512 service provider for substance abuse evaluation and treatment,  
 513 in addition to any sentence or fine imposed under this section.  
 514 The offender shall assume reasonable costs for such education,  
 515 evaluation, and treatment, with completion of all such  
 516 education, evaluation, and treatment being a condition of  
 517 reporting probation. Treatment resulting from a psychosocial  
 518 evaluation may not be waived without a supporting psychosocial  
 519 evaluation conducted by an agency appointed by the court and  
 520 with access to the original evaluation. The offender shall bear  
 521 the cost of this procedure. The term "substance abuse" means the  
 522 abuse of alcohol or any substance named or described in  
 523 Schedules I-V of s. 893.03.

524 Section 7. For the purpose of incorporating the amendment  
 525 made by this act to section 893.03, Florida Statutes, in a

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526 reference thereto, paragraph (b) of subsection (11) of section  
 527 440.102, Florida Statutes, is reenacted to read:

528 440.102 Drug-free workplace program requirements.—The  
 529 following provisions apply to a drug-free workplace program  
 530 implemented pursuant to law or to rules adopted by the Agency  
 531 for Health Care Administration:

532 (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING OR SPECIAL-RISK  
 533 POSITIONS.—

534 (b) An employee who is employed by a public employer in a  
 535 special-risk position may be discharged or disciplined by a  
 536 public employer for the first positive confirmed test result if  
 537 the drug confirmed is an illicit drug under s. 893.03. A  
 538 special-risk employee who is participating in an employee  
 539 assistance program or drug rehabilitation program may not be  
 540 allowed to continue to work in any special-risk or mandatory-  
 541 testing position of the public employer, but may be assigned to  
 542 a position other than a mandatory-testing position or placed on  
 543 leave while the employee is participating in the program.  
 544 However, the employee shall be permitted to use any accumulated  
 545 annual leave credits before leave may be ordered without pay.

546 Section 8. For the purpose of incorporating the amendment  
 547 made by this act to section 893.03, Florida Statutes, in a  
 548 reference thereto, paragraph (e) of subsection (1) of section  
 549 458.3265, Florida Statutes, is reenacted to read:

550 458.3265 Pain-management clinics.—

551 (1) REGISTRATION.—

552 (e) The department shall deny registration to any pain-  
 553 management clinic owned by or with any contractual or employment  
 554 relationship with a physician:

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555 1. Whose Drug Enforcement Administration number has ever  
 556 been revoked.

557 2. Whose application for a license to prescribe, dispense,  
 558 or administer a controlled substance has been denied by any  
 559 jurisdiction.

560 3. Who has been convicted of or pleaded guilty or nolo  
 561 contendere to, regardless of adjudication, an offense that  
 562 constitutes a felony for receipt of illicit and diverted drugs,  
 563 including a controlled substance listed in Schedule I, Schedule  
 564 II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in  
 565 this state, any other state, or the United States.

566 Section 9. For the purpose of incorporating the amendment  
 567 made by this act to section 893.03, Florida Statutes, in a  
 568 reference thereto, paragraph (e) of subsection (1) of section  
 569 459.0137, Florida Statutes, is reenacted to read:

570 459.0137 Pain-management clinics.—

571 (1) REGISTRATION.—

572 (e) The department shall deny registration to any pain-  
 573 management clinic owned by or with any contractual or employment  
 574 relationship with a physician:

575 1. Whose Drug Enforcement Administration number has ever  
 576 been revoked.

577 2. Whose application for a license to prescribe, dispense,  
 578 or administer a controlled substance has been denied by any  
 579 jurisdiction.

580 3. Who has been convicted of or pleaded guilty or nolo  
 581 contendere to, regardless of adjudication, an offense that  
 582 constitutes a felony for receipt of illicit and diverted drugs,  
 583 including a controlled substance listed in Schedule I, Schedule

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584 II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in  
 585 this state, any other state, or the United States.

586 Section 10. For the purpose of incorporating the amendment  
 587 made by this act to section 893.03, Florida Statutes, in a  
 588 reference thereto, paragraph (a) of subsection (1) and  
 589 subsection (4) of section 782.04, Florida Statutes, are  
 590 reenacted to read:

591 782.04 Murder.—

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

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

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

597 a. Trafficking offense prohibited by s. 893.135(1),  
 598 b. Arson,  
 599 c. Sexual battery,  
 600 d. Robbery,  
 601 e. Burglary,  
 602 f. Kidnapping,  
 603 g. Escape,  
 604 h. Aggravated child abuse,  
 605 i. Aggravated abuse of an elderly person or disabled adult,  
 606 j. Aircraft piracy,  
 607 k. Unlawful throwing, placing, or discharging of a  
 608 destructive device or bomb,  
 609 l. Carjacking,  
 610 m. Home-invasion robbery,  
 611 n. Aggravated stalking,  
 612 o. Murder of another human being,

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613 p. Resisting an officer with violence to his or her person,  
 614 q. Aggravated fleeing or eluding with serious bodily injury  
 615 or death,  
 616 r. Felony that is an act of terrorism or is in furtherance  
 617 of an act of terrorism; or

618 3. Which resulted from the unlawful distribution of any  
 619 substance controlled under s. 893.03(1), cocaine as described in  
 620 s. 893.03(2)(a)4., opium or any synthetic or natural salt,  
 621 compound, derivative, or preparation of opium, or methadone by a  
 622 person 18 years of age or older, when such drug is proven to be  
 623 the proximate cause of the death of the user,  
 624  
 625 is murder in the first degree and constitutes a capital felony,  
 626 punishable as provided in s. 775.082.

627 (4) The unlawful killing of a human being, when perpetrated  
 628 without any design to effect death, by a person engaged in the  
 629 perpetration of, or in the attempt to perpetrate, any felony  
 630 other than any:

631 (a) Trafficking offense prohibited by s. 893.135(1),  
 632 (b) Arson,  
 633 (c) Sexual battery,  
 634 (d) Robbery,  
 635 (e) Burglary,  
 636 (f) Kidnapping,  
 637 (g) Escape,  
 638 (h) Aggravated child abuse,  
 639 (i) Aggravated abuse of an elderly person or disabled  
 640 adult,  
 641 (j) Aircraft piracy,

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642 (k) Unlawful throwing, placing, or discharging of a  
 643 destructive device or bomb,  
 644 (l) Unlawful distribution of any substance controlled under  
 645 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or  
 646 opium or any synthetic or natural salt, compound, derivative, or  
 647 preparation of opium by a person 18 years of age or older, when  
 648 such drug is proven to be the proximate cause of the death of  
 649 the user,  
 650 (m) Carjacking,  
 651 (n) Home-invasion robbery,  
 652 (o) Aggravated stalking,  
 653 (p) Murder of another human being,  
 654 (q) Aggravated fleeing or eluding with serious bodily  
 655 injury or death,  
 656 (r) Resisting an officer with violence to his or her  
 657 person, or  
 658 (s) Felony that is an act of terrorism or is in furtherance  
 659 of an act of terrorism,  
 660  
 661 is murder in the third degree and constitutes a felony of the  
 662 second degree, punishable as provided in s. 775.082, s. 775.083,  
 663 or s. 775.084.  
 664 Section 11. For the purpose of incorporating the amendment  
 665 made by this act to section 893.03, Florida Statutes, in a  
 666 reference thereto, paragraph (a) of subsection (2) of section  
 667 787.06, Florida Statutes, is reenacted to read:  
 668 787.06 Human trafficking.—  
 669 (2) As used in this section, the term:  
 670 (a) "Coercion" means:

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671 1. Using or threatening to use physical force against any  
 672 person;  
 673 2. Restraining, isolating, or confining or threatening to  
 674 restrain, isolate, or confine any person without lawful  
 675 authority and against her or his will;  
 676 3. Using lending or other credit methods to establish a  
 677 debt by any person when labor or services are pledged as a  
 678 security for the debt, if the value of the labor or services as  
 679 reasonably assessed is not applied toward the liquidation of the  
 680 debt, the length and nature of the labor or services are not  
 681 respectively limited and defined;  
 682 4. Destroying, concealing, removing, confiscating,  
 683 withholding, or possessing any actual or purported passport,  
 684 visa, or other immigration document, or any other actual or  
 685 purported government identification document, of any person;  
 686 5. Causing or threatening to cause financial harm to any  
 687 person;  
 688 6. Enticing or luring any person by fraud or deceit; or  
 689 7. Providing a controlled substance as outlined in Schedule  
 690 I or Schedule II of s. 893.03 to any person for the purpose of  
 691 exploitation of that person.  
 692 Section 12. For the purpose of incorporating the amendment  
 693 made by this act to section 893.03, Florida Statutes, in a  
 694 reference thereto, section 817.563, Florida Statutes, is  
 695 reenacted to read:  
 696 817.563 Controlled substance named or described in s.  
 697 893.03; sale of substance in lieu thereof.—It is unlawful for  
 698 any person to agree, consent, or in any manner offer to  
 699 unlawfully sell to any person a controlled substance named or

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700 described in s. 893.03 and then sell to such person any other  
701 substance in lieu of such controlled substance. Any person who  
702 violates this section with respect to:

703 (1) A controlled substance named or described in s.  
704 893.03(1), (2), (3), or (4) is guilty of a felony of the third  
705 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
706 775.084.

707 (2) A controlled substance named or described in s.  
708 893.03(5) is guilty of a misdemeanor of the second degree,  
709 punishable as provided in s. 775.082 or s. 775.083.

710 Section 13. For the purpose of incorporating the amendment  
711 made by this act to section 893.03, Florida Statutes, in a  
712 reference thereto, paragraph (a) of subsection (1) and  
713 subsection (2) of section 831.31, Florida Statutes, are  
714 reenacted to read:

715 831.31 Counterfeit controlled substance; sale, manufacture,  
716 delivery, or possession with intent to sell, manufacture, or  
717 deliver.—

718 (1) It is unlawful for any person to sell, manufacture, or  
719 deliver, or to possess with intent to sell, manufacture, or  
720 deliver, a counterfeit controlled substance. Any person who  
721 violates this subsection with respect to:

722 (a) A controlled substance named or described in s.  
723 893.03(1), (2), (3), or (4) is guilty of a felony of the third  
724 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
725 775.084.

726 (2) For purposes of this section, "counterfeit controlled  
727 substance" means:

728 (a) A controlled substance named or described in s. 893.03

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729 which, or the container or labeling of which, without  
730 authorization bears the trademark, trade name, or other  
731 identifying mark, imprint, or number, or any likeness thereof,  
732 of a manufacturer other than the person who in fact manufactured  
733 the controlled substance; or

734 (b) Any substance which is falsely identified as a  
735 controlled substance named or described in s. 893.03.

736 Section 14. For the purpose of incorporating the amendment  
737 made by this act to section 893.03, Florida Statutes, in a  
738 reference thereto, paragraph (c) of subsection (1) of section  
739 856.015, Florida Statutes, is reenacted to read:

740 856.015 Open house parties.—

741 (1) Definitions.—As used in this section:

742 (c) "Drug" means a controlled substance, as that term is  
743 defined in ss. 893.02(4) and 893.03.

744 Section 15. For the purpose of incorporating the amendment  
745 made by this act to section 893.03, Florida Statutes, in a  
746 reference thereto, subsection (4) of section 893.02, Florida  
747 Statutes, is reenacted to read:

748 893.02 Definitions.—The following words and phrases as used  
749 in this chapter shall have the following meanings, unless the  
750 context otherwise requires:

751 (4) "Controlled substance" means any substance named or  
752 described in Schedules I-V of s. 893.03. Laws controlling the  
753 manufacture, distribution, preparation, dispensing, or  
754 administration of such substances are drug abuse laws.

755 Section 16. For the purpose of incorporating the amendment  
756 made by this act to section 893.03, Florida Statutes, in a  
757 reference thereto, subsection (2), paragraph (a) of subsection

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758 (7), and paragraph (a) of subsection (8) of section 893.035,  
759 Florida Statutes, are reenacted to read:

760 893.035 Control of new substances; findings of fact;  
761 delegation of authority to Attorney General to control  
762 substances by rule.—

763 (2) The Attorney General shall apply the provisions of this  
764 section to any substance not currently controlled under the  
765 provisions of s. 893.03. The Attorney General may by rule:

766 (a) Add a substance to a schedule established by s. 893.03,  
767 or transfer a substance between schedules, if he or she finds  
768 that it has a potential for abuse and he or she makes with  
769 respect to it the other findings appropriate for classification  
770 in the particular schedule under s. 893.03 in which it is to be  
771 placed.

772 (b) Remove a substance previously added to a schedule if he  
773 or she finds the substance does not meet the requirements for  
774 inclusion in that schedule.

775

776 Rules adopted under this section shall be made pursuant to the  
777 rulemaking procedures prescribed by chapter 120.

778 (7) (a) If the Attorney General finds that the scheduling of  
779 a substance in Schedule I of s. 893.03 on a temporary basis is  
780 necessary to avoid an imminent hazard to the public safety, he  
781 or she may by rule and without regard to the requirements of  
782 subsection (5) relating to the Department of Health and the  
783 Department of Law Enforcement schedule such substance in  
784 Schedule I if the substance is not listed in any other schedule  
785 of s. 893.03. The Attorney General shall be required to  
786 consider, with respect to his or her finding of imminent hazard

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787 to the public safety, only those factors set forth in paragraphs  
788 (3) (a) and (4) (d), (e), and (f), including actual abuse,  
789 diversion from legitimate channels, and clandestine importation,  
790 manufacture, or distribution.

791 (8) (a) Upon the effective date of a rule adopted pursuant  
792 to this section adding or transferring a substance to a schedule  
793 under s. 893.03, such substance shall be deemed included in that  
794 schedule, and all provisions of this chapter applicable to  
795 substances in that schedule shall be deemed applicable to such  
796 substance.

797 Section 17. For the purpose of incorporating the amendment  
798 made by this act to section 893.03, Florida Statutes, in a  
799 reference thereto, paragraph (a) of subsection (2) and  
800 subsection (5) of section 893.0356, Florida Statutes, are  
801 reenacted to read:

802 893.0356 Control of new substances; findings of fact;  
803 "controlled substance analog" defined.—

804 (2) (a) As used in this section, "controlled substance  
805 analog" means a substance which, due to its chemical structure  
806 and potential for abuse, meets the following criteria:

- 807 1. Is substantially similar to that of a controlled  
808 substance listed in Schedule I or Schedule II of s. 893.03; and  
809 2. Has a stimulant, depressant, or hallucinogenic effect on  
810 the central nervous system or is represented or intended to have  
811 a stimulant, depressant, or hallucinogenic effect on the central  
812 nervous system substantially similar to or greater than that of  
813 a controlled substance listed in Schedule I or Schedule II of s.  
814 893.03.

815 (5) A controlled substance analog shall, for purposes of

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816 drug abuse prevention and control, be treated as a controlled  
817 substance in Schedule I of s. 893.03.

818 Section 18. For the purpose of incorporating the amendment  
819 made by this act to section 893.03, Florida Statutes, in a  
820 reference thereto, subsection (1) of section 893.05, Florida  
821 Statutes, is reenacted to read:

822 893.05 Practitioners and persons administering controlled  
823 substances in their absence.—

824 (1) A practitioner, in good faith and in the course of his  
825 or her professional practice only, may prescribe, administer,  
826 dispense, mix, or otherwise prepare a controlled substance, or  
827 the practitioner may cause the same to be administered by a  
828 licensed nurse or an intern practitioner under his or her  
829 direction and supervision only. A veterinarian may so prescribe,  
830 administer, dispense, mix, or prepare a controlled substance for  
831 use on animals only, and may cause it to be administered by an  
832 assistant or orderly under the veterinarian's direction and  
833 supervision only. A certified optometrist licensed under chapter  
834 463 may not administer or prescribe a controlled substance  
835 listed in Schedule I or Schedule II of s. 893.03.

836 Section 19. For the purpose of incorporating the amendment  
837 made by this act to section 893.03, Florida Statutes, in a  
838 reference thereto, paragraphs (b), (c), and (d) of subsection  
839 (2) of section 893.12, Florida Statutes, are reenacted to read:

840 893.12 Contraband; seizure, forfeiture, sale.—

841 (2)

842 (b) All real property, including any right, title,  
843 leasehold interest, and other interest in the whole of any lot  
844 or tract of land and any appurtenances or improvements, which

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845 real property is used, or intended to be used, in any manner or  
846 part, to commit or to facilitate the commission of, or which  
847 real property is acquired with proceeds obtained as a result of,  
848 a violation of any provision of this chapter related to a  
849 controlled substance described in s. 893.03(1) or (2) may be  
850 seized and forfeited as provided by the Florida Contraband  
851 Forfeiture Act except that no property shall be forfeited under  
852 this paragraph to the extent of an interest of an owner or  
853 lienholder by reason of any act or omission established by that  
854 owner or lienholder to have been committed or omitted without  
855 the knowledge or consent of that owner or lienholder.

856 (c) All moneys, negotiable instruments, securities, and  
857 other things of value furnished or intended to be furnished in  
858 any person in exchange for a controlled substance described in  
859 s. 893.03(1) or (2) or a listed chemical in violation of any  
860 provision of this chapter, all proceeds traceable to such an  
861 exchange, and all moneys, negotiable instruments, and securities  
862 used or intended to be used to facilitate any violation of any  
863 provision of this chapter or which are acquired with proceeds  
864 obtained in violation of any provision of this chapter may be  
865 seized and forfeited as provided by the Florida Contraband  
866 Forfeiture Act, except that no property shall be forfeited under  
867 this paragraph to the extent of an interest of an owner or  
868 lienholder by reason of any act or omission established by that  
869 owner or lienholder to have been committed or omitted without  
870 the knowledge or consent of that owner or lienholder.

871 (d) All books, records, and research, including formulas,  
872 microfilm, tapes, and data which are used, or intended for use,  
873 or which are acquired with proceeds obtained, in violation of

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874 any provision of this chapter related to a controlled substance  
875 described in s. 893.03(1) or (2) or a listed chemical may be  
876 seized and forfeited as provided by the Florida Contraband  
877 Forfeiture Act.

878 Section 20. For the purpose of incorporating the amendment  
879 made by this act to section 893.03, Florida Statutes, in a  
880 reference thereto, paragraphs (a), (c), (d), (e), (f), and (h)  
881 of subsection (1), paragraph (a) of subsection (2), paragraph  
882 (b) of subsection (4), paragraph (b) of subsection (5), and  
883 paragraph (a) of subsection (7) of section 893.13, Florida  
884 Statutes, are reenacted to read:

885 893.13 Prohibited acts; penalties.—

886 (1) (a) Except as authorized by this chapter and chapter  
887 499, a person may not sell, manufacture, or deliver, or possess  
888 with intent to sell, manufacture, or deliver, a controlled  
889 substance. A person who violates this provision with respect to:

890 1. A controlled substance named or described in s.  
891 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.  
892 commits a felony of the second degree, punishable as provided in  
893 s. 775.082, s. 775.083, or s. 775.084.

894 2. A controlled substance named or described in s.  
895 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,  
896 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of  
897 the third degree, punishable as provided in s. 775.082, s.  
898 775.083, or s. 775.084.

899 3. A controlled substance named or described in s.  
900 893.03(5) commits a misdemeanor of the first degree, punishable  
901 as provided in s. 775.082 or s. 775.083.

902 (c) Except as authorized by this chapter, a person may not

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903 sell, manufacture, or deliver, or possess with intent to sell,  
904 manufacture, or deliver, a controlled substance in, on, or  
905 within 1,000 feet of the real property comprising a child care  
906 facility as defined in s. 402.302 or a public or private  
907 elementary, middle, or secondary school between the hours of 6  
908 a.m. and 12 midnight, or at any time in, on, or within 1,000  
909 feet of real property comprising a state, county, or municipal  
910 park, a community center, or a publicly owned recreational  
911 facility. As used in this paragraph, the term "community center"  
912 means a facility operated by a nonprofit community-based  
913 organization for the provision of recreational, social, or  
914 educational services to the public. A person who violates this  
915 paragraph with respect to:

916 1. A controlled substance named or described in s.  
917 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.  
918 commits a felony of the first degree, punishable as provided in  
919 s. 775.082, s. 775.083, or s. 775.084. The defendant must be  
920 sentenced to a minimum term of imprisonment of 3 calendar years  
921 unless the offense was committed within 1,000 feet of the real  
922 property comprising a child care facility as defined in s.  
923 402.302.

924 2. A controlled substance named or described in s.  
925 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,  
926 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of  
927 the second degree, punishable as provided in s. 775.082, s.  
928 775.083, or s. 775.084.

929 3. Any other controlled substance, except as lawfully sold,  
930 manufactured, or delivered, must be sentenced to pay a \$500 fine  
931 and to serve 100 hours of public service in addition to any

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932 other penalty prescribed by law.

933

934 This paragraph does not apply to a child care facility unless  
 935 the owner or operator of the facility posts a sign that is not  
 936 less than 2 square feet in size with a word legend identifying  
 937 the facility as a licensed child care facility and that is  
 938 posted on the property of the child care facility in a  
 939 conspicuous place where the sign is reasonably visible to the  
 940 public.

941 (d) Except as authorized by this chapter, a person may not  
 942 sell, manufacture, or deliver, or possess with intent to sell,  
 943 manufacture, or deliver, a controlled substance in, on, or  
 944 within 1,000 feet of the real property comprising a public or  
 945 private college, university, or other postsecondary educational  
 946 institution. A person who violates this paragraph with respect  
 947 to:

948 1. A controlled substance named or described in s.  
 949 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.  
 950 commits a felony of the first degree, punishable as provided in  
 951 s. 775.082, s. 775.083, or s. 775.084.

952 2. A controlled substance named or described in s.  
 953 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 954 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 955 the second degree, punishable as provided in s. 775.082, s.  
 956 775.083, or s. 775.084.

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

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961 (e) Except as authorized by this chapter, a person may not  
 962 sell, manufacture, or deliver, or possess with intent to sell,  
 963 manufacture, or deliver, a controlled substance not authorized  
 964 by law in, on, or within 1,000 feet of a physical place for  
 965 worship at which a church or religious organization regularly  
 966 conducts religious services or within 1,000 feet of a  
 967 convenience business as defined in s. 812.171. A person who  
 968 violates this paragraph with respect to:

969 1. A controlled substance named or described in s.  
 970 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.  
 971 commits a felony of the first degree, punishable as provided in  
 972 s. 775.082, s. 775.083, or s. 775.084.

973 2. A controlled substance named or described in s.  
 974 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 975 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 976 the second degree, punishable as provided in s. 775.082, s.  
 977 775.083, or s. 775.084.

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

982 (f) Except as authorized by this chapter, a person may not  
 983 sell, manufacture, or deliver, or possess with intent to sell,  
 984 manufacture, or deliver, a controlled substance in, on, or  
 985 within 1,000 feet of the real property comprising a public  
 986 housing facility at any time. As used in this section, the term  
 987 "real property comprising a public housing facility" means real  
 988 property, as defined in s. 421.03(12), of a public corporation  
 989 created as a housing authority pursuant to part I of chapter

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990 421. A person who violates this paragraph with respect to:

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

992 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.

993 commits a felony of the first degree, punishable as provided in

994 s. 775.082, s. 775.083, or s. 775.084.

995 2. A controlled substance named or described in s.

996 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

997 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of

998 the second degree, punishable as provided in s. 775.082, s.

999 775.083, or s. 775.084.

1000 3. Any other controlled substance, except as lawfully sold,

1001 manufactured, or delivered, must be sentenced to pay a \$500 fine

1002 and to serve 100 hours of public service in addition to any

1003 other penalty prescribed by law.

1004 (h) Except as authorized by this chapter, a person may not

1005 sell, manufacture, or deliver, or possess with intent to sell,

1006 manufacture, or deliver, a controlled substance in, on, or

1007 within 1,000 feet of the real property comprising an assisted

1008 living facility, as that term is used in chapter 429. A person

1009 who violates this paragraph with respect to:

1010 1. A controlled substance named or described in s.

1011 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.

1012 commits a felony of the first degree, punishable as provided in

1013 s. 775.082, s. 775.083, or s. 775.084.

1014 2. A controlled substance named or described in s.

1015 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

1016 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of

1017 the second degree, punishable as provided in s. 775.082, s.

1018 775.083, or s. 775.084.

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1019 (2)(a) Except as authorized by this chapter and chapter

1020 499, a person may not purchase, or possess with intent to

1021 purchase, a controlled substance. A person who violates this

1022 provision with respect to:

1023 1. A controlled substance named or described in s.

1024 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.

1025 commits a felony of the second degree, punishable as provided in

1026 s. 775.082, s. 775.083, or s. 775.084.

1027 2. A controlled substance named or described in s.

1028 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

1029 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of

1030 the third degree, punishable as provided in s. 775.082, s.

1031 775.083, or s. 775.084.

1032 3. A controlled substance named or described in s.

1033 893.03(5) commits a misdemeanor of the first degree, punishable

1034 as provided in s. 775.082 or s. 775.083.

1035 (4) Except as authorized by this chapter, a person 18 years

1036 of age or older may not deliver any controlled substance to a

1037 person younger than 18 years of age, use or hire a person

1038 younger than 18 years of age as an agent or employee in the sale

1039 or delivery of such a substance, or use such person to assist in

1040 avoiding detection or apprehension for a violation of this

1041 chapter. A person who violates this provision with respect to:

1042 (b) A controlled substance named or described in s.

1043 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

1044 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of

1045 the second degree, punishable as provided in s. 775.082, s.

1046 775.083, or s. 775.084.

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1048 Imposition of sentence may not be suspended or deferred, and the  
1049 person so convicted may not be placed on probation.

1050 (5) A person may not bring into this state any controlled  
1051 substance unless the possession of such controlled substance is  
1052 authorized by this chapter or unless such person is licensed to  
1053 do so by the appropriate federal agency. A person who violates  
1054 this provision with respect to:

1055 (b) A controlled substance named or described in s.  
1056 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
1057 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
1058 the third degree, punishable as provided in s. 775.082, s.  
1059 775.083, or s. 775.084.

1060 (7) (a) A person may not:

1061 1. Distribute or dispense a controlled substance in  
1062 violation of this chapter.

1063 2. Refuse or fail to make, keep, or furnish any record,  
1064 notification, order form, statement, invoice, or information  
1065 required under this chapter.

1066 3. Refuse entry into any premises for any inspection or  
1067 refuse to allow any inspection authorized by this chapter.

1068 4. Distribute a controlled substance named or described in  
1069 s. 893.03(1) or (2) except pursuant to an order form as required  
1070 by s. 893.06.

1071 5. Keep or maintain any store, shop, warehouse, dwelling,  
1072 building, vehicle, boat, aircraft, or other structure or place  
1073 which is resorted to by persons using controlled substances in  
1074 violation of this chapter for the purpose of using these  
1075 substances, or which is used for keeping or selling them in  
1076 violation of this chapter.

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1077 6. Use to his or her own personal advantage, or reveal, any  
1078 information obtained in enforcement of this chapter except in a  
1079 prosecution or administrative hearing for a violation of this  
1080 chapter.

1081 7. Possess a prescription form unless it has been signed by  
1082 the practitioner whose name appears printed thereon and  
1083 completed. This subparagraph does not apply if the person in  
1084 possession of the form is the practitioner whose name appears  
1085 printed thereon, an agent or employee of that practitioner, a  
1086 pharmacist, or a supplier of prescription forms who is  
1087 authorized by that practitioner to possess those forms.

1088 8. Withhold information from a practitioner from whom the  
1089 person seeks to obtain a controlled substance or a prescription  
1090 for a controlled substance that the person making the request  
1091 has received a controlled substance or a prescription for a  
1092 controlled substance of like therapeutic use from another  
1093 practitioner within the previous 30 days.

1094 9. Acquire or obtain, or attempt to acquire or obtain,  
1095 possession of a controlled substance by misrepresentation,  
1096 fraud, forgery, deception, or subterfuge.

1097 10. Affix any false or forged label to a package or  
1098 receptacle containing a controlled substance.

1099 11. Furnish false or fraudulent material information in, or  
1100 omit any material information from, any report or other document  
1101 required to be kept or filed under this chapter or any record  
1102 required to be kept by this chapter.

1103 12. Store anhydrous ammonia in a container that is not  
1104 approved by the United States Department of Transportation to  
1105 hold anhydrous ammonia or is not constructed in accordance with

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1106 sound engineering, agricultural, or commercial practices.  
 1107 13. With the intent to obtain a controlled substance or  
 1108 combination of controlled substances that are not medically  
 1109 necessary for the person or an amount of a controlled substance  
 1110 or substances that is not medically necessary for the person,  
 1111 obtain or attempt to obtain from a practitioner a controlled  
 1112 substance or a prescription for a controlled substance by  
 1113 misrepresentation, fraud, forgery, deception, subterfuge, or  
 1114 concealment of a material fact. For purposes of this  
 1115 subparagraph, a material fact includes whether the person has an  
 1116 existing prescription for a controlled substance issued for the  
 1117 same period of time by another practitioner or as described in  
 1118 subparagraph 8.

1119 Section 21. For the purpose of incorporating the amendment  
 1120 made by this act to section 893.03, Florida Statutes, in a  
 1121 reference thereto, paragraphs (b), (c), and (e) of subsection  
 1122 (3) of section 921.0022, Florida Statutes, are reenacted to  
 1123 read:

1124 921.0022 Criminal Punishment Code; offense severity ranking  
 1125 chart.-

1126 (3) OFFENSE SEVERITY RANKING CHART  
 1127 (b) LEVEL 2

1128  
 1129

Florida Statute	Felony Degree	Description
379.2431 (1) (e) 3.	3rd	Possession of 11 or fewer marine turtle eggs in violation

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1131 of the Marine Turtle Protection Act.

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

1132 403.413(6) (c) 3rd Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.

1133 517.07(2) 3rd Failure to furnish a prospectus meeting requirements.

1134 590.28(1) 3rd Intentional burning of lands.

1135 784.05(3) 3rd Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.

1136 787.04(1) 3rd In violation of court order, take, entice, etc., minor beyond state limits.

1137 806.13(1) (b) 3. 3rd Criminal mischief; damage

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			\$1,000 or more to public communication or any other public service.
1138	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
1139	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
1140	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
1141	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
1142	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
1143	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
1144			

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	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
1145	817.52(3)	3rd	Failure to redeliver hired vehicle.
1146	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
1147	817.60(5)	3rd	Dealing in credit cards of another.
1148	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
1149	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
1150	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
1151	831.01	3rd	Forgery.
1152	831.02	3rd	Uttering forged instrument;

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1153 utters or publishes alteration  
with intent to defraud.

1154 831.07 3rd Forging bank bills, checks,  
drafts, or promissory notes.

1155 831.08 3rd Possessing 10 or more forged  
notes, bills, checks, or  
drafts.

1156 831.09 3rd Uttering forged notes, bills,  
checks, drafts, or promissory  
notes.

1157 831.11 3rd Bringing into the state forged  
bank bills, checks, drafts, or  
notes.

1158 832.05(3)(a) 3rd Cashing or depositing item with  
intent to defraud.

1159 843.08 3rd False personation.

893.13(2)(a)2. 3rd Purchase of any s.  
893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)5.,  
(2)(c)6., (2)(c)7., (2)(c)8.,  
(2)(c)9., (3), or (4) drugs  
other than cannabis.

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1160 893.147(2) 3rd Manufacture or delivery of drug  
paraphernalia.

1161 (c) LEVEL 3

1162

1163

1164

Florida Statute	Felony Degree	Description
1165 119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
1166 316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
1167 316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
1168 316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
1169 319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
1170 319.33(1)(a)	3rd	Alter or forge any certificate

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				of title to a motor vehicle or mobile home.
1171	319.33(1)(c)	3rd		Procure or pass title on stolen vehicle.
1172	319.33(4)	3rd		With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
1173	327.35(2)(b)	3rd		Felony BUI.
1174	328.05(2)	3rd		Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
1175	328.07(4)	3rd		Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
1176	376.302(5)	3rd		Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
1177	379.2431 (1)(e)5.	3rd		Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring,

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				selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
1178	379.2431 (1)(e)6.	3rd		Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
1179	400.9935(4)(a) or (b)	3rd		Operating a clinic, or offering services requiring licensure, without a license.
1180	400.9935(4)(e)	3rd		Filing a false license application or other required information or failing to report information.
1181	440.1051(3)	3rd		False report of workers' compensation fraud or retaliation for making such a report.
1182	501.001(2)(b)	2nd		Tampers with a consumer product or the container using materially false/misleading

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				information.
1183	624.401(4)(a)	3rd		Transacting insurance without a certificate of authority.
1184	624.401(4)(b)1.	3rd		Transacting insurance without a certificate of authority; premium collected less than \$20,000.
1185	626.902(1)(a) & (b)	3rd		Representing an unauthorized insurer.
1186	697.08	3rd		Equity skimming.
1187	790.15(3)	3rd		Person directs another to discharge firearm from a vehicle.
1188	806.10(1)	3rd		Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
1189	806.10(2)	3rd		Interferes with or assaults firefighter in performance of duty.
1190	810.09(2)(c)	3rd		Trespass on property other than structure or conveyance armed

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				with firearm or dangerous weapon.
1191	812.014(2)(c)2.	3rd		Grand theft; \$5,000 or more but less than \$10,000.
1192	812.0145(2)(c)	3rd		Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
1193	815.04(5)(b)	2nd		Computer offense devised to defraud or obtain property.
1194	817.034(4)(a)3.	3rd		Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
1195	817.233	3rd		Burning to defraud insurer.
1196	817.234 (8)(b) & (c)	3rd		Unlawful solicitation of persons involved in motor vehicle accidents.
1197	817.234(11)(a)	3rd		Insurance fraud; property value less than \$20,000.
1198	817.236	3rd		Filing a false motor vehicle insurance application.

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1199	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
1200	817.413(2)	3rd	Sale of used goods as new.
1201	817.505(4)	3rd	Patient brokering.
1202	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
1203	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
1204	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
1205	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
1206	843.19	3rd	Injure, disable, or kill police dog or horse.

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1207	860.15(3)	3rd	Overcharging for repairs and parts.
1208	870.01(2)	3rd	Riot; inciting or encouraging.
1209	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).
1210	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.
1211	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
1212			

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1213	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
1214	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
1215	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
1216	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
1217	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
	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

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1218			or related to the practitioner's practice.
1219	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.
1220	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
1221	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
1222	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
1223	944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
	944.47(1)(c)	2nd	Possess contraband while upon

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				the grounds of a correctional institution.
1224	985.721	3rd		Escapes from a juvenile facility (secure detention or residential commitment facility).
1225				
1226	(e) LEVEL 5			
1227				
1228	Florida Statute	Felony Degree		Description
1229	316.027(2)(a)	3rd		Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
1230	316.1935(4)(a)	2nd		Aggravated fleeing or eluding.
1231	322.34(6)	3rd		Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
1232	327.30(5)	3rd		Vessel accidents involving personal injury; leaving scene.
1233				

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	379.367(4)	3rd		Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
1234	379.3671	3rd		Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
	(2)(c)3.			
1235	381.0041(11)(b)	3rd		Donate blood, plasma, or organs knowing HIV positive.
1236	440.10(1)(g)	2nd		Failure to obtain workers' compensation coverage.
1237	440.105(5)	2nd		Unlawful solicitation for the purpose of making workers' compensation claims.
1238	440.381(2)	2nd		Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
1239	624.401(4)(b)2.	2nd		Transacting insurance without a certificate or authority; premium collected \$20,000 or

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1240				
	626.902(1)(c)	2nd		Representing an unauthorized insurer; repeat offender.
1241				
	790.01(2)	3rd		Carrying a concealed firearm.
1242				
	790.162	2nd		Threat to throw or discharge destructive device.
1243				
	790.163(1)	2nd		False report of deadly explosive or weapon of mass destruction.
1244				
	790.221(1)	2nd		Possession of short-barreled shotgun or machine gun.
1245				
	790.23	2nd		Felons in possession of firearms, ammunition, or electronic weapons or devices.
1246				
	796.05(1)	2nd		Live on earnings of a prostitute; 1st offense.
1247				
	800.04(6)(c)	3rd		Lewd or lascivious conduct; offender less than 18 years of age.
1248				
	800.04(7)(b)	2nd		Lewd or lascivious exhibition;

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	20-01317-16		20161182__	offender 18 years of age or older.
1249				
	806.111(1)	3rd		Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
1250				
	812.0145(2)(b)	2nd		Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
1251				
	812.015(8)	3rd		Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
1252				
	812.019(1)	2nd		Stolen property; dealing in or trafficking in.
1253				
	812.131(2)(b)	3rd		Robbery by sudden snatching.
1254				
	812.16(2)	3rd		Owning, operating, or conducting a chop shop.
1255				
	817.034(4)(a)2.	2nd		Communications fraud, value \$20,000 to \$50,000.
1256				
	817.234(11)(b)	2nd		Insurance fraud; property value \$20,000 or more but less than

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1257	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.
1258	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.
1259	817.625(2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
1260	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
1261	827.071(4)	2nd	Possess with intent to promote any photographic material,

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

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1262	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
1263	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.
1264	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
1265	847.0135(5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
1266	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
1267	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by

Page 58 of 61

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

20-01317-16 20161182\_\_  
 electronic device or equipment.

1268 874.05(1)(b) 2nd Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

1269 874.05(2)(a) 2nd Encouraging or recruiting person under 13 years of age to join a criminal gang.

1270 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).

1271 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.

20-01317-16 20161182\_\_

1272 893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.

1273 893.13(1)(e)2. 2nd Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

1274 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.

1275 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.,

20-01317-16

20161182\_\_

(2) (c) 5., (2) (c) 6., (2) (c) 7.,  
(2) (c) 8., (2) (c) 9., (3), or (4)  
drugs).

1276

893.1351(1)

3rd

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

1277

1278

Section 22. This act shall take effect October 1, 2016.



# 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 14, 2016

The Honorable Greg Evers, Chair  
Senate Committee on Criminal Justice  
510 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Evers:

I respectfully request consideration of Senate Bill 1182/Controlled Substances at your earliest convenience.

This bill will revise scheduling requirements for the controlled substance known as Kratom. It would add Mitragynine and 7-Hydroxymitragynine, composition of Kratom, to the schedule of controlled substances. Additionally, the bill would allow for an exemption from scheduling for any drug that has previously been approved by the United States Food and Drug Administration.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jack Latvala".

Jack Latvala  
State Senator  
District 20

Cc: Amanda Cannon, Staff Director; Sue Arnold, 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)

2.8.16

Meeting Date

1182

Bill Number (if applicable)

Topic

SB 1182 Kratom

Amendment Barcode (if applicable)

Name

Kristie McDonald

Job Title

Business Owner

Address

312 S Dixie Highway

Phone

561 699 5747

Street

WPB

FL

33401

Email

klynn501@yahoo

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

Business owner

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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16  
Meeting Date

1192  
Bill Number (if applicable)

Topic SB 1192 - Kratom

Amendment Barcode (if applicable)

Name Susan Ash

Job Title Director

Address 1503 Powhatan Ct

Phone 757-633-6222

Street

Norfolk

City

VA

State

23508

Zip

Email SusanAsh@gmail.com

Speaking:  For  Against  Information

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

Representing American Kratom Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-6-16

Meeting Date

SB 1182

Bill Number (if applicable)

Topic SB 1182

Amendment Barcode (if applicable)

Name Michael Antihoni

Job Title Att

Address 714 Palmetto St.

Phone 772.321.8590

West Palm Beach FL 33405  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Kavasutra

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/8/16

Meeting Date

1182

Bill Number (if applicable)

Topic SB1182

Amendment Barcode (if applicable)

Name MICHAEL KLEIN

Job Title COO

Address 4351 N BROWNING DR

Phone 561 317 9792

Street

WEST PALM BEACH FL 33406

Email mike.klein01@gmail

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16

Meeting Date

SB 1182

Bill Number (if applicable)

Topic Kratom

Amendment Barcode (if applicable)

Name James Owens

Job Title Porter

Address 612 Dora Ave  
Street

Phone 407 969 1416

Tavares FL 32778  
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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-9-16  
Meeting Date

SB1182  
Bill Number (if applicable)

Topic KRATOM

Amendment Barcode (if applicable)

Name ~~THE Healthy BUDDAH~~ Jon Goble

Job Title OWNER

Address 803 W FAIRBANKS  
Street

Phone 352 406 2906

Winter Park FL 32789  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing THE HEALTHY BUDDAH

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/8/16

Meeting Date

SB 1182  
~~HB 73~~

Bill Number (if applicable)

Topic Kratom

Amendment Barcode (if applicable)

Name Jaclyn Pelchat

Job Title Mom / owner

Address 13509 oak Bend Dr.

Phone 6263217457

Street

Grand Island FL

32735

Email jackiepelchat@gmail

City

State

Zip

Speaking:  For  Against  Information

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

Representing Me + people I represent

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16  
Meeting Date

1182  
Bill Number (if applicable)

Topic SB 1182

Amendment Barcode (if applicable)

Name Sean Simpson

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

Address 1100 ~~24th~~ AVE N  
Street

Phone 727 804 9754

St. Pete, FL 33704  
City State Zip

Email lowtideSean@gmail.com

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.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16  
Meeting Date

1182  
Bill Number (if applicable)

Topic SB 1182

Amendment Barcode (if applicable)

Name Matt Wright

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

Address 25B FAH St S  
Street

Phone 5712166534

EdFport FL 33707  
City State Zip

Email MRWRIGHT79@  
gmail

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.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02/08/16  
Meeting Date

1182  
Bill Number (if applicable)

Topic KRATOM - ~~SB~~ SB 1182

Amendment Barcode (if applicable)

Name TOBY HARRISON

Job Title OWNER IE MANA KAVA BAR

Address 521 CLEMATIS ST  
Street

Phone (561) 835-3921

WPA  
City

FL  
State

33405  
Zip

Email TOBO4960@AOL.COM

Speaking:  For  Against  Information

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

Representing IE MANA KAVA BAR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02-08-16  
Meeting Date

SB1182  
Bill Number (if applicable)

Topic Kratom

Amendment Barcode (if applicable)

Name Greg Averill

Job Title Disabled Vet

Address 3019 Plymouth Oaks Rd.  
Street

Phone 407 808 5160

Apopka FL 32712  
City State Zip

Email averillgreg3@gmail.com

Speaking:  For  Against  Information

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

Representing self

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16

Meeting Date

1182

Bill Number (if applicable)

Topic SB 1182

Amendment Barcode (if applicable)

Name Lydia Vazquez

Job Title self-employed

Address 235 Dyer Road  
Street

Phone \_\_\_\_\_

W Palm Beach FL 33405  
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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Feb 9, 2014

Meeting Date

1182

Bill Number (if applicable)

Topic CONTROLLED SUBSTANCES (SCT 4:00  
375)

Amendment Barcode (if applicable)

Name LAURA YOUMANS

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

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ 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

*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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-08-16  
Meeting Date

1182  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name THAD LOWREY

Job Title VP Government Relations

Address 7720 Washington St St 102  
Street

Phone 727-992-8508

PORT RICHEY FL 34868  
City State Zip

Email Howey@openpar.org

Speaking:  For  Against  Information

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

Representing OPERATION PAR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

8 Feb 2016  
Meeting Date

1182 <sup>as amended</sup>  
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Bill Ewan

Job Title Legislative / Public Policy

Address 3818 Mahan Dr  
Street

Phone 850 878 2916

Tallahassee FL 32307  
City State Zip

Email bill@fadaa.org

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2.8.16  
Meeting Date

1182  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Mike Dombrowski

Job Title Business Owner

Address 912 W. Kalam Dr.  
Street

Phone 772 333 5927

Lake Park FL 33103  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Tenaga Kava

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

182  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Amendment Barcode (if applicable) \_\_\_\_\_

Topic Katon

Name ROD VAN TASSEL

Job Title OWNER OF KAVASUTS KAVABAR

Address 931 Village Blvd 905-498

Phone 561-523-5723

Street W.P.B State FL Zip 33404

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing KAVASUTS

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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**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 Committee on Criminal Justice

---

BILL: SB 1314

INTRODUCER: Senators Dean and Margolis

SUBJECT: Public Records/Witness to a Felony

DATE: February 5, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			GO	
3.			FP	

---

**I. Summary:**

SB 1314 creates a public records exemption for personal identifying information of a witness to a felony. Such information may not be released to a newspaper. The exemption applies to each witness for a period of 2 years following the commission of the felony observed by the witness.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the Florida Constitution.

The Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

**II. Present Situation:**

**Public Records Exemptions for Certain Investigation Information**

Currently, s. 119.071(2), F.S., in relevant part, provides public records exemptions for various types of personal information of specified parties involved in the investigation of a crime. Information exempt from public records requirements includes information revealing the identity of a confidential informant or a confidential source,<sup>1</sup> information revealing the identity of a victim of a child abuse offense,<sup>2</sup> and information revealing the identity of a victim of any sexual offense.<sup>3</sup>

---

<sup>1</sup> Section 119.071(2)(f), F.S.

<sup>2</sup> Section 119.071(2)(h)1.a., F.S.

<sup>3</sup> Section 119.071(2)(h)1.b., F.S.

## Witness to a Crime

News articles have recently reported on several homicides that occurred in 2015 in the Tampa area that remain unsolved.<sup>4</sup> The victim of one of the unsolved murders was Edward Harris, a 14-year-old boy who was murdered in a park.<sup>5</sup> A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015, Mr. Harris was the witness to multiple crimes that resulted in arrests.<sup>6</sup> Mr. Harris's family has made statements indicating they believe he was murdered as a result of talking to police. Twelve detectives within the Hillsborough County area have been quoted in the media as stating witnesses to crimes refuse to come forward, often out of fear of retaliation and for their safety.<sup>7</sup>

Currently, there is no public record exemption for the personal identifying information of a witness to a crime.

## 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>8</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>9</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>10</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>11</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>12</sup>

---

<sup>4</sup> Dan Sullivan, "Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders" (October 29, 2012), Tampa Bay Times, available at <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784> (last visited on February 2, 2016); Sue Carlton, "Solutions to street violence elusive amid anti-snitching culture" (June 2, 2015), Tampa Bay Times, available at <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047> (last visited on February 2, 2016).

<sup>5</sup> Stephanie Slifer, "Dad believes son was killed in Tampa drive-by shooting for talking to cops" (June 2, 2015), CBS News, available at <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/> (last visited on February 2, 2016).

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

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

<sup>8</sup> FLA. CONST., art. I, s. 24(a).

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

<sup>10</sup> Ch. 119, F.S.

<sup>11</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 *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992).

<sup>12</sup> Section 119.07(1)(a), F.S.

Only the Legislature may create an exemption to public records requirements.<sup>13</sup> This exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>14</sup> There is a difference between records the Legislature designates 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.<sup>15</sup> 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.<sup>16</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>17</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>18</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records exemptions.<sup>19</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>20</sup>

The OGSR provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.<sup>21</sup> An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption.
- The release of sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt.
- It protects trade or business secrets.<sup>22</sup>

In addition, the Legislature must find that the purpose of the exemption overrides Florida’s public policy strongly favoring open government.

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<sup>13</sup> FLA. CONST., art. I, s. 24(c).

<sup>14</sup> *Id.*

<sup>15</sup> *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). Attorney General Opinion 85-62, (August 1, 1985).

<sup>16</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004) and *Wait v. Florida Power and Light Co.*, 372 So.2d 420 (Fla. 1979).

<sup>17</sup> However, the bill may contain multiple exemptions that relate to one subject.

<sup>18</sup> FLA. CONST., art. I, s. 24(c).

<sup>19</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

<sup>20</sup> Section 119.15(3), F.S.

<sup>21</sup> Section 119.15(6)(b), F.S.

<sup>22</sup> Section 119.15(6)(b)1.-3., F.S.

The OGSR also requires specified questions to be considered during the review process.<sup>23</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. These specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?<sup>24</sup>

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>25</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>26</sup>

### III. Effect of Proposed Changes:

The bill creates s. 119.071(2)(m), F.S., to provide that the personal identifying information of a witness to a felony is exempt from s. 119.07(1), F.S., and article I, section 24(a), of the Florida Constitution. Such information may not be released to a newspaper, as that term is described in s. 50.011, F.S. The exemption applies to each witness for a period of 2 years following the commission of the felony observed by the witness.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution.<sup>27</sup> This statement includes the following findings:

- The judicial system cannot function without the participation of witnesses.
- Complete cooperation and truthful testimony of witnesses are essential to the determination of the facts of a case.
- The public disclosure of personal identifying information of a witness to a felony, including disclosure to a newspaper, could have a chilling effect on persons stepping forward and providing their accounts of felony crimes that have been witnessed.
- A witness to a felony may be unwilling to cooperate fully with law enforcement officers if the witness knows his or her personal identifying information can be made publicly available.

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<sup>23</sup> Section 119.15(6)(a), F.S.

<sup>24</sup> Section 119.15(6)(a)1.-6., F.S.

<sup>25</sup> FLA. CONST., art. I, s. 24(c).

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> FLA. CONST., art. I, s. 24(c).

- A witness may be less likely to call a law enforcement officer and report a crime if his or her personal identifying information is made available in connection with the felony that is being reported or under investigation.
- A witness could become the subject of intimidation tactics or threats by the perpetrator of the felony if the witness's personal identifying information is publicly available.

The bill takes effect on July 1, 2016.

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

##### **A. Municipality/County Mandates Restrictions:**

None.

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

###### **Vote Requirement**

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

###### **Public Necessity Statement**

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption and includes a public necessity statement.

###### **Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the bill does not appear to be in conflict with this constitutional requirement.

##### **C. Trust Funds Restrictions:**

None.

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

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public records exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. However, the costs should be absorbed as they relate to day-to-day responsibilities of agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

An exemption from public records requirements does not render a document automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure or in administrative proceedings.<sup>28</sup>

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 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.)

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>28</sup> See *Department of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069 (Fla. 3d DCA 1984) (“Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.”); *B.B. v. Department of Children and Family Services*, 731 So. 2d 30, 34 (Fla. 4th DCA 1999) (holding that the statutory exemption for active criminal investigative information did not “override the discovery authorized by the Rules of Juvenile Procedure.”).



849632

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .

House

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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (m) is added to subsection (2) of  
section 119.071, Florida Statutes, to read:

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

(2) AGENCY INVESTIGATIONS.—

(m)1. Notwithstanding any other provision of this



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11 subsection, the personal identifying information of a witness to  
12 a murder, as described in s. 782.04, is confidential and exempt  
13 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
14 for 2 years after the date on which the murder is observed by  
15 the witness. The personal identifying information may be  
16 disclosed only to a criminal justice agency or governmental  
17 entity for use in the performance of its official duties and  
18 responsibilities.

19 2. This paragraph is subject to the Open Government Sunset  
20 Review Act in accordance with s. 119.15 and shall stand repealed  
21 on October 2, 2021, unless reviewed and saved from repeal  
22 through reenactment by the Legislature.

23 Section 2. Paragraph (k) is added to subsection (1) of  
24 section 119.0714, Florida Statutes, to read:

25 119.0714 Court files; court records; official records.—

26 (1) COURT FILES.—Nothing in this chapter shall be construed  
27 to exempt from s. 119.07(1) a public record that was made a part  
28 of a court file and that is not specifically closed by order of  
29 court, except:

30 (k) Personal identifying information of a witness to a  
31 murder as provided in s. 119.071(2)(m).

32 Section 3. The Legislature finds that it is a public  
33 necessity that personal identifying information of a witness to  
34 a murder, as described in s. 782.04, Florida Statutes, be made  
35 confidential and exempt from s. 119.07(1), Florida Statutes, and  
36 s. 24(a), Article I of the State Constitution for 2 years after  
37 the date on which the murder is observed by the witness. The  
38 judicial system cannot function without the participation of  
39 witnesses. Complete cooperation and truthful testimony of



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40 witnesses is essential to the determination of the facts of a  
41 case. The public disclosure of personal identifying information  
42 of a witness to a murder could have an undesirable chilling  
43 effect on witnesses stepping forward and providing their  
44 eyewitness accounts of murders. A witness to a murder may be  
45 unwilling to cooperate fully with law enforcement officers if  
46 the witness knows his or her personal identifying information  
47 can be made publicly available. A witness may be less likely to  
48 call a law enforcement officer and report a murder if his or her  
49 personal identifying information is made available in connection  
50 with the murder that is being reported or under investigation.  
51 The Legislature further finds that a witness could become the  
52 subject of intimidation tactics or threats by the perpetrator of  
53 the murder if the witness's personal identifying information is  
54 publicly available. For these reasons, the Legislature finds  
55 that it is a public necessity that the personal identifying  
56 information of a witness to a murder, as described in s. 782.04,  
57 Florida Statutes, be made confidential and exempt from public  
58 record requirements.

59 Section 4. This act shall take effect July 1, 2016.

60  
61 ===== T I T L E A M E N D M E N T =====

62 And the title is amended as follows:

63 Delete everything before the enacting clause  
64 and insert:

65 A bill to be entitled  
66 An act relating to public records; amending s.  
67 119.071, F.S.; providing an exemption from public  
68 records requirements for personal identifying



849632

69 information of a witness to a murder for a specified  
70 period; authorizing specified entities to receive the  
71 information; providing for future legislative review  
72 and repeal of the exemption; amending s. 119.0714,  
73 F.S.; providing that the public records exemption  
74 applies to personal identifying information of a  
75 witness to a murder which is made part of a court  
76 file; providing a statement of public necessity;  
77 providing an effective date.

By Senator Dean

5-00902-16

20161314\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 119.071, F.S.; providing an exemption from public  
 4 records requirements for personal identifying  
 5 information of a witness to a felony; prohibiting  
 6 release of such information to a newspaper; providing  
 7 a time limit to the exemption; providing for future  
 8 legislative review and repeal of the exemption;  
 9 providing a statement of public necessity; providing  
 10 an effective date.

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

14 Section 1. Paragraph (m) is added to subsection (2) of  
 15 section 119.071, Florida Statutes, to read:

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

18 (2) AGENCY INVESTIGATIONS.—

19 (m)1. Notwithstanding any other provision of this  
 20 subsection, the personal identifying information of a witness to  
 21 a felony is exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 22 State Constitution. Such information may not be released to a  
 23 newspaper, as that term is described in s. 50.011. This  
 24 exemption shall apply to each witness for a period of 2 years  
 25 following the commission of the felony observed by the witness.

26 2. This paragraph is subject to the Open Government Sunset  
 27 Review Act in accordance with s. 119.15 and shall stand repealed  
 28 on October 2, 2021, unless reviewed and saved from repeal  
 29 through reenactment by the Legislature.

30 Section 2. The Legislature finds that it is a public  
 31 necessity that personal identifying information of a witness to  
 32 a felony be made exempt from s. 119.07(1), Florida Statutes, and

Page 1 of 2

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

5-00902-16

20161314\_\_

33 s. 24(a), Article I of the State Constitution. The judicial  
 34 system cannot function without the participation of witnesses.  
 35 Complete cooperation and truthful testimony of witnesses are  
 36 essential to the determination of the facts of a case. The  
 37 public disclosure of personal identifying information of a  
 38 witness to a felony, including disclosure to a newspaper as the  
 39 term is described in s. 50.011, Florida Statutes, could have a  
 40 chilling effect on persons stepping forward and providing their  
 41 accounts of felony crimes that have been witnessed. A witness to  
 42 a felony may be unwilling to cooperate fully with law  
 43 enforcement officers if the witness knows his or her personal  
 44 identifying information can be made publicly available. A  
 45 witness may be less likely to call a law enforcement officer and  
 46 report a crime if his or her personal identifying information is  
 47 made available in connection with the felony that is being  
 48 reported or under investigation. The Legislature further finds  
 49 that a witness could become the subject of intimidation tactics  
 50 or threats by the perpetrator of the felony if the witness's  
 51 personal identifying information is publicly available. For  
 52 these reasons, the Legislature finds that it is a public  
 53 necessity that the personal identifying information of a witness  
 54 to a felony be made exempt from public record requirements.

55 Section 3. This act shall take effect July 1, 2016.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Environmental Preservation and  
Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General  
Government  
Children, Families, and Elder Affairs  
Communications, Energy, and Public Utilities  
Community Affairs

SENATOR CHARLES S. DEAN, SR.  
5th District

February 8, 2016

The Honorable Greg Evers  
308 Senate Office Building  
404 South Monroe St.  
Tallahassee, FL 32399-1100

Dear Chairman Evers:

Thank you for allowing Senate Bill 1314, relating to Public Records/Witness to a Felony, to be placed on your agenda. Unfortunately, I will be unable to attend the Committee meeting and would like to request your permission to allow my aide, Kyle Langan, to present this bill in my place.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Dean".

Charles S. Dean  
State Senator, District 5

Cc: Amanda Cannon, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

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

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and  
Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General  
Government  
Children, Families, and Elder Affairs  
Community Affairs  
Ethics and Elections

**SENATOR CHARLES S. DEAN, SR.**  
5th District

January 20, 2016

The Honorable Greg Evers  
308 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Evers,

I respectfully request you place Senate Bill 1314, relating to Public Records/Witness to a Felony, on your Criminal Justice Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Dean".

Charles S. Dean  
State Senator District 5

cc: Amanda Cannon, Staff Director

**REPLY TO:**

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

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)

2-8-16  
Meeting Date

SB 1314  
Bill Number (if applicable)

849632  
Amendment Barcode (if applicable)

Topic Public Records / Witness to A Felony

Name GARY BRADFORD

Job Title Government Relations

Address 300 E. Breward St  
Street

Phone 800-733-3722

Tallahassee FL 33601  
City State Zip

Email GARY@FLPBA.COM

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.**

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

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

FEB 8, 2016

*Meeting Date*

1314

*Bill Number (if applicable)*

Topic Public Records/Witness to a Felony

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

*Street*

Tallahassee

*City*

FL

*State*

32308

*Zip*

Phone 850-274-3599

Email mdunagan@flsheriffs.org

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)

2/8/16  
Meeting Date

SB 1314  
Bill Number (if applicable)

Topic Public Records/Witness to a Felony

Amendment Barcode (if applicable)

Name Ed Brodsky

Job Title State Attorney 12<sup>th</sup> Circuit (Sarasota)

Address 2071 Ringling Blvd  
Street  
Sarasota FL  
City State Zip

Phone (941) 861-4400

Email ebrodsky@segov.net

Speaking:  For  Against  Information

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

Representing State Attorneys 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.

**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 Committee on Criminal Justice

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BILL: SB 1352

INTRODUCER: Senator Smith

SUBJECT: Autism Awareness Training for Law Enforcement Officers

DATE: February 5, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

---

**I. Summary:**

SB 1352 requires the Florida Department of Law Enforcement to establish an online continued employment training component relating to autism spectrum disorder. Instruction must include, but is not limited to, instruction on the recognition of the symptoms and idiosyncrasies of an individual on the autism disorder spectrum and appropriate responses to a person exhibiting such symptoms and idiosyncrasies. The bill specifies that completion of the training component may count toward the 40 hours of required instruction for continued employment or appointment as a law enforcement officer.

**II. Present Situation:**

**Autism Spectrum Disorder**

The Center for Disease Control (CDC) estimates that 1 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 ASD people 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>

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<sup>1</sup> “Autism Spectrum Disorder (ASD),” National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, available at <http://www.cdc.gov/ncbddd/autism/research.html> (last visited on February 2, 2016). Data is from the Autism and Developmental Disabilities Monitoring (ADDM) Network.

<sup>2</sup> “Autism Spectrum Disorder (ASD),” National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, available at <http://www.cdc.gov/ncbddd/autism/facts.html> (last visited on February 2, 2016).

Though formerly diagnosed separately, autistic disorder, pervasive developmental disorder, and Asperger syndrome are now included in the diagnosis of ASD.<sup>3</sup>

The following definitions are codified in Florida law:

- “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:
  - Autistic disorder;
  - Asperger’s syndrome; and
  - Pervasive developmental disorder not otherwise specified.<sup>6</sup>

### **Law Enforcement Training on Autism Spectrum Disorder**

In order to maintain their certification, law enforcement officers must satisfy the continuing training and education requirements of s. 943.135, F.S., which requires officers, as a condition of continued employment or appointment, to receive continuing training or education at the rate of 40 hours every 4 years. The employing agency must document that the continuing training or education is job-related and consistent with the needs of the employing agency, and report completion of the training to the Criminal Justice Standards and Training Commission (CJSTC).<sup>7</sup>

The CJSTC does not offer specific post-basic training on autism spectrum disorder (ASD). Agencies wanting to offer training to their officers rely on CJSTC-certified training schools or vendors to provide training on this topic. Training schools may use CJSTC Trust Fund monies to deliver the training. This training topic is also provided in the Crisis Intervention Team training (CIT) program (the Memphis Model) that is offered independently through training facilitated by the Florida Sheriff’s Association statewide for a period of three years beginning with FY 2015-16.

The topic of ASDs is included in two sections of the Florida Law Enforcement Academy basic recruit curriculum:

- Chapter 3 (Interactions in a Diverse Community), Unit 2 (Communicating in a Diverse Society), Lesson 3 (Developmental Disabilities); and

<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.

<sup>7</sup> Information in this section of the analysis is from: Analysis of SB 1182 (January 15, 2016), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This analysis is further cited as “FDLE Analysis.”

- Chapter 6 (Calls for Service), Unit 6 (Responding to a Person in Crisis), Lesson 2 (Intervention and Referral).

There is no set number of training hours specifically for autism spectrum disorder. For purpose of reference, Chapter 3 (Interactions in a Diverse Community) is 40 classroom hours and Chapter 6 (Calls for Service) is 36 classroom hours. Instructors for each of the referenced chapters are given resources such as videos and links to informational websites to aid classroom instruction. An instructor guide is provided to all instructors that, along with the required activities, includes suggested activities. Examples of suggested activities are reviewing websites such as [floridaautismcenter.info](http://floridaautismcenter.info), [florida-card.org](http://florida-card.org), and [autismfl.com](http://autismfl.com), reviewing case law, and inviting a guest speaker from the Autism Society or a member of the Exceptional Student Education Program (ESE).

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

The bill creates s. 943.1727, F.S., which requires the Florida Department of Law Enforcement to establish an online continued employment training component relating to autism spectrum disorder. Instruction must include, but is not limited to, instruction on the recognition of the symptoms and idiosyncrasies of an individual on the autism disorder spectrum and appropriate responses to a person exhibiting such symptoms and idiosyncrasies. The bill specifies that completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135, F.S.

The bill takes effect on 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 bill requires the Florida Department of Law Enforcement (FDLE) to develop an online course of instruction on the recognition of the symptoms and idiosyncrasies of an individual on the autism disorder spectrum and appropriate responses to the individual. The FDLE estimates that the development of the training will cost a minimum of \$11,934.78. The FDLE states that it basis this estimate on current estimates for curriculum development workshops and the production of online training, which may require actors and videotaping.<sup>8</sup>

**VI. Technical Deficiencies:**

Although not a technical “deficiency,” the FDLE has recommended a minor technical amendment to remove the word “online” as it appears on line 17 of the bill, which references “online continued employment training component.” The FDLE states:

The purpose of this bill is for law officers to take and complete training that will enable them to recognize the symptoms and idiosyncrasies of an individual with an autism spectrum disorder and respond appropriately. We recommend that the bill not specify a particular method of delivery for this topic. This course should offer the individuals attending the training some form of exposure to persons with an autism disorder. The training may also include the opportunity for persons familiar with the disorder to act as guest instructors. With a clear understanding of intent of the training, the instructional design staff can, with the Criminal Justice Standards and Training Commission’s approval, determine the most effective means for delivering the training, whether through classroom instruction, online training, or both....<sup>9</sup>

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 943.1727 of the Florida Statutes.

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<sup>8</sup> FDLE Analysis.

<sup>9</sup> FDLE Analysis.

**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 Smith

31-01460-16

20161352\_\_

1 A bill to be entitled

2 An act relating to autism awareness training for law  
3 enforcement officers; creating s. 943.1727, F.S.;  
4 requiring the Department of Law Enforcement to  
5 establish an online continued employment training  
6 component relating to autism spectrum disorder;  
7 specifying instruction to be included in the training  
8 component; providing that completion of the training  
9 may count toward continued employment instruction  
10 requirements; providing an effective date.

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

13  
14 Section 1. Section 943.1727, Florida Statutes, is created  
15 to read:

16 ~~943.1727 Continued employment training relating to autism.-~~  
17 The department shall establish an online continued employment  
18 training component relating to autism spectrum disorder. The  
19 training component shall include, but need not be limited to,  
20 instruction on the recognition of the symptoms and  
21 idiosyncrasies of an individual on the autism disorder spectrum  
22 and appropriate responses to a person exhibiting such symptoms  
23 and idiosyncrasies. Completion of the training component may  
24 count toward the 40 hours of instruction for continued  
25 employment or appointment as a law enforcement officer required  
26 under s. 943.135.

27 Section 2. This act shall take effect October 1, 2016.

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

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

FEB 8, 2016

*Meeting Date*

1352

*Bill Number (if applicable)*

Topic Autism Awareness Training for Law Enforcement Officers

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

*Street*

Tallahassee

*City*

FL

*State*

32308

*Zip*

Phone 850-274-3599

Email mdunagan@flsheriffs.org

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 Committee on Criminal Justice

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BILL: SB 1382

INTRODUCER: Senator Flores

SUBJECT: Victim and Witness Protection

DATE: February 5, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Pre-meeting</b>
2.			JU	
3.			FP	

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**I. Summary:**

SB 1382 broadens the application of the witness or victim protections found in ss. 92.53, and 92.54, F.S., by amending the cut-off age from under the age of 16 to under the age of 18. The bill therefore extends the court’s statutory authority to order videotaped or closed circuit testimony if necessary to protect a witness or victim who is a minor from “at least moderate emotional or mental harm due to the presence of the defendant” if the child is required to testify in open court in the defendant’s presence.

Likewise, the age is increased from under the age of 16 to under the age of 18 in s. 92.55, F.S., to extend the protections of those court orders intended to protect a victim or witness from “severe emotional or mental harm due to the presence of the defendant.” The definition of “sexual offense victim or witness” is also amended in s. 92.55, F.S., extending the age limitation by two years.

In s. 92.55, F.S., as amended by the bill, a person appointed by the court pursuant to s. 914.17, F.S.,<sup>1</sup> will be able to move the court to enter a protective order on behalf of the victim or witness.

Section 794.022, F.S., dealing with rules of evidence is amended to include victims of human trafficking and victims of lewd or lascivious offenses<sup>2</sup> in the list of offenses for which the admission of certain evidence may be limited. The bill provides that victims of those crimes need not have their testimony corroborated nor should specific instances of prior consensual sexual activity with anyone other than the offender be admitted into evidence in a criminal prosecution

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<sup>1</sup> Section 914.17, F.S., provides for a guardian ad litem or other advocate to be appointed by the court to represent the interests of a minor in a criminal proceeding where the minor is a victim of or a witness to child abuse or neglect, a victim of a sexual offense, or a witness to a sexual offense committed against another minor. “Advocate” is not defined in Chapter 914, F.S.

<sup>2</sup> Sections 787.06 and 800.04, F.S.

except under limited circumstances. This section of law is referenced in s. 90.404, F.S., therefore paragraph (b) of subsection (1) of that statute is reenacted by the bill.

The bill becomes effective July 1, 2016.

## II. Present Situation:

### Victim or Witness Testimony

Florida law currently contains a constitutional provision and several statutes providing for certain treatment of victims and witnesses.<sup>3</sup> A number of these statutes authorize the court to provide special protections to a victim or witness who is under 16 years of age or who has an intellectual disability or to a victim or witness of a sexual offense who is under 16 years of age.

Sections 92.53 and 92.54, F.S., authorize a court to enter a protective order after a motion and hearing in camera<sup>4</sup> if the court finds that the protected individual is a victim or witness who is under the age of 16 or has an intellectual disability,<sup>5</sup> and that:

- It is substantially likely the protected individual would suffer at least moderate emotional or mental harm due to the presence of the defendant if the protected individual were required to testify in open court; or
- The court determines that the protected individual is unavailable<sup>6</sup> to testify.

When the above circumstances are met, the court has several options. The court may order the protected individual's testimony be videotaped and used in lieu of testimony in open court.<sup>7</sup> In the event of such an order, the defendant and the defendant's counsel must be permitted to be present at any videotaping, but the court may order the defendant to view the testimony from outside the presence of the protected individual.<sup>8</sup> Alternatively, the court may require that the protected individual's testimony be taken outside the courtroom and shown in the courtroom by means of closed circuit television.<sup>9</sup> Only the specified parties<sup>10</sup> may be permitted in the room

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<sup>3</sup> See, e.g., FLA. CONST. art. I, s. 16; ss. 92.53-55, F.S.; s. 914.25, F.S.; s. 914.27.

<sup>4</sup> A hearing "in camera" means the hearing is held in the judge's chambers or held in a courtroom where all spectators are excluded from being present. DUHAIME'S LAW DICTIONARY, *In Camera Definition*, <http://www.duhaime.org/LegalDictionary/I/InCamera.aspx> (last visited Jan. 14, 2016).

<sup>5</sup> Under the procedure provided in s. 92.53, F.S., "intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. s. 393.063, F.S.

<sup>6</sup> A witness or potential witness is considered unavailable to testify when he or she: 1) Is exempted from testifying by a ruling of a court due to a legal privilege; 2) Refuses to testify concerning the subject matter of his or her statement despite a court order to testify; 3) Has suffered a lack of memory of the subject matter of his or her statement; 4) Is unable to be present or to testify at the hearing because of death, illness or infirmity; or 5) Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance by reasonable means. s. 90.804(1), F.S.

<sup>7</sup> Section 92.53(1), F.S.

<sup>8</sup> Section 92.53(4), F.S.

<sup>9</sup> Section 92.54(1), F.S.

<sup>10</sup> Only the judge, prosecutor, the defendant and his or her attorney, any video equipment operators, and interpreter, or any other person who is not going to be a witness in the case and, in the opinion of the court, benefits the well-being of the protected individual. s. 92.54(3), F.S.

when the testimony is recorded.<sup>11</sup> The judge may require the defendant to view the testimony from the courtroom, but must permit the defendant to observe and hear the person's testimony.<sup>12</sup>

Section 92.55, F.S., authorizes the court to enter a wide variety of protective orders to protect victims and witnesses under 16 years of age, sexual offense<sup>13</sup> victims or witnesses under 16 years of age,<sup>14</sup> and persons with an intellectual disability.<sup>15</sup> A motion for protection can be raised by any party to the case, a parent, a guardian, an attorney, a guardian ad litem, or the court.<sup>16</sup> The court must find that such order is necessary to protect the person from severe emotional or mental harm due to the defendant's presence if the person is required to testify in open court.<sup>17</sup>

The court is required to consider a lengthy list of factors, including, but not limited to the age of the person, the nature of the offense, and the functional capacity of the person if he or she has an intellectual disability.<sup>18</sup>

The court may enter orders taking the following actions, in addition to any other relief available under the law:

- Limit the number of times that the person may be interviewed;
- Prohibit depositions of the person;
- Require the submission of questions prior to examination of the person;
- Set the place and conditions for interviewing the person or for other proceedings;
- Permit or prohibit the attendance of any person at a proceeding; and
- Permit the use of a service animal during the person's testimony in any sexual offense proceeding.<sup>19</sup>

### **Inadmissible Evidence**

In many U.S. jurisdictions, laws exist to prevent specific instances of the victim's prior sexual conduct from being admitted at trial in a prosecution for sexual battery or other sexual misconduct charges.<sup>20</sup>

<sup>11</sup> Section 92.54(3), F.S.

<sup>12</sup> Section 92.54(4), F.S.

<sup>13</sup> "Sexual offense" means any offense specified in s. 775.21(4)(a)1., F.S. (Sexual Predator criteria), or s. 943.0435(1)(a)1.a.(I), F.S. (Sexual Offender criteria).

<sup>14</sup> A "sexual offense victim or witness" means a person who was under 16 years old when he or she was the victim of or a witness to a sexual offense. s. 92.55(1)(a), F.S.

<sup>15</sup> Section 92.55(1)(b), F.S.

<sup>16</sup> Section 92.55(2), F.S.

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

<sup>18</sup> Section 92.55(3), F.S.

<sup>19</sup> Section 92.55(4) and (5), F.S.

<sup>20</sup> Nat'l Dist. Attorney's Ass'n, *Rape Shield Statutes*, NAT'L DIST. ATTORNEY'S ASS'N (March 2011) (available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiMI-Xc06XKAhWFHD4KHVs-ByAQFggcMAA&url=http%3A%2F%2Fwww.ndaa.org%2Fpdf%2FNCPCA%2520Rape%2520Shield%25202011.pdf&usg=AFQjCNGb9ME\\_OADBM-qIDOCmtYCs3dYB7g](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiMI-Xc06XKAhWFHD4KHVs-ByAQFggcMAA&url=http%3A%2F%2Fwww.ndaa.org%2Fpdf%2FNCPCA%2520Rape%2520Shield%25202011.pdf&usg=AFQjCNGb9ME_OADBM-qIDOCmtYCs3dYB7g)) (last visited Jan. 12, 2016).

These laws are commonly referred to as “Rape Shield” laws.<sup>21</sup> Section 794.022, F.S., is Florida’s Rape Shield law, and it has long been considered a codification of the rule of relevancy that a victim’s prior sexual conduct is generally irrelevant in determining the defendant’s guilt.<sup>22</sup> It applies only to criminal prosecutions for sexual battery under s. 794.011, F.S., and provides that:

- The victim’s testimony doesn’t have to be corroborated by other evidence;
- Specific instances of the victim’s sexual history with people other than the offender are inadmissible unless:
  - The evidence is introduced to prove that the defendant wasn’t the source of physical evidence, such as semen; or
  - When consent is at issue, the evidence proves a pattern of the victim’s conduct or behavior that is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.
- The victim’s reputation for sexual behavior is inadmissible;
- Evidence presented to prove the victim’s appearance prompted the sexual battery is inadmissible;
- When consent is a defense, evidence of the victim’s mental incapacity or defect can be admitted to prove that consent was not given;
- An offender’s use of a prophylactic device, or a victim’s request that an offender use a prophylactic device, is not independently relevant.<sup>23</sup>

The United States Code also has a Rape Shield statute. In contrast to Florida’s Rape Shield law, the federal statute is not limited to sexual battery offenses; rather, the federal statute applies to *any* criminal or civil proceeding involving alleged sexual misconduct.<sup>24</sup> As such, federal courts have repeatedly held that a victim’s prior history of sexual behavior, such as exotic dancing or prostitution, is irrelevant and inadmissible in prosecutions for crimes such as sex trafficking, forced labor, sex trafficking by force, fraud, or coercion, and sex trafficking of a child.<sup>25</sup>

### III. Effect of Proposed Changes:

The bill broadens the application of the witness or victim protections found in ss. 92.53, and 92.54, F.S., by amending the cut-off age from under the age of 16 to under the age of 18. This will allow the court to protect a witness or victim who is a minor from “at least moderate emotional or mental harm due to the presence of the defendant” if the child is required to testify in open court in the defendant’s presence. The bill extends the court’s statutory authority to order videotaped or closed circuit testimony.

<sup>21</sup> See *Lewis v. State*, 591 So. 2d 922, 924 (Fla. 1991).

<sup>22</sup> *Marr v. Florida*, 494 So. 2d 1139, 1142-43 (Fla. 1986).

<sup>23</sup> Section 794.022, F.S.

<sup>24</sup> 28 U.S.C. § 412.

<sup>25</sup> See *United States v. Rivera*, 799 F.3d 180, 185 (2d Cir. 2015) (holding that “[e]vidence of victims’ prior acts of commercial sex is irrelevant to whether those victims were coerced into working as prostitutes.”); *United States v. Roy*, 781 F.3d 416, 420 (8th Cir. 2015) (holding that the victim’s participation in prostitution before or after the alleged incident is irrelevant to whether the defendant threatened her, beat her, or took her money); *United States v. Cephus*, 684 F.3d 703, 708 (7th Cir. 2012) (holding that the victim’s prior history of prostitution was irrelevant to proving that she consented to having her wages withheld and be beaten).

Likewise the age is increased from under the age of 16 to under the age of 18 in s. 92.55, F.S., to extend the protections of those court orders intended to protect a victim or witness from severe emotional or mental harm due to the presence of the defendant. The definition of “sexual offense victim or witness” is also amended in s. 92.55, F.S., extending the age limitation by two years.

In s. 92.55, F.S., as amended by the bill, a person appointed by the court pursuant to s. 914.17, F.S.,<sup>26</sup> will be able to move the court to enter a protective order on behalf of the victim or witness.

Section 794.022, F.S., dealing with rules of evidence is amended to include victims of human trafficking and victims of lewd or lascivious offenses<sup>27</sup> in the list of offenses for which the admission of certain evidence may be limited. The bill provides that victims of those crimes need not have their testimony corroborated nor should specific instances of prior consensual sexual activity with anyone other than the offender be admitted into evidence in a criminal prosecution except under limited circumstances. This section of law is referenced in s. 90.404, F.S., therefore paragraph (b) of subsection (1) of that statute is reenacted by the bill.

The bill becomes 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:

None.

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<sup>26</sup> Section 914.17, F.S., provides for a guardian ad litem or other advocate to be appointed by the court to represent the interests of a minor in a criminal proceeding where the minor is a victim of or a witness to child abuse or neglect, a victim of a sexual offense, or a witness to a sexual offense committed against another minor. “Advocate” is not defined in Chapter 914, F.S.

<sup>27</sup> Sections 787.06 and 800.04, F.S.

C. **Government Sector Impact:**

To the extent to which the court orders the videotape and closed circuit television authorized in the bill, there may be additional costs incurred by the court.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 92.53, 92.54, 92.55, 794.022, and 90.404.

**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 Senator Flores

37-01400-16

20161382\_\_

1 A bill to be entitled  
 2 An act relating to victim and witness protection;  
 3 amending ss. 92.53 and 92.54, F.S.; increasing the  
 4 maximum age of victims and witnesses for whom the  
 5 court may order the use of videotaped testimony and  
 6 closed circuit television in court proceedings in lieu  
 7 of testifying in open court; amending s. 92.55, F.S.;  
 8 revising the definition of the term "sexual offense  
 9 victim or witness"; increasing the maximum age of  
 10 victims and witnesses for whom the court may enter  
 11 protective orders; authorizing certain advocates to  
 12 file motions for such orders on behalf of certain  
 13 persons; amending s. 794.022, F.S.; revising the  
 14 corroboration requirements for certain victim  
 15 testimony and the admissibility of certain evidence in  
 16 prosecutions to include specified human trafficking  
 17 and lewd or lascivious offenses; reenacting s.  
 18 90.404(1)(b), F.S., relating to character evidence, to  
 19 incorporate the amendment made to s. 794.022, F.S., in  
 20 a reference thereto; providing an effective date.  
 21  
 22 Be It Enacted by the Legislature of the State of Florida:  
 23  
 24 Section 1. Section 92.53, Florida Statutes, is amended to  
 25 read:  
 26 92.53 Videotaping the testimony of a victim or witness  
 27 under age 18 ~~16~~ or who has an intellectual disability.—  
 28 (1) On motion and hearing in camera and a finding that  
 29 there is a substantial likelihood that a victim or witness who  
 30 is under the age of 18 ~~16~~ or who has an intellectual disability  
 31 as defined in s. 393.063 would suffer at least moderate  
 32 emotional or mental harm due to the presence of the defendant if

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

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33 such victim or witness is required to testify in open court, or  
 34 is unavailable as defined in s. 90.804(1), the trial court may  
 35 order the videotaping of the testimony of the victim or witness  
 36 in a case, whether civil or criminal in nature, in which  
 37 videotaped testimony is to be used at trial in lieu of trial  
 38 testimony in open court.  
 39 (2) The motion may be filed by:  
 40 (a) The victim or witness, or the victim's or witness's  
 41 attorney, parent, legal guardian, or guardian ad litem;  
 42 (b) A trial judge on his or her own motion;  
 43 (c) Any party in a civil proceeding; or  
 44 (d) The prosecuting attorney or the defendant, or the  
 45 defendant's counsel.  
 46 (3) The judge shall preside, or shall appoint a special  
 47 master to preside, at the videotaping unless:  
 48 (a) The child or the person who has the intellectual  
 49 disability is represented by a guardian ad litem or counsel;  
 50 (b) The representative of the victim or witness and the  
 51 counsel for each party stipulate that the requirement for the  
 52 presence of the judge or special master may be waived; and  
 53 (c) The court finds at a hearing on the motion that the  
 54 presence of a judge or special master is not necessary to  
 55 protect the victim or witness.  
 56 (4) The defendant and the defendant's counsel must be  
 57 present at the videotaping unless the defendant has waived this  
 58 right. The court may require the defendant to view the testimony  
 59 from outside the presence of the child or the person who has an  
 60 intellectual disability by means of a two-way mirror or another  
 61 similar method that ensures that the defendant can observe and

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

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62 hear the testimony of the victim or witness in person, but the  
63 victim or witness cannot hear or see the defendant. The  
64 defendant and the attorney for the defendant may communicate by  
65 any appropriate private method.

66 (5) Any party, or the court on its own motion, may request  
67 the aid of an interpreter, as provided in s. 90.606, to aid the  
68 parties in formulating methods of questioning the child or  
69 person who has the intellectual disability and in interpreting  
70 the answers of the child or person during proceedings conducted  
71 under this section.

72 (6) The motion referred to in subsection (1) may be made at  
73 any time with reasonable notice to each party to the cause, and  
74 videotaping of testimony may be made any time after the court  
75 grants the motion. The videotaped testimony is admissible as  
76 evidence in the trial of the cause; however, such testimony is  
77 not admissible in any trial or proceeding in which such witness  
78 testifies by use of closed circuit television pursuant to s.  
79 92.54.

80 (7) The court shall make specific findings of fact, on the  
81 record, as to the basis for its ruling under this section.

82 Section 2. Section 92.54, Florida Statutes, is amended to  
83 read:

84 92.54 Use of closed circuit television in proceedings  
85 involving a victim or witness under the age of 18 ~~16~~ or who has  
86 an intellectual disability.-

87 (1) Upon motion and hearing in camera and upon a finding  
88 that there is a substantial likelihood that a victim or witness  
89 under the age of 18 ~~16~~ or who has an intellectual disability  
90 will suffer at least moderate emotional or mental harm due to

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91 the presence of the defendant if such victim or witness is  
92 required to testify in open court, or is unavailable as defined  
93 in s. 90.804(1), the trial court may order that the testimony of  
94 the victim or witness be taken outside of the courtroom and  
95 shown by means of closed circuit television.

96 (2) The motion may be filed by the victim or witness; the  
97 attorney, parent, legal guardian, or guardian ad litem of the  
98 victim or witness; the prosecutor; the defendant or the  
99 defendant's counsel; or the trial judge on his or her own  
100 motion.

101 (3) Only the judge, the prosecutor, the defendant, the  
102 attorney for the defendant, the operators of the videotape  
103 equipment, an interpreter, and some other person who, in the  
104 opinion of the court, contributes to the well-being of the child  
105 or the person who has an intellectual disability and who will  
106 not be a witness in the case may be in the room during the  
107 recording of the testimony.

108 (4) During the victim's or witness's testimony by closed  
109 circuit television, the court may require the defendant to view  
110 the testimony from the courtroom. In such a case, the court  
111 shall permit the defendant to observe and hear the testimony of  
112 the victim or witness, but must ensure that the victim or  
113 witness cannot hear or see the defendant. The defendant's right  
114 to assistance of counsel, which includes the right to immediate  
115 and direct communication with counsel conducting cross-  
116 examination, must be protected and, upon the defendant's  
117 request, such communication must be provided by any appropriate  
118 electronic method.

119 (5) The court shall make specific findings of fact, on the

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120 record, as to the basis for its ruling under this section.

121 Section 3. Section 92.55, Florida Statutes, is amended to  
122 read:

123 92.55 Judicial or other proceedings involving victim or  
124 witness under the age of 18 ~~16~~, a person who has an intellectual  
125 disability, or a sexual offense victim or witness; special  
126 protections; use of registered service or therapy animals.—

127 (1) For purposes of this section, the term:

128 (a) "Sexual offense victim or witness" means a person who  
129 was under the age of 18 ~~16~~ when he or she was the victim of or a  
130 witness to a sexual offense.

131 (b) "Sexual offense" means any offense specified in s.  
132 775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).

133 (2) Upon motion of any party, upon motion of a parent,  
134 guardian, attorney, ~~or~~ guardian ad litem, or other advocate  
135 appointed by the court under s. 914.17 for a victim or witness  
136 under the age of 18 ~~16~~, a person who has an intellectual  
137 disability, or a sexual offense victim or witness, or upon its  
138 own motion, the court may enter any order necessary to protect  
139 the victim or witness in any judicial proceeding or other  
140 official proceeding from severe emotional or mental harm due to  
141 the presence of the defendant if the victim or witness is  
142 required to testify in open court. Such orders must relate to  
143 the taking of testimony and include, but are not limited to:

144 (a) Interviewing or the taking of depositions as part of a  
145 civil or criminal proceeding.

146 (b) Examination and cross-examination for the purpose of  
147 qualifying as a witness or testifying in any proceeding.

148 (c) The use of testimony taken outside of the courtroom,

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149 including proceedings under ss. 92.53 and 92.54.

150 (3) In ruling upon the motion, the court shall consider:

151 (a) The age of the child, the nature of the offense or act,  
152 the relationship of the child to the parties in the case or to  
153 the defendant in a criminal action, the degree of emotional  
154 trauma that will result to the child as a consequence of the  
155 defendant's presence, and any other fact that the court deems  
156 relevant;

157 (b) The age of the person who has an intellectual  
158 disability, the functional capacity of such person, the nature  
159 of the offenses or act, the relationship of the person to the  
160 parties in the case or to the defendant in a criminal action,  
161 the degree of emotional trauma that will result to the person as  
162 a consequence of the defendant's presence, and any other fact  
163 that the court deems relevant; or

164 (c) The age of the sexual offense victim or witness when  
165 the sexual offense occurred, the relationship of the sexual  
166 offense victim or witness to the parties in the case or to the  
167 defendant in a criminal action, the degree of emotional trauma  
168 that will result to the sexual offense victim or witness as a  
169 consequence of the defendant's presence, and any other fact that  
170 the court deems relevant.

171 (4) In addition to such other relief provided by law, the  
172 court may enter orders limiting the number of times that a  
173 child, a person who has an intellectual disability, or a sexual  
174 offense victim or witness may be interviewed, prohibiting  
175 depositions of the victim or witness, requiring the submission  
176 of questions before the examination of the victim or witness,  
177 setting the place and conditions for interviewing the victim or

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178 witness or for conducting any other proceeding, or permitting or  
 179 prohibiting the attendance of any person at any proceeding. The  
 180 court shall enter any order necessary to protect the rights of  
 181 all parties, including the defendant in any criminal action.

182 (5) The court may set any other conditions it finds just  
 183 and appropriate when taking the testimony of a child victim or  
 184 witness or a sexual offense victim or witness, including the use  
 185 of a service or therapy animal that has been evaluated and  
 186 registered according to national standards, in any proceeding  
 187 involving a sexual offense. When deciding whether to permit a  
 188 child victim or witness or sexual offense victim or witness to  
 189 testify with the assistance of a registered service or therapy  
 190 animal, the court shall consider the age of the child victim or  
 191 witness, the age of the sexual offense victim or witness at the  
 192 time the sexual offense occurred, the interests of the child  
 193 victim or witness or sexual offense victim or witness, the  
 194 rights of the parties to the litigation, and any other relevant  
 195 factor that would facilitate the testimony by the child victim  
 196 or witness or sexual offense victim or witness.

197 Section 4. Subsections (1) through (4) of section 794.022,  
 198 Florida Statutes, are amended to read:

199 794.022 Rules of evidence.—

200 (1) The testimony of the victim need not be corroborated in  
 201 a prosecution under s. 787.06, s. 794.011, or s. 800.04.

202 (2) Specific instances of prior consensual sexual activity  
 203 between the victim and any person other than the offender shall  
 204 not be admitted into evidence in a prosecution under s. 787.06,  
 205 s. 794.011, or s. 800.04. However, such evidence may be admitted  
 206 if it is first established to the court in a proceeding in

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207 camera that such evidence may prove that the defendant was not  
 208 the source of the semen, pregnancy, injury, or disease; or, when  
 209 consent by the victim is at issue, such evidence may be admitted  
 210 if it is first established to the court in a proceeding in  
 211 camera that such evidence tends to establish a pattern of  
 212 conduct or behavior on the part of the victim which is so  
 213 similar to the conduct or behavior in the case that it is  
 214 relevant to the issue of consent.

215 (3) Notwithstanding any other provision of law, reputation  
 216 evidence relating to a victim's prior sexual conduct or evidence  
 217 presented for the purpose of showing that manner of dress of the  
 218 victim at the time of the offense incited the offense ~~sexual~~  
 219 ~~battery~~ shall not be admitted into evidence in a prosecution  
 220 under s. 787.06, s. 794.011, or s. 800.04.

221 (4) When consent of the victim is a defense to prosecution  
 222 under s. 787.06, s. 794.011, or s. 800.04, evidence of the  
 223 victim's mental incapacity or defect is admissible to prove that  
 224 the consent was not intelligent, knowing, or voluntary; and the  
 225 court shall instruct the jury accordingly.

226 Section 5. For the purpose of incorporating the amendment  
 227 made by this act to section 794.022, Florida Statutes, in a  
 228 reference thereto, paragraph (b) of subsection (1) of section  
 229 90.404, Florida Statutes, is reenacted to read:

230 90.404 Character evidence; when admissible.—

231 (1) CHARACTER EVIDENCE GENERALLY.—Evidence of a person's  
 232 character or a trait of character is inadmissible to prove  
 233 action in conformity with it on a particular occasion, except:

234 (b) *Character of victim.*—

235 1. Except as provided in s. 794.022, evidence of a

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236 pertinent trait of character of the victim of the crime offered  
237 by an accused, or by the prosecution to rebut the trait; or

238 2. Evidence of a character trait of peacefulness of the  
239 victim offered by the prosecution in a homicide case to rebut  
240 evidence that the victim was the aggressor.

241 Section 6. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request



**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** January 14, 2016

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I respectfully request that **Senate Bill #1382**, relating to Victim and Witness Protections, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

*Anitere Flores*

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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)

2/8/16

Meeting Date

1382

Bill Number (if applicable)

Topic Victim and Witness Protection

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Public Defender, 2nd Circuit

Address Leon County Courthouse, #401

Phone 850 606-1010

Tallahassee FL 32301  
City State Zip

Email nancy.daniels@fpda.com

Speaking:  For  Against  Information

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

Representing Florida Public Defender 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.

**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 Committee on Criminal Justice

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BILL: SB 1580

INTRODUCER: Senator Legg

SUBJECT: First Responders

DATE: February 5, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 1580 requires state agencies to provide a voluntary first responder career development plan for law enforcement officers, correctional officers, correctional probation officers, and firefighters. The plan will provide salary increases to those officers and firefighters in good standing who achieve and maintain specified levels of achievement determined by the agency. Each agency's plan will identify the activities approved to attain the levels. Each level achieved must be documented by specific achievements and completion of a specified number of years of service.

**II. Present Situation:**

Section 943.22, F.S., and s. 633.422, F.S., provide salary incentive increases for law enforcement officers and firefighters who successfully complete and are awarded an Associate Degree or a Bachelor Degree. The increases or supplements are as follows:

- \$30 per month for law enforcement officers with an Associate Degree;
- \$50 per month for law enforcement officers with a Bachelors Degree;
- \$50 per month for firefighters with an Associate Degree; and
- \$110 per month for firefighters with a Bachelors Degree.

Law enforcement officers can also receive incentive increases for additional approved training classes up to \$130 per month.

**III. Effect of Proposed Changes:**

This bill requires state agencies to provide a voluntary first responder career development plan for law enforcement officers, correctional officers, correctional probation officers, and firefighters. The plan will provide salary increases to those officers and firefighters in good standing who achieve and maintain specified levels of achievement determined by the agency.

Each agency's plan will identify the activities approved to attain the levels. Each level achieved must be documented by specific achievements and completion of a specified number of years of service.

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.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Florida Department of Law Enforcement (FDLE), a career development plan based on first responder skill specialization would most likely result in the establishment of a lead, master, or senior officer rank. If these levels are defined and a 5 percent pay increase is associated with each, assuming a required time in service of 5 years for all non-supervisory sworn positions (186 sworn positions meet this initial criterion), the plan could have a recurring fiscal impact of over \$700,000 if all reach a single level of achievement.

The Department of Financial Services states persons affected by the bill would be 103 sworn law enforcement personnel and 61 certified firefighters employed by the Division of State Marshal and 153 sworn law enforcement personnel employed by the Division of Insurance Fraud.

**VI. Technical Deficiencies:**

According to FDLE, a first responder is an employee of an emergency service agency who is likely to be among the first people to arrive and assist at an emergency scene (generally

municipal and county law enforcement officers). FDLE states that except in rare incidences, FDLE is not a first responder.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 110.2035 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.)

None.

**B. Amendments:**

None.

By Senator Legg

17-01197-16

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A bill to be entitled

An act relating to first responders; amending s.

110.2035, F.S.; requiring state agencies to establish a first responder career development plan for certain purposes; providing duties of the agencies relating to the implementation of the plan; providing an effective date.

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

Section 1. Subsection (9) is added to section 110.2035, Florida Statutes, to read:

110.2035 Classification and compensation program.—

(9)(a) In order to strengthen the ability of state agencies to provide career development for law enforcement officers, correctional officers, correctional probation officers, and firefighters and retain well-qualified and experienced officers and firefighters, all state agencies employing law enforcement officers, correctional officers, correctional probation officers, and firefighters shall establish a first responder career development plan. The plan shall be voluntary for law enforcement officers, correctional officers, correctional probation officers, and firefighters and shall provide salary increases for officer and firefighter achievements that exceed the minimum requirements for employment.

(b) Salary increases shall be awarded to an officer or a firefighter in good standing who achieves and maintains specified levels of achievement as determined by the agency.

(c)1. Each state agency shall provide levels of achievement for law enforcement officers, correctional officers, correctional probation officers, and firefighters and develop standards, through collective bargaining, if applicable, that

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

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provide approved activities recognized for attaining the levels. The achievement of each level must be documented by the attainment of specific achievements and the completion of a specified number of years of service.

2. Achievements may include the earning of postsecondary education credits and the completion of leadership or advanced training. Officers and firefighters may attain specified levels by participating in approved activities that advance the officer's or firefighter's professional interests as specified in the officer's or firefighter's job description.

(d) The plan shall be made available to law enforcement officers as defined in s. 943.10, correctional officers as defined in s. 943.10, and firefighters as defined in s. 633.102, in all career service positions. The number of officers or firefighters who may qualify for each level may not exceed the number of officers or firefighters covered by the bargaining unit covering such classes of employees in the agency.

Section 2. This act shall take effect July 1, 2016.

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Education Pre-K - 12, Chair  
Ethics and Elections, Vice Chair  
Appropriations Subcommittee on Education  
Fiscal Policy  
Government Oversight and Accountability  
Higher Education

**SENATOR JOHN LEGG**  
17th District

Legg.John.web@FLSenate.gov

February 8, 2016

The Honorable Greg Evers  
Committee on Criminal Justice, Chair  
510 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

### RE: SB 1580 - First Responders

Dear Chair Evers:

SB 1580: First Responders is on the Committee on Criminal Justice agenda, February 8, 2016. My mother has suffered a critical health incident, and my presence is needed at home.

Please recognize my Legislative Assistant, Rich Reidy, to present SB 1580 on my behalf. Should you have any questions, please feel free to contact me. Your consideration is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg".

John Legg  
State Senator, District 17

cc: Amanda Cannon, Staff Director  
Sue Arnold, Administrative Assistant

### REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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)

2/8/2016  
Meeting Date

SB 1580  
Bill Number (if applicable)

Topic First Responders

Amendment Barcode (if applicable)

Name Matt Peckett

Job Title Lobbyist

Address 300 East Brevard St  
Street

Phone \_\_\_\_\_

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.**



## II. Present Situation:

### Overview of Sexual Predator and Sexual Offender Registration

Florida law requires certain persons to register as a sexual predator or sexual offender. 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>1</sup>

A sexual predator or sexual offender must comply with a number of registration requirements.<sup>2</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 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 (DOC), Department of Juvenile Justice (DJJ), or Department of Children and Families (DCF) (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 (DHSMV) 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 Florida Department of Law Enforcement (FDLE) and entered in a statewide database. The registry laws contain a public or community notification component.<sup>3</sup> 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>4</sup> Information is also available through a toll-free hotline.

Provided as follows is a description of those registration requirements and other provisions of the registry laws that are relevant to the bill.

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<sup>1</sup> See generally ss. 775.21, 943.0435, 944.607, and 985.4815, F.S. "All sex offenders that are required to register have been convicted of certain qualifying felonies set forth in Florida statutes or have registration requirements in other states.... Some sex offenders are designated by the court as sexual predators because they are deemed to present an extreme threat to public safety as demonstrated through repeated sex offenses, the use of physical violence, or preying on child victims." *Sex Offender Registration and Monitoring: Statewide Requirements, Local Practices, and Monitoring Procedures*, Report No. 15-16, p. 2 (footnote omitted), Office of Program Policy Analysis & Government Accountability, The Florida Legislature. This report is available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1516rpt.pdf> (last visited on January 27, 2016). This report is further referenced in this analysis as "OPPAGA Report."

<sup>2</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.

<sup>3</sup> "Local law enforcement agencies are ... required to notify the public of the presence of sexual predators living in their communities. Within 48 hours, law enforcement agencies must notify licensed child care centers and schools within a one-mile radius of the predator's residence." OPAAGA Report. "In addition, local law enforcement agencies, or ... [DOC], if an offender is on community supervision, are also required to notify institutions of higher learning when a sex offender enrolls, is employed, or volunteers at that institution of higher learning, including technical schools, community colleges, and state universities." *Id.*

<sup>4</sup> See <https://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on January 29, 2016).

## Sexual Predator and Sexual Offender Criteria

Several provisions of the registry laws specify that the following offenses are registration-qualifying offenses: kidnapping (s. 797.01, F.S.); false imprisonment (s. 787.02, F.S.); and luring or enticing a child (s. 787.025(2)(c)), F.S. However, these offenses only apply if the victim is a minor and the defendant is not the victim's parent or guardian.<sup>5</sup>

Further, convictions for these offenses can only be used as a registration-qualifying offense if there is a finding that the conviction has a sexual component. As one Florida appellate court has held, the state has an interest in protecting the public from sexual offenders and the designation of a person as a sexual offender is rationally related to that goal where an accused has been convicted of false imprisonment of a child under 13 when committed along with an enumerated sexual offense. However, where an accused is convicted of false imprisonment devoid of a sexual component, such rational basis is lost.<sup>6</sup>

The "parent or guardian" language also appears in s. 856.022, F.S., the loitering or prowling statute, which prohibits a person convicted of a specified sexual offense from being within 300 feet of a place where children are congregating. Sexual offenses specified in this section include, in part, convictions for kidnapping, false imprisonment, and luring or enticing a child if any of these offenses involved a victim who is a minor and a defendant who is not the victim's parent or guardian. The statute does not apply to a person who has been removed from the requirement to register as a sexual predator or sexual offender.

Section 943.0435(1)(a)1.d., F.S., includes a list of registration-qualifying offenses relevant to certain juvenile offenders. Omitted from this provision is any similar offense committed in this state which has been redesignated from a former statute number to one of the listed offenses. This appears to be an error because a provision of this type appears in all provisions of the registry laws relating to registration criteria.

## Registration and Reregistration

Sexual predators and sexual offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>7</sup> Sexual predators and sexual offenders who are in the custody of or under the supervision of the DOC or a local jail must register with the DOC and the jail, respectively. During initial registration, the registrant must provide certain information, including, in part, his or her name, address, e-mail address, home and cellular telephone number, and Internet identifier, to the sheriff's department, which then provides the information to the FDLE for inclusion in the statewide database. Sexual predators and sexual offenders also must reregister at specified intervals and immediately report any changes to registration information.<sup>8</sup>

Sexual predators and sexual offenders must reregister at varying intervals depending on the type of designation and the qualifying offense that was the basis for the designation as a sexual

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<sup>5</sup> Sections 775.21(4)(a), 943.0435(1) and (14)(b), and 944.607(1)(a) and (13)(b), F.S. This language is also relevant to notifications regarding certain sex offenders that the FDLE and/or others are required to make under ss. 944.606(1)(b), F.S.

<sup>6</sup> *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001).

<sup>7</sup> See ss. 775.21 and 943.0435, F.S.

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

predator or sexual offender. Sexual predators and certain sexual offenders must report in person each year during the month of the registrant's birthday and during every third month thereafter to the sheriff's office in the county in which the registrant resides or is otherwise located to reregister.<sup>9</sup> Examples of sexual offenders who must register quarterly include sexual offenders who have a conviction for kidnapping or false imprisonment (where the victim is a minor and the offender is not the victim's parent or guardian) and sexual battery.<sup>10</sup> Sexual offenders who do not fall in this reporting category must report each year during the month of the sexual offender's birthday and during the sixth month following the sexual offender's birth month.<sup>11</sup> Reporting must be done in person to the sheriff's office in the county in which the registrant resides or is otherwise located.<sup>12</sup>

### **Registration – Electronic Mail Addresses and Internet Identifiers**

Sexual predators and sexual offenders must register all electronic mail (e-mail) address or Internet identifiers with the FDLE before such addresses or identifiers can be used.<sup>13</sup> Registration must be made either in person or through the FDLE's online system.<sup>14</sup>

Relevant to the bill, the term "Internet identifier" is defined in s. 775.21(2)(i), F.S., to mean all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN).<sup>15</sup> According to the FDLE, this definition does not currently include "corresponding website URL or application software associated with the login/username/screen identifier."<sup>16</sup>

Sections 775.21 and 943.0435, F.S., require the FDLE to establish an online system through which sexual predators and sexual offenders may securely access and update all electronic mail addresses and Internet identifier information.

### **Registration – Location of Residence or Travel**

Sexual predators and sexual offenders must register their permanent, temporary, or transient residences both within the state and outside the state.<sup>17</sup> A sexual predator or sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than Florida must report in person to the sheriff of the county of current residence within:

- 48 hours before the date he or she intends to leave Florida to establish residence in another state or jurisdiction; or

<sup>9</sup> Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(b), and 985.4815(13)(a), F.S.

<sup>10</sup> Sections 943.0435(14)(b) and 944.607(13)(b), F.S.

<sup>11</sup> Sections 943.0435(14)(a) and 944.607(13)(a), F.S.

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

<sup>13</sup> Sections 775.21(6)(a)1., (6)(e)2., and (6)(g)5. and 943.0435(2)(a), (2)(b), and (4)(e), F.S.

<sup>14</sup> Sections 775.21(6)(g)5. and 943.0435(4)(e), F.S.

<sup>15</sup> Voluntary disclosure by a sexual predator of his or her date of birth, social security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information. *Id.*

<sup>16</sup> Analysis of SB 1662, Florida Department of Law Enforcement (October 1, 2016) (on file with Senate Committee on Criminal Justice). This document is further referenced in this analysis as "FDLE Analysis."

<sup>17</sup> Sections 775.21(6)(i) and 943.0435(7), F.S.

- 21 days before his or her planned departure date for stays outside the country lasting longer than five days.<sup>18</sup>

The notification provided to the sheriff must include the address, municipality, county, state, and country of intended residence.<sup>19</sup> The sheriff must promptly provide the FDLE with the information received from the registrant and the FDLE must notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the registrant's intended residence.<sup>20</sup>

### **Registration – Institution of Higher Education**

Sexual predators and sexual offenders who are enrolled, employed, volunteering, or carrying on a vocation at an institution of high education must provide:

- The name, address, and county of each institution, including each campus attended; and
- Enrollment, volunteer, or employment status.<sup>21</sup>

Additionally, a change in such enrollment, volunteer, or employment status must be reported in person to the appropriate entity within 48 hours.<sup>22</sup> The appropriate entity must promptly notify each institution of the sexual predator's or sexual offender's presence and any change in enrollment, volunteer, or employment status.<sup>23</sup>

Relevant to the bill, the term:

- “Institution of higher education” is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean a “career center, community college, college, state university, or independent postsecondary institution.”<sup>24</sup>
- “Change in enrollment or employment status” is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean the “commencement or termination of enrollment or employment or a change in location of enrollment or employment.”<sup>25</sup>

### **Registration – Professional Licenses and Employment Information**

Sexual predators and sexual offenders must provide information about employment and any professional licenses they may possess.<sup>26</sup> The term “professional license” is not currently defined in the registry laws.

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<sup>18</sup> *Id.*

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

<sup>20</sup> *Id.*

<sup>21</sup> Sections 775.21(6)(b), 943.0435(2)(b)2., 944.607(4)(b), and 985.4815(4)(b), F.S.

<sup>22</sup> Section 775.21(6)(b), F.S., provides that the sheriff or the DOC is the appropriate reporting entity. Section 943.0435(2)(b)2., F.S., provides that the sheriff is the appropriate reporting entity. Section 944.607(4)(b), F.S., provides that the DOC is the appropriate reporting agency. Section 985.4815(4)(b), F.S., provides that the DJJ is the appropriate reporting agency.

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

<sup>24</sup> Sections 775.21(1)(j), 943.0435(1)(d), 944.607(1)(d), and 985.4815(1)(c), F.S.

<sup>25</sup> Sections 775.21(1)(a), 943.0435(1)(e), 944.607(1)(e), and 985.4815(1)(a), F.S.

<sup>26</sup> Sections 775.21(6)(a)1. and (8), 943.0435(2)(b) and (14)(c), 944.606(3)(a), 944.607(4)(a) and (14)(c), 985.481(3)(a)1., 985.4815(4)(a) and (13)(b)1., F.S.

### **Registration – Driver License or Identification Card**

Sexual predators and sexual offenders who are not incarcerated must register in person at a driver license office within 48 hours to obtain a driver license or identification card.<sup>27</sup>

Additionally, sexual predators and sexual offenders must report specified information to the Department of Highway Safety and Motor Vehicles (DHSMV), maintain an accurate driver license or identification card, and report to a driver license office within 48 hours any time the registrant's:

- Driver license or identification card is subject to renewal;
- Residence has changed; or
- Name has changed by reason of marriage or other legal process.<sup>28</sup>

The DHSMV must forward to the FDLE and the DOC all photographs and information provided by sexual predators and sexual offenders.<sup>29</sup>

A sexual predator or sexual offender who is unable to secure or update a driver license or identification card with the DHSMV as described must report any change of the residence or change in 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 registrant resides or is located and provide confirmation that he or she reported such information to the DHSMV.<sup>30</sup>

### **Removal of the Requirement to Register as a Sexual Offender or Sexual Predator**

Generally, a sexual offender must maintain registration with the FDLE for the duration of the offender's life unless he or she has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.<sup>31</sup> However, there are ways in which the registration requirements can be removed.<sup>32</sup>

#### ***Registration Removal under s. 943.0435(11), F.S.***

Section 943.0435(11)(a), F.S., permits sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and who have not been arrested for any felony or misdemeanor offense since release to petition the criminal division of the circuit court of the circuit where the conviction or adjudication occurred for the purpose of removing the requirement for registration as a sexual offender, provided that the

<sup>27</sup> Sections 775.21(6)(f) and (g) and 943.0435(4)(a), F.S. Section 944.607, F.S., covers this requirement for sexual offenders who are not incarcerated, but are under the supervision of the DOC.

<sup>28</sup> *Id.* "Local tax collectors perform driver's license related functions previously conducted by DHSMV, including processing sex offender identification requests, for 64 of Florida's 67 counties. The three counties with DHSMV offices are Broward, Miami Dade, and Volusia. When combined, these three counties reflect approximately 40% of all transactions and will remain the responsibility of DHSMV because their tax collectors are appointed, not elected officials." OPPAGA Report.

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

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

<sup>31</sup> Sections 775.21(6) and 943.0435(11), F.S.

<sup>32</sup> Sections 775.21(6) and 943.0435(11), F.S.

offender's requirement to register was not based on an adult conviction for any specified, excludable offense such as kidnapping, false imprisonment, or sexual battery.<sup>33</sup>

Relevant to the bill, s. 943.0435(11)(a)4., F.S., contains language regarding calculation of the registration period. According to the FDLE, this language was included in legislation which passed in 2014.<sup>34</sup> The FDLE states that this language was connected to provisions of the original bill that were subsequently removed, and therefore, the language is orphaned and inoperable. Additionally, the language "added some unnecessary ambiguity to the long preexisting language regarding duration of registration requirements and has already allowed at least one offender to gain relief from registration despite not technically qualifying for it."<sup>35</sup>

***Registration Removal under Section 943.04354, F.S.***

Section 943.04354, F.S., which is sometimes referred to as the "Romeo and Juliet" statute, allows certain minors or young adults who must register as a sexual predator or sexual offender to request removal of registration requirements if the court finds that certain criteria are met. Criteria that must be met include:

- The person was convicted, regardless of adjudication, or adjudicated delinquent of:
  - Sexual battery (s. 794.011, F.S.), a lewd offense (s. 800.04, F.S., F.S.), promoting, etc., sexual performance of a child (s. 827.071, F.S.), or lewd acts transmitted over a computer (s. 847.0135(5), F.S.), or of a similar offense in another jurisdiction if the person does not have any other conviction, regardless of adjudication, or adjudication of delinquency for a violation of any of these referenced statutes or for a similar offense in another jurisdiction;
  - A conviction, etc., of a violation of any of these referenced statutes and the person must register as a sexual offender or sexual predator solely on the basis of this conviction or adjudication; or
  - A conviction, etc., of an offense in another jurisdiction which is similar to a violation of any of the referenced statutes and the person no longer meets the criteria for registration as a sexual offender or sexual predator under the laws of the jurisdiction in which the similar offense occurred; and
- The person is not more than 4 years older than the victim of this violation who was 13 years of age or older but younger than 18 years of age at the time the person committed this violation.

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<sup>33</sup> The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief.

Section 943.0435(11)(a), F.S.

<sup>34</sup> CS/CS/SB 528 (ch. 2014-5, L.O.F.). FDLE Analysis.

<sup>35</sup> E-mail to Senate Criminal Justice staff from FDLE staff (January 28, 2016) (on file with the Senate Committee on Criminal Justice).

A person who meets these criteria may move the criminal division of the circuit court of the circuit where the conviction or adjudication for the qualifying offense occurred to remove the requirement that the person register as a sexual offender or sexual predator. The person must:

- Allege in the motion that he or she meets these criteria and that removal of the registration requirement will not “conflict with federal law”; and
- Provide the court with written confirmation that he or she is not required to register in the jurisdiction in which the conviction or adjudication occurred if the offense occurred in a jurisdiction other than Florida.<sup>36</sup>

While Florida is substantially compliant with the requirements of the federal Sex Offender Registration and Notification Act (SORNA),<sup>37</sup> one requirement of the SORNA is not specifically articulated in the registry laws. According to the FDLE, the SORNA requires that the sexual act be “consensual, notwithstanding the age of the victim”<sup>38</sup> and the FDLE interprets the words “conflict with federal law” to mean a conflict with this federal requirement (i.e., a non-consensual sexual act would conflict with the SORNA).<sup>39</sup> The FDLE notes that it “received a recent court order for registration relief based on the R&J statute and further review found that the act was not consensual and attorneys involved in the matter were not aware of the requirements of the federal law.”<sup>40</sup>

### III. Effect of Proposed Changes:

The bill, which takes effect October 1, 2016, amends numerous provisions of the laws pertaining to registration of sexual predators and sexual offenders. Some of these changes are to more closely align Florida’s registry laws with requirements of the federal Sex Offender Registration and Notification Act.

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<sup>36</sup> The state attorney and the FDLE must be given notice of the motion at least 21 days before the date of sentencing, disposition of the violation, or hearing on the motion and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. If the court determines the person meets the criteria in subsection (1) and the removal of the registration requirements will not conflict with federal law, it may grant the motion and order the removal of the registration requirements. If the motion is granted, the person must provide the FDLE with a certified copy of the order granting relief. If the motion is denied, the person is not authorized under s. 943.04354, F.S., to file another motion for removal of the registration requirements. Section 943.04354(2), F.S.

<sup>37</sup> Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). OPPAGA Report.

<sup>38</sup> “SORNA section 111(5)(C) addresses the minimum standards for requiring sex offender registration for consensual sexual conduct under the Adam Walsh Act. SORNA does NOT require registration in the following situations: 1) If both participants are adults, and neither is under the custodial authority of the other (e.g., inmate/prison guard) and the conduct was consensual, then this conduct does not constitute a registerable sex offense for purposes of the Adam Walsh Act. 2) With respect to acts involving at least one minor (person under 18) who engages in consensual sexual conduct, the following minimum standards apply: Where both participants are at least 13 years old and neither participant is more than 4 years older than the other, a sex offense conviction based on consensual sexual conduct does not require registration under the Adam Walsh Act. In all situations, jurisdictions have discretion to exceed the minimum standards of SORNA and require registration upon convictions based on consensual sexual conduct.” “Frequently Asked Questions: The Sex Offender Registration and Notification Act (SORNA) Final Guidelines” (July 2008), Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, available at [http://ojp.gov/smart/pdfs/faq\\_sorna\\_guidelines.pdf](http://ojp.gov/smart/pdfs/faq_sorna_guidelines.pdf) (last visited on January 27, 2016).

<sup>39</sup> FDLE Analysis.

<sup>40</sup> *Id.*

### **Sexual Predator and Sexual Offender Criteria**

The bill amends ss. 775.21, 856.022, 943.0435, 944.606, and 944.607, F.S., to remove language associated with kidnapping, false imprisonment, and luring or enticing a child that prevents a parent or guardian who committed such a registration-qualifying offense against his or her minor child for a sexual purpose from being designated as a sexual predator or sexual offender.

Therefore, if a parent or guardian is convicted of any of these offenses against his or her minor child and such offense had a sexual component, this will result in the parent or guardian being designated as a sexual predator or sexual offender.

The bill amends s. 856.022, F.S., relating to loitering or prowling by a person convicted of a sexual offense, to remove this language from the enumerated list of offenses in that statute. As a result of these changes, additional persons (qualifying parents or guardians) could be designated as a sexual predator or sexual offender and subject to registration requirements.

The bill amends a list of registration-qualifying offenses relevant to certain juvenile offenders to include any similar offense committed in this state which has been redesignated from a former statute number to one of the listed offenses. This change is consistent with other criteria provisions of the registry laws that include identical language.

### **Removal of the Requirement to Register as a Sexual Offender or Sexual Predator**

#### ***Registration Removal under s. 943.0435(11), F.S.***

The bill amends s. 943.0435, F.S., to include a violation of s. 825.1025(2)(a), F.S. (lewd or lascivious battery upon an elderly or disabled person), as an offense that, if committed as an adult, will prohibit a sexual offender from petitioning the court for removal from registration. This change will bring the statute in line with the federal Adam Walsh Act.

The bill removes from s. 943.0435(11), F.S. (petition for removal of registration requirements), inoperable language regarding calculation of the registration period.

The bill amends s. 943.0435, F.S., to clarify that an eligible sexual offender may, for the purpose of removing the requirement for registration as a sexual offender, petition the criminal division of the circuit court of the circuit where the:

- Conviction or adjudication occurred, for a conviction in this state;
- Sexual offender resides, for a conviction of a violation of similar law of another jurisdiction; or
- Sexual offender last resided, for a sexual offender who has a conviction for a violation of a similar law of another jurisdiction and who no longer resides in this state.

#### ***Registration Removal under Section 943.04354, F.S.***

The bill amends s. 943.04354(1), F.S., to remove sexual battery (s. 794.011, F.S.) as a qualifying offense for seeking removal from registration requirements under this provision.

The bill clarifies that a person who seeks to have his or her registration requirements removed under this statute must file a motion in the criminal division of the circuit court where the:

- Conviction or adjudication for the qualifying offense occurred if registration is required for a conviction that occurred in this state;
- Sexual offender or sexual predator resides if registration is required for a violation of a similar law of another jurisdiction; or
- Sexual offender or sexual predator last resided for a sexual offender or sexual predator who has a conviction for a violation of a similar law of another jurisdiction and who no longer resides in this state.

### **Registration and Reregistration**

The bill amends ss. 943.0435 and 944.607, F.S., to provide that a sexual offender who must register as a result of a conviction for lewd or lascivious battery upon an elderly or disabled person (s. 825.1025(2)(a), F.S.), must reregister quarterly and for life. According to the FDLE, this change accords with federal SORNA requirements.<sup>41</sup>

### **Online Registration and Reregistration**

The bill amends ss. 775.21 and 943.0435, F.S., to expand the information that can be registered or updated due to changes through the FDLE's online system, including change to:

- Home telephone numbers and cellular telephone numbers, including added and deleted numbers;
- Employment information; and
- Status relating to enrollment, volunteering, or employment at institutions of higher education.

Additionally, the bill provides that sexual predators and sexual offenders may continue to register such changes in person. If a sexual predator or sexual offender chooses to register information changes in person, he or she must ensure that the changes are registered with the appropriate entity.<sup>42</sup> The bill further provides that changes in information registered in person or through the online system must be done within 48 hours of the change.

The bill amends ss. 775.21 and 943.0435, F.S., to provide that the FDLEs online system must permit sexual predators and sexual offenders to securely access, submit, and update all home telephone numbers and cellular telephone numbers, employment information, and institution of higher education information.

### **Registration – Electronic Mail Addresses and Internet Identifiers**

The bill amends s. 775.21, F.S., to modify the definition of the term “Internet identifier” to include, but not be limited to:

all website uniform resource locators (URLs) and application software, whether mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or

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<sup>41</sup> FDLE Analysis.

<sup>42</sup> Applicable entities include the sheriff's office; in person at the DOC, if in the custody or control, or under the supervision of the DOC; or in person at the DJJ, if in the custody or control, or under the supervision of the DJJ.

other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, or personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.

This modification expands the definition of “Internet identifier” to include the corresponding website URLs or application software that is associated with the identifier, rather than limiting the information that must be registered to the names used for Internet communication. The bill amends the definition of “Internet identifier” found in ss. 943.0435, 944.606, 944.607, and 985.4815, F.S., to have the same meaning as in s. 775.21, F.S.

The bill adds the term “electronic mail address” to ss. 985.481 and 985.4815, F.S., and provides that the term has the same meaning as in s. 668.602, F.S.

Relevant to information on electronic mail addresses and Internet identifiers that must be registered prior to their use, the bill amends ss. 775.21 and 943.0435, F.S., to provide that sexual predators and sexual offenders may register such information through the FDLE’s online system or in person at the sheriff’s office. Additionally, the bill amends these sections to provide that sexual predators and sexual offenders who are in the custody or control, or under the supervision, of the DOC or the DJJ must report all email addresses and Internet identifiers to the applicable agency prior to using such email addresses or Internet identifiers.

### **Registration – Location of Residence or Travel**

The bill amends the definition sections found in ss. 944.606, 985.481, and 985.4815, F.S., to include definitions for the terms permanent, temporary, and transient residence. The definitions are relevant to reporting residence information. The bill provides these terms have the same meaning as provided in s. 775.21, F.S.

The bill amends ss. 775.21 and 943.0435, F.S., to clarify that sexual predators and sexual offenders must report to the sheriff of the county of current residence at least 21 days before the date of intended travel for international travel, rather than within 21 days of the planned departure date. Additionally, the bill requires registrants to provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel for international travel plans.

### **Registration – Institution of Higher Education**

The bill amends s. 775.21, F.S., to rename the term “change in enrollment or employment status” as “change in status at an institution of higher education,” and to amend the definition to mean the commencement or termination of enrollment, including, but not limited to, traditional classroom setting or online courses, or employment, whether for compensation or as a volunteer, at an institution of higher education or a change in location of enrollment or employment, whether for compensation or as a volunteer, at an institution of higher education. The bill also

amends the name of the term in ss. 943.0435, 944.607, and 985.4815, F.S., in the same manner and provides that the term has the same meaning as provided in s. 775.21, F.S.

As a result of these changes, sexual predators and sexual offenders who are enrolled in online classes at institutions that meet this definition will now be required to register such information and reregister changes to status. Additionally, appropriate reporting entities will be required to notify institutions of sexual predators and sexual offenders who are enrolled in online classes through their institution.

The bill retains the reporting agencies included in ss. 944.607 and 985.4815, F.S., but amends ss. 775.21 and 943.0435, F.S., to provide that the sheriff, the DOC, or the DJJ shall promptly notify each institution of higher education of a registrant's presence or change in status.

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., to specifically include information regarding changes in enrollment status to the types of information that sexual predators and sexual offenders must register and reregister.

### **Registration – Professional Licenses and Employment Information**

The bill amends s. 775.21, F.S., to define the term “professional license” as a document of authorization or certification issued by an agency of this state for a regulatory purpose, or by any similar agency in another jurisdiction for a regulatory purpose, to a person to engage in an occupation or to carry out a trade or business. The bill also amends ss. 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S., to include the term “professional license” and define the term to have the same meaning as in s. 775.21, F.S.

As a result of these changes, sexual predators and sexual offenders who have been issued or are issued a professional license that meets the definition will be required to provide information about such license at the time of registration.

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., to specifically include employment information and changes in employment information as information that sexual predators and sexual offenders must register and reregister.

### **Registration – Driver License or Identification Card**

The bill amends s. 775.21, F.S., to clarify that a sexual predator who has previously obtained a driver license or identification card as a requirement under s. 944.607, F.S., is not required to obtain a driver license or identification card again.

The bill amends ss. 775.21 and 943.0435, F.S., to clarify that the requirement to report specified information to the DHSMV does not negate the requirement to obtain a Florida driver license or identification card.

**Penalties for Failure to Register**

As noted above, the bill expands various current registration and reregistration requirements or adds new registration requirements. If a sexual predator or sexual offender fails to provide initially or update as necessary any of the above-mentioned types of information, he or she will be subject to the criminal penalties for failure to comply with registration requirements.

The bills amends s. 775.21(10) F.S., to provide that a sexual predator commits a third degree felony if he or she fails to provide employment information or information regarding change in status at an institution of higher education. While it appears the failure to provide employment information or information regarding change in status at an institution of higher education is already punishable under subsection (10) as a failure, by act or omission, to comply with the requirements of s. 775.21, F.S., the inclusion of this information in subsection (10) would clearly indicate that failure to provide this information is a third degree felony.

**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, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have a positive indeterminate impact (an unquantifiable increase in prison bed impact). Potential prison bed impact in regard to registry laws involves registered sexual predators and sexual offenders who are convicted of failing to meet registration requirements.

Per the DOC, in FY 2014-15, one offender was sentenced for s. 825.102(2)(a), F.S., and that offender received a prison sentence (sentence length of 48.0 months). There were 58

(adj.) offenders sentenced under s. 787.01, F.S., s. 787.02, F.S., or s. 787.025(2), F.S., and 265 (adj.) of these offenders were sentenced to prison (mean sentence length of 109.2 months; incarceration rate: 47.5 percent adj.-47.5 percent unadj.). It is unknown how many of these offenders were parents and how many offenses had a sexual component.

Per the DOC, in Fiscal Year 2014-15, there were 1,145 (adj.) offenders sentenced for offenses relating to sexual offenders and sexual predators, with 620 (adj.) of these offenders sentenced to prison (mean sentence length of 43.4 months; incarceration rate: 52.4 percent adj.-54.1 percent unadj.). It is unknown how many additional offenders might be added due to changes in the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 92.55, 775.0862, 775.21, 856.022, 943.0435, 943.04354, 943.0515, 944.606, 944.607, 947.1405, 948.30, 948.31, 985.481, 985.4815, 1012.315, and 1012.467.

This bill reenacts the following sections (or provisions of those sections) of the Florida Statutes: 322.141, 397.4872, 435.07, 775.25, 775.24, 794.056, 921.0022, 938.085, 944.607, 944.608, 948.06, 948.063, and 985.04.

**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 Senator Bradley

7-01110A-16

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1                   A bill to be entitled  
 2       An act relating to sexual offenders; amending s.  
 3       775.21, F.S.; revising definitions; revising the  
 4       criteria for a felony offense for which an offender is  
 5       designated as a sexual predator; expanding the  
 6       criteria by removing a requirement that the defendant  
 7       not be the victim's parent or guardian; revising the  
 8       information that a sexual predator is required to  
 9       provide to specified entities under certain  
 10       circumstances; revising registration and verification  
 11       requirements imposed upon a sexual predator;  
 12       conforming provisions to changes made by the act;  
 13       amending s. 856.022, F.S.; revising the criteria for  
 14       loitering or prowling by certain offenders; expanding  
 15       the criteria by removing a requirement that the  
 16       offender not be the victim's parent or guardian;  
 17       amending s. 943.0435, F.S.; revising definitions;  
 18       revising the reporting and registering requirements  
 19       imposed upon a sexual offender to conform provisions  
 20       to changes made by the act; deleting provisions of  
 21       applicability; amending s. 943.04354, F.S.; modifying  
 22       the list of offenses for which a sexual offender or  
 23       sexual predator must be considered by the department  
 24       for removal from registration requirements; deleting  
 25       from the list a conviction or adjudication of  
 26       delinquency for sexual battery; specifying the  
 27       appropriate venue for a defendant to move the circuit  
 28       court to remove the requirement to register as a  
 29       sexual offender or sexual predator; amending s.  
 30       944.606, F.S.; revising definitions; revising the  
 31       information that the Department of Law Enforcement is  
 32       required to provide about a sexual offender upon his

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33       or her release from incarceration; conforming  
 34       provisions to changes made by the act; amending s.  
 35       944.607, F.S.; revising definitions; conforming  
 36       provisions to changes made by the act; amending s.  
 37       985.481, F.S.; revising definitions; conforming  
 38       provisions to changes made by the act; amending s.  
 39       985.4815, F.S.; revising definitions; revising the  
 40       reporting and registering requirements imposed upon a  
 41       sexual offender to conform provisions to changes made  
 42       by the act; amending ss. 92.55, 775.0862, 943.0515,  
 43       947.1405, 948.30, 948.31, 1012.315, and 1012.467,  
 44       F.S.; conforming cross-references; reenacting s.  
 45       938.085, F.S., relating to additional costs to fund  
 46       rape crisis centers, to incorporate the amendment made  
 47       to s. 775.21, F.S., in a reference thereto; reenacting  
 48       s. 794.056(1), F.S., relating to the Rape Crisis  
 49       Program Trust Fund, to incorporate the amendments made  
 50       to ss. 775.21 and 943.0435, F.S., in references  
 51       thereto; reenacting s. 921.0022(3)(g), F.S., relating  
 52       to level 7 of the offense severity ranking chart of  
 53       the Criminal Punishment Code, to incorporate the  
 54       amendments made to ss. 775.21, 943.0435, 944.607, and  
 55       985.4815, F.S., in references thereto; reenacting s.  
 56       985.04(6)(b), F.S., relating to confidential  
 57       information, to incorporate the amendments made to ss.  
 58       775.21, 943.0435, 944.606, 944.607, 985.481, and  
 59       985.4815, F.S., in references thereto; reenacting ss.  
 60       322.141(3) and (4), 948.06(4), and 948.063, F.S.,  
 61       relating to color or markings of certain licenses or

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62 identification cards, probation or community control,  
 63 and violations of probation or community control by  
 64 designated sexual offenders and sexual predators,  
 65 respectively, to incorporate the amendments made to  
 66 ss. 775.21, 943.0435, and 944.607, F.S., in references  
 67 thereto; reenacting s. 944.607(10)(c), F.S., relating  
 68 to notification to the Department of Law Enforcement  
 69 of information on sexual offenders, to incorporate the  
 70 amendment made to s. 943.0435, F.S., in a reference  
 71 thereto; reenacting ss. 397.4872(2) and 435.07(4)(b),  
 72 F.S., relating to exemptions from disqualification, to  
 73 incorporate the amendment made to s. 943.04354, F.S.,  
 74 in references thereto; reenacting s. 775.25, F.S.,  
 75 relating to prosecutions for acts or omissions, to  
 76 incorporate the amendments made to ss. 944.606 and  
 77 944.607, F.S., in references thereto; reenacting ss.  
 78 775.24(2) and 944.608(7), F.S., relating to duty of  
 79 the court to uphold laws governing sexual predators  
 80 and sexual offenders and notification to the  
 81 Department of Law Enforcement of information on career  
 82 offenders, respectively, to incorporate the amendment  
 83 made to s. 944.607, F.S., in references thereto;  
 84 providing an effective date.

85  
 86 Be It Enacted by the Legislature of the State of Florida:

87  
 88 Section 1. Subsection (2), paragraph (a) of subsection (4),  
 89 paragraphs (a), (e), (f), (g), and (i) of subsection (6),  
 90 paragraph (a) of subsection (8), and paragraphs (a) and (b) of

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91 subsection (10) of section 775.21, Florida Statutes, are  
 92 amended, and paragraphs (c) and (d) of subsection (4),  
 93 paragraphs (a) and (b) of subsection (5), and paragraphs (c) and  
 94 (e) of subsection (10) of that section are republished, to read:

95 775.21 The Florida Sexual Predators Act.—

96 (2) DEFINITIONS.—As used in this section, the term:

97 (a) "Change in ~~enrollment or employment~~ status at an  
 98 institution of higher education" means the commencement or  
 99 termination of enrollment, including, but not limited to,  
 100 traditional classroom settings or online courses, or employment,  
 101 whether for compensation or as a volunteer, at an institution of  
 102 higher education or a change in location of enrollment or  
 103 employment, whether for compensation or as a volunteer, at an  
 104 institution of higher education.

105 (b) "Chief of police" means the chief law enforcement  
 106 officer of a municipality.

107 (c) "Child care facility" has the same meaning as provided  
 108 in s. 402.302.

109 (d) "Community" means any county where the sexual predator  
 110 lives or otherwise establishes or maintains a permanent,  
 111 temporary, or transient ~~permanent~~ residence.

112 (e) "Conviction" means a determination of guilt which is  
 113 the result of a trial or the entry of a plea of guilty or nolo  
 114 contendere, regardless of whether adjudication is withheld. A  
 115 conviction for a similar offense includes, but is not limited  
 116 to, a conviction by a federal or military tribunal, including  
 117 courts-martial conducted by the Armed Forces of the United  
 118 States, and includes a conviction or entry of a plea of guilty  
 119 or nolo contendere resulting in a sanction in any state of the

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120 United States or other jurisdiction. A sanction includes, but is  
 121 not limited to, a fine, probation, community control, parole,  
 122 conditional release, control release, or incarceration in a  
 123 state prison, federal prison, private correctional facility, or  
 124 local detention facility.

125 (f) "Department" means the Department of Law Enforcement.

126 (g) "Electronic mail address" has the same meaning as  
 127 provided in s. 668.602.

128 (h) "Entering the county" includes being discharged from a  
 129 correctional facility or jail or secure treatment facility  
 130 within the county or being under supervision within the county  
 131 for the commission of a violation enumerated in subsection (4).

132 (i) "Institution of higher education" means a career  
 133 center, a community college, a college, a state university, or  
 134 an independent postsecondary institution.

135 (j) ~~(i)~~ "Internet identifier" includes, but is not limited  
 136 to, all website uniform resource locators (URLs) and application  
 137 software, whether mobile or nonmobile, used for Internet  
 138 communication, including anonymous communication, through means  
 139 all electronic mail, chat, instant messages messenger, social  
 140 networking, social gaming, or other similar programs and all  
 141 corresponding usernames, logins, screen names, and screen  
 142 identifiers associated with each URL or application software.  
 143 Internet identifier application software, or similar names used  
 144 for Internet communication, but does not include a date of  
 145 birth, Social Security number, or personal identification number  
 146 (PIN), URL, or application software used for utility, banking,  
 147 retail, or medical purposes. Voluntary disclosure by a sexual  
 148 predator or sexual offender of his or her date of birth, Social

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149 Security number, or PIN as an Internet identifier waives the  
 150 disclosure exemption in this paragraph for such personal  
 151 information.

152 ~~(j) "Institution of higher education" means a career~~  
 153 ~~center, community college, college, state university, or~~  
 154 ~~independent postsecondary institution.~~

155 (k) "Permanent residence" means a place where the person  
 156 abides, lodges, or resides for 5 or more consecutive days.

157 (l) "Professional license" means the document of  
 158 authorization or certification issued by an agency of this state  
 159 for a regulatory purpose, or by any similar agency in another  
 160 jurisdiction for a regulatory purpose, to a person to engage in  
 161 an occupation or to carry out a trade or business.

162 (m) ~~(l)~~ "Temporary residence" means a place where the person  
 163 abides, lodges, or resides, including, but not limited to,  
 164 vacation, business, or personal travel destinations in or out of  
 165 this state, for a period of 5 or more days in the aggregate  
 166 during any calendar year and which is not the person's permanent  
 167 address or, for a person whose permanent residence is not in  
 168 this state, a place where the person is employed, practices a  
 169 vocation, or is enrolled as a student for any period of time in  
 170 this state.

171 (n) ~~(m)~~ "Transient residence" means a county where a person  
 172 lives, remains, or is located for a period of 5 or more days in  
 173 the aggregate during a calendar year and which is not the  
 174 person's permanent or temporary address. The term includes, but  
 175 is not limited to, a place where the person sleeps or seeks  
 176 shelter and a location that has no specific street address.

177 (o) ~~(n)~~ "Vehicles owned" means any motor vehicle as defined

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178 in s. 320.01, which is registered, coregistered, leased, titled,  
 179 or rented by a sexual predator or sexual offender; a rented  
 180 vehicle that a sexual predator or sexual offender is authorized  
 181 to drive; or a vehicle for which a sexual predator or sexual  
 182 offender is insured as a driver. The term also includes any  
 183 motor vehicle as defined in s. 320.01, which is registered,  
 184 coregistered, leased, titled, or rented by a person or persons  
 185 residing at a sexual predator's or sexual offender's permanent  
 186 residence for 5 or more consecutive days.

187 (4) SEXUAL PREDATOR CRITERIA.—

188 (a) For a current offense committed on or after October 1,  
 189 1993, upon conviction, an offender shall be designated as a  
 190 "sexual predator" under subsection (5), and subject to  
 191 registration under subsection (6) and community and public  
 192 notification under subsection (7) if:

193 1. The felony is:

194 a. A capital, life, or first degree felony violation, or  
 195 any attempt thereof, of s. 787.01 or s. 787.02, where the victim  
 196 is a minor ~~and the defendant is not the victim's parent or~~  
 197 ~~guardian~~, or s. 794.011, s. 800.04, or s. 847.0145, or a  
 198 violation of a similar law of another jurisdiction; or

199 b. Any felony violation, or any attempt thereof, of s.  
 200 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 201 787.025(2)(c), where the victim is a minor ~~and the defendant is~~  
 202 ~~not the victim's parent or guardian~~; s. 787.06(3)(b), (d), (f),  
 203 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.  
 204 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
 205 800.04; s. 810.145(8)(b); s. 825.1025; s. 827.071; s. 847.0135,  
 206 excluding s. 847.0135(6); s. 847.0145; s. 916.1075(2); or s.

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207 985.701(1); or a violation of a similar law of another  
 208 jurisdiction, and the offender has previously been convicted of  
 209 or found to have committed, or has pled nolo contendere or  
 210 guilty to, regardless of adjudication, any violation of s.  
 211 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 212 787.025(2)(c), where the victim is a minor ~~and the defendant is~~  
 213 ~~not the victim's parent or guardian~~; s. 787.06(3)(b), (d), (f),  
 214 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.  
 215 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
 216 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,  
 217 excluding s. 847.0135(6); s. 847.0145; s. 916.1075(2); or s.  
 218 985.701(1); or a violation of a similar law of another  
 219 jurisdiction;

220 2. The offender has not received a pardon for any felony or  
 221 similar law of another jurisdiction that is necessary for the  
 222 operation of this paragraph; and

223 3. A conviction of a felony or similar law of another  
 224 jurisdiction necessary to the operation of this paragraph has  
 225 not been set aside in any postconviction proceeding.

226 (c) If an offender has been registered as a sexual predator  
 227 by the Department of Corrections, the department, or any other  
 228 law enforcement agency and if:

229 1. The court did not, for whatever reason, make a written  
 230 finding at the time of sentencing that the offender was a sexual  
 231 predator; or

232 2. The offender was administratively registered as a sexual  
 233 predator because the Department of Corrections, the department,  
 234 or any other law enforcement agency obtained information that  
 235 indicated that the offender met the criteria for designation as

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236 a sexual predator based on a violation of a similar law in  
 237 another jurisdiction,  
 238  
 239 the department shall remove that offender from the department's  
 240 list of sexual predators and, for an offender described under  
 241 subparagraph 1., shall notify the state attorney who prosecuted  
 242 the offense that met the criteria for administrative designation  
 243 as a sexual predator, and, for an offender described under this  
 244 paragraph, shall notify the state attorney of the county where  
 245 the offender establishes or maintains a permanent, temporary, or  
 246 transient residence. The state attorney shall bring the matter  
 247 to the court's attention in order to establish that the offender  
 248 meets the criteria for designation as a sexual predator. If the  
 249 court makes a written finding that the offender is a sexual  
 250 predator, the offender must be designated as a sexual predator,  
 251 must register or be registered as a sexual predator with the  
 252 department as provided in subsection (6), and is subject to the  
 253 community and public notification as provided in subsection (7).  
 254 If the court does not make a written finding that the offender  
 255 is a sexual predator, the offender may not be designated as a  
 256 sexual predator with respect to that offense and is not required  
 257 to register or be registered as a sexual predator with the  
 258 department.

259 (d) An offender who has been determined to be a sexually  
 260 violent predator pursuant to a civil commitment proceeding under  
 261 chapter 394 shall be designated as a "sexual predator" under  
 262 subsection (5) and subject to registration under subsection (6)  
 263 and community and public notification under subsection (7).

264 (5) SEXUAL PREDATOR DESIGNATION.—An offender is designated

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265 as a sexual predator as follows:

266 (a)1. An offender who meets the sexual predator criteria  
 267 described in paragraph (4) (d) is a sexual predator, and the  
 268 court shall make a written finding at the time such offender is  
 269 determined to be a sexually violent predator under chapter 394  
 270 that such person meets the criteria for designation as a sexual  
 271 predator for purposes of this section. The clerk shall transmit  
 272 a copy of the order containing the written finding to the  
 273 department within 48 hours after the entry of the order;

274 2. An offender who meets the sexual predator criteria  
 275 described in paragraph (4) (a) who is before the court for  
 276 sentencing for a current offense committed on or after October  
 277 1, 1993, is a sexual predator, and the sentencing court must  
 278 make a written finding at the time of sentencing that the  
 279 offender is a sexual predator, and the clerk of the court shall  
 280 transmit a copy of the order containing the written finding to  
 281 the department within 48 hours after the entry of the order; or

282 3. If the Department of Corrections, the department, or any  
 283 other law enforcement agency obtains information which indicates  
 284 that an offender who establishes or maintains a permanent,  
 285 temporary, or transient residence in this state meets the sexual  
 286 predator criteria described in paragraph (4) (a) or paragraph  
 287 (4) (d) because the offender was civilly committed or committed a  
 288 similar violation in another jurisdiction on or after October 1,  
 289 1993, the Department of Corrections, the department, or the law  
 290 enforcement agency shall notify the state attorney of the county  
 291 where the offender establishes or maintains a permanent,  
 292 temporary, or transient residence of the offender's presence in  
 293 the community. The state attorney shall file a petition with the

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294 criminal division of the circuit court for the purpose of  
 295 holding a hearing to determine if the offender's criminal record  
 296 or record of civil commitment from another jurisdiction meets  
 297 the sexual predator criteria. If the court finds that the  
 298 offender meets the sexual predator criteria because the offender  
 299 has violated a similar law or similar laws in another  
 300 jurisdiction, the court shall make a written finding that the  
 301 offender is a sexual predator.

302  
 303 When the court makes a written finding that an offender is a  
 304 sexual predator, the court shall inform the sexual predator of  
 305 the registration and community and public notification  
 306 requirements described in this section. Within 48 hours after  
 307 the court designating an offender as a sexual predator, the  
 308 clerk of the circuit court shall transmit a copy of the court's  
 309 written sexual predator finding to the department. If the  
 310 offender is sentenced to a term of imprisonment or supervision,  
 311 a copy of the court's written sexual predator finding must be  
 312 submitted to the Department of Corrections.

313 (b) If a sexual predator is not sentenced to a term of  
 314 imprisonment, the clerk of the court shall ensure that the  
 315 sexual predator's fingerprints are taken and forwarded to the  
 316 department within 48 hours after the court renders its written  
 317 sexual predator finding. The fingerprints shall be clearly  
 318 marked, "Sexual Predator Registration." The clerk of the court  
 319 that convicts and sentences the sexual predator for the offense  
 320 or offenses described in subsection (4) shall forward to the  
 321 department and to the Department of Corrections a certified copy  
 322 of any order entered by the court imposing any special condition

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323 or restriction on the sexual predator that restricts or  
 324 prohibits access to the victim, if the victim is a minor, or to  
 325 other minors.

326 (6) REGISTRATION.—

327 (a) A sexual predator shall register with the department  
 328 through the sheriff's office by providing the following  
 329 information to the department:

330 1. Name; social security number; age; race; sex; date of  
 331 birth; height; weight; tattoos or other identifying marks; hair  
 332 and eye color; photograph; address of legal residence and  
 333 address of any current temporary residence, within the state or  
 334 out of state, including a rural route address and a post office  
 335 box; if no permanent or temporary address, any transient  
 336 residence within the state; address, location or description,  
 337 and dates of any current or known future temporary residence  
 338 within the state or out of state; all electronic mail addresses  
 339 and all Internet identifiers required to be provided pursuant to  
 340 subparagraph (g)5.; all home telephone numbers and cellular  
 341 telephone numbers required to be provided pursuant to  
 342 subparagraph (g)5.; ~~date and place of any employment information~~  
 343 required to be provided pursuant to subparagraph (g)5.; the  
 344 make, model, color, vehicle identification number (VIN), and  
 345 license tag number of all vehicles owned; date and place of each  
 346 conviction; fingerprints; palm prints; and a brief description  
 347 of the crime or crimes committed by the offender. A post office  
 348 box may not be provided in lieu of a physical residential  
 349 address. The sexual predator shall produce his or her passport,  
 350 if he or she has a passport, and, if he or she is an alien,  
 351 shall produce or provide information about documents

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352 establishing his or her immigration status. The sexual predator  
 353 shall also provide information about any professional licenses  
 354 he or she has.

355 a. If the sexual predator's place of residence is a motor  
 356 vehicle, trailer, mobile home, or manufactured home, as defined  
 357 in chapter 320, the sexual predator shall also provide to the  
 358 department written notice of the vehicle identification number;  
 359 the license tag number; the registration number; and a  
 360 description, including color scheme, of the motor vehicle,  
 361 trailer, mobile home, or manufactured home. If a sexual  
 362 predator's place of residence is a vessel, live-aboard vessel,  
 363 or houseboat, as defined in chapter 327, the sexual predator  
 364 shall also provide to the department written notice of the hull  
 365 identification number; the manufacturer's serial number; the  
 366 name of the vessel, live-aboard vessel, or houseboat; the  
 367 registration number; and a description, including color scheme,  
 368 of the vessel, live-aboard vessel, or houseboat.

369 b. If the sexual predator is enrolled or, employed, whether  
 370 for compensation or as a volunteer ~~volunteering, or carrying on~~  
 371 ~~a vocation~~ at an institution of higher education in this state,  
 372 the sexual predator shall also provide to the department  
 373 pursuant to subparagraph (g)5. the name, address, and county of  
 374 each institution, including each campus attended, and the sexual  
 375 predator's enrollment, volunteer, or employment status. ~~Each~~  
 376 ~~change in enrollment, volunteer, or employment status must be~~  
 377 ~~reported in person at the sheriff's office, or the Department of~~  
 378 ~~Corrections if the sexual predator is in the custody or control~~  
 379 ~~of or under the supervision of the Department of Corrections,~~  
 380 ~~within 48 hours after any change in status.~~ The sheriff, ~~or~~ the

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381 Department of Corrections, or the Department of Juvenile Justice  
 382 shall promptly notify each institution of higher education of  
 383 the sexual predator's presence and any change in the sexual  
 384 predator's enrollment, volunteer, or employment status.

385 c. A sexual predator shall report in person to the  
 386 sheriff's office within 48 hours after any change in vehicles  
 387 owned to report those vehicle information changes.

388 2. Any other information determined necessary by the  
 389 department, including criminal and corrections records;  
 390 nonprivileged personnel and treatment records; and evidentiary  
 391 genetic markers when available.

392 (e)1. If the sexual predator is not in the custody or  
 393 control of, or under the supervision of, the Department of  
 394 Corrections or is not in the custody of a private correctional  
 395 facility, the sexual predator shall register in person:

396 a. At the sheriff's office in the county where he or she  
 397 establishes or maintains a residence within 48 hours after  
 398 establishing or maintaining a residence in this state; and

399 b. At the sheriff's office in the county where he or she  
 400 was designated a sexual predator by the court within 48 hours  
 401 after such finding is made.

402 2. Any change in the sexual predator's permanent, ~~or~~  
 403 temporary, or transient residence; ~~name;~~ vehicles owned;  
 404 electronic mail addresses; ~~Internet identifiers;~~ home  
 405 telephone numbers and cellular telephone numbers; and employment  
 406 information and any change in status at an institution of higher  
 407 education, required to be provided pursuant to subparagraph  
 408 (g)5., after the sexual predator registers in person at the  
 409 sheriff's office as provided in subparagraph 1.  ~~must be~~

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 410 accomplished in the manner provided in paragraphs (g), (i), and  
 411 (j). When a sexual predator registers with the sheriff's office,  
 412 the sheriff shall take a photograph, a set of fingerprints, and  
 413 palm prints of the predator and forward the photographs, palm  
 414 prints, and fingerprints to the department, along with the  
 415 information that the predator is required to provide pursuant to  
 416 this section.

(f) Within 48 hours after the registration required under  
 417 paragraph (a) or paragraph (e), a sexual predator who is not  
 418 incarcerated and who resides in the community, including a  
 419 sexual predator under the supervision of the Department of  
 420 Corrections, shall register in person at a driver license office  
 421 of the Department of Highway Safety and Motor Vehicles and shall  
 422 present proof of registration unless a driver license or an  
 423 identification card that complies with the requirements of s.  
 424 322.141(3) was previously secured or updated under s. 944.607.

At the driver license office the sexual predator shall:

1. If otherwise qualified, secure a Florida driver license,  
 427 renew a Florida driver license, or secure an identification  
 428 card. The sexual predator shall identify himself or herself as a  
 429 sexual predator who is required to comply with this section,  
 430 provide his or her place of permanent, temporary, or transient  
 431 residence, including a rural route address and a post office  
 432 box, and submit to the taking of a photograph for use in issuing  
 433 a driver license, a renewed license, or an identification card,  
 434 and for use by the department in maintaining current records of  
 435 sexual predators. A post office box may not be provided in lieu  
 436 of a physical residential address. If the sexual predator's  
 437 place of residence is a motor vehicle, trailer, mobile home, or  
 438

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 439 manufactured home, as defined in chapter 320, the sexual  
 440 predator shall also provide to the Department of Highway Safety  
 441 and Motor Vehicles the vehicle identification number; the  
 442 license tag number; the registration number; and a description,  
 443 including color scheme, of the motor vehicle, trailer, mobile  
 444 home, or manufactured home. If a sexual predator's place of  
 445 residence is a vessel, live-aboard vessel, or houseboat, as  
 446 defined in chapter 327, the sexual predator shall also provide  
 447 to the Department of Highway Safety and Motor Vehicles the hull  
 448 identification number; the manufacturer's serial number; the  
 449 name of the vessel, live-aboard vessel, or houseboat; the  
 450 registration number; and a description, including color scheme,  
 451 of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway  
 452 Safety and Motor Vehicles for issuing or renewing a driver  
 453 license or an identification card as required by this section.  
 454 The driver license or identification card issued to the sexual  
 455 predator must comply with s. 322.141(3).  
 456

3. Provide, upon request, any additional information  
 457 necessary to confirm the identity of the sexual predator,  
 458 including a set of fingerprints.  
 459

(g)1. Each time a sexual predator's driver license or  
 460 identification card is subject to renewal, and, without regard  
 461 to the status of the predator's driver license or identification  
 462 card, within 48 hours after any change of the predator's  
 463 residence or change in the predator's name by reason of marriage  
 464 or other legal process, the predator shall report in person to a  
 465 driver license office and is subject to the requirements  
 466 specified in paragraph (f). The Department of Highway Safety and  
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468 Motor Vehicles shall forward to the department and to the  
 469 Department of Corrections all photographs and information  
 470 provided by sexual predators. Notwithstanding the restrictions  
 471 set forth in s. 322.142, the Department of Highway Safety and  
 472 Motor Vehicles may release a reproduction of a color-photograph  
 473 or digital-image license to the Department of Law Enforcement  
 474 for purposes of public notification of sexual predators as  
 475 provided in this section. A sexual predator who is unable to  
 476 secure or update a driver license or an identification card with  
 477 the Department of Highway Safety and Motor Vehicles as provided  
 478 in paragraph (f) and this paragraph shall also report any change  
 479 of the predator's residence or change in the predator's name by  
 480 reason of marriage or other legal process within 48 hours after  
 481 the change to the sheriff's office in the county where the  
 482 predator resides or is located and provide confirmation that he  
 483 or she reported such information to the Department of Highway  
 484 Safety and Motor Vehicles. The reporting requirements under this  
 485 subparagraph do not negate the requirement for a sexual predator  
 486 to obtain a Florida driver license or identification card as  
 487 required by this section.

488 2.a. A sexual predator who vacates a permanent, temporary,  
 489 or transient residence and fails to establish or maintain  
 490 another permanent, temporary, or transient residence shall,  
 491 within 48 hours after vacating the permanent, temporary, or  
 492 transient residence, report in person to the sheriff's office of  
 493 the county in which he or she is located. The sexual predator  
 494 shall specify the date upon which he or she intends to or did  
 495 vacate such residence. The sexual predator shall provide or  
 496 update all of the registration information required under

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497 paragraph (a). The sexual predator shall provide an address for  
 498 the residence or other place that he or she is or will be  
 499 located during the time in which he or she fails to establish or  
 500 maintain a permanent or temporary residence.

501 b. A sexual predator shall report in person at the  
 502 sheriff's office in the county in which he or she is located  
 503 within 48 hours after establishing a transient residence and  
 504 thereafter must report in person every 30 days to the sheriff's  
 505 office in the county in which he or she is located while  
 506 maintaining a transient residence. The sexual predator must  
 507 provide the addresses and locations where he or she maintains a  
 508 transient residence. Each sheriff's office shall establish  
 509 procedures for reporting transient residence information and  
 510 provide notice to transient registrants to report transient  
 511 residence information as required in this sub-subparagraph.  
 512 Reporting to the sheriff's office as required by this sub-  
 513 subparagraph does not exempt registrants from any reregistration  
 514 requirement. The sheriff may coordinate and enter into  
 515 agreements with police departments and other governmental  
 516 entities to facilitate additional reporting sites for transient  
 517 residence registration required in this sub-subparagraph. The  
 518 sheriff's office shall, within 2 business days, electronically  
 519 submit and update all information provided by the sexual  
 520 predator to the department.

521 3. A sexual predator who remains at a permanent, temporary,  
 522 or transient residence after reporting his or her intent to  
 523 vacate such residence shall, within 48 hours after the date upon  
 524 which the predator indicated he or she would or did vacate such  
 525 residence, report in person to the sheriff's office to which he

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526 or she reported pursuant to subparagraph 2. for the purpose of  
 527 reporting his or her address at such residence. When the sheriff  
 528 receives the report, the sheriff shall promptly convey the  
 529 information to the department. An offender who makes a report as  
 530 required under subparagraph 2. but fails to make a report as  
 531 required under this subparagraph commits a felony of the second  
 532 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 533 775.084.

534 4. The failure of a sexual predator who maintains a  
 535 transient residence to report in person to the sheriff's office  
 536 every 30 days as required by sub-subparagraph 2.b. is punishable  
 537 as provided in subsection (10).

538 5.a. A sexual predator shall register all electronic mail  
 539 addresses and Internet identifiers with the department through  
 540 the department's online system or in person at the sheriff's  
 541 office before using such electronic mail addresses and Internet  
 542 identifiers. If the sexual predator is in the custody or  
 543 control, or under the supervision, of the Department of  
 544 Corrections, he or she must report all electronic mail addresses  
 545 and Internet identifiers to the Department of Corrections before  
 546 using such electronic mail addresses or Internet identifiers. If  
 547 the sexual predator is in the custody or control, or under the  
 548 supervision, of the Department of Juvenile Justice, he or she  
 549 must report all electronic mail addresses and Internet  
 550 identifiers to the Department of Juvenile Justice before using  
 551 such electronic mail addresses or Internet identifiers.

552 b. A sexual predator shall register all changes to home  
 553 telephone numbers and cellular telephone numbers, including  
 554 added and deleted numbers, all changes to employment

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555 information, and all changes in status related to enrollment,  
 556 volunteering, or employment at institutions of higher education,  
 557 through the department's online system; in person at the  
 558 sheriff's office; in person at the Department of Corrections if  
 559 the sexual predator is in the custody or control, or under the  
 560 supervision, of the Department of Corrections; or in person at  
 561 the Department of Juvenile Justice if the sexual predator is in  
 562 the custody or control, or under the supervision, of the  
 563 Department of Juvenile Justice. All changes required to be  
 564 reported in this subparagraph shall be reported within 48 hours  
 565 after the change.

566 c. The department shall establish an online system through  
 567 which sexual predators may securely access, submit, and update  
 568 all electronic mail address and Internet identifier information,  
 569 home telephone numbers and cellular telephone numbers,  
 570 employment information, and institution of higher education  
 571 information.

572 (i) A sexual predator who intends to establish a permanent,  
 573 temporary, or transient residence in another state or  
 574 jurisdiction other than the State of Florida shall report in  
 575 person to the sheriff of the county of current residence within  
 576 48 hours before the date he or she intends to leave this state  
 577 to establish residence in another state or jurisdiction or at  
 578 least within 21 days before the date he or she intends to travel  
 579 before his or her planned departure date if the intended  
 580 residence of 5 days or more is outside of the United States. Any  
 581 travel that is not known by the sexual predator 21 days before  
 582 the departure date must be reported to the sheriff's office as  
 583 soon as possible before departure. The sexual predator shall

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584 provide to the sheriff the address, municipality, county, state,  
 585 and country of intended residence. For international travel, the  
 586 sexual predator shall also provide travel information,  
 587 including, but not limited to, expected departure and return  
 588 dates, flight number, airport of departure, cruise port of  
 589 departure, or any other means of intended travel. The sheriff  
 590 shall promptly provide to the department the information  
 591 received from the sexual predator. The department shall notify  
 592 the statewide law enforcement agency, or a comparable agency, in  
 593 the intended state, jurisdiction, or country of residence of the  
 594 sexual predator's intended residence. The failure of a sexual  
 595 predator to provide his or her intended place of residence is  
 596 punishable as provided in subsection (10).

597 (8) VERIFICATION.—The department and the Department of  
 598 Corrections shall implement a system for verifying the addresses  
 599 of sexual predators. The system must be consistent with ~~the~~  
 600 provisions of the federal Adam Walsh Child Protection and Safety  
 601 Act of 2006 and any other federal standards applicable to such  
 602 verification or required to be met as a condition for the  
 603 receipt of federal funds by the state. The Department of  
 604 Corrections shall verify the addresses of sexual predators who  
 605 are not incarcerated but who reside in the community under the  
 606 supervision of the Department of Corrections and shall report to  
 607 the department any failure by a sexual predator to comply with  
 608 registration requirements. County and local law enforcement  
 609 agencies, in conjunction with the department, shall verify the  
 610 addresses of sexual predators who are not under the care,  
 611 custody, control, or supervision of the Department of  
 612 Corrections, and may verify the addresses of sexual predators

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613 who are under the care, custody, control, or supervision of the  
 614 Department of Corrections. Local law enforcement agencies shall  
 615 report to the department any failure by a sexual predator to  
 616 comply with registration requirements.

617 (a) A sexual predator shall report in person each year  
 618 during the month of the sexual predator's birthday and during  
 619 every third month thereafter to the sheriff's office in the  
 620 county in which he or she resides or is otherwise located to  
 621 reregister. The sheriff's office may determine the appropriate  
 622 times and days for reporting by the sexual predator, which must  
 623 be consistent with the reporting requirements of this paragraph.  
 624 Reregistration must include any changes to the following  
 625 information:

626 1. Name; social security number; age; race; sex; date of  
 627 birth; height; weight; tattoos or other identifying marks; hair  
 628 and eye color; address of any permanent residence and address of  
 629 any current temporary residence, within the state or out of  
 630 state, including a rural route address and a post office box; if  
 631 no permanent or temporary address, any transient residence  
 632 within the state; address, location or description, and dates of  
 633 any current or known future temporary residence within the state  
 634 or out of state; all electronic mail addresses or Internet  
 635 identifiers required to be provided pursuant to subparagraph  
 636 (6)(g)5.; all home telephone numbers and cellular telephone  
 637 numbers required to be provided pursuant to subparagraph  
 638 (6)(g)5.; date and place of any employment required to be  
 639 provided pursuant to subparagraph (6)(g)5.; the make, model,  
 640 color, vehicle identification number (VIN), and license tag  
 641 number of all vehicles owned; fingerprints; palm prints; and

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642 photograph. A post office box may not be provided in lieu of a  
 643 physical residential address. The sexual predator shall also  
 644 produce his or her passport, if he or she has a passport, and,  
 645 if he or she is an alien, shall produce or provide information  
 646 about documents establishing his or her immigration status. The  
 647 sexual predator shall also provide information about any  
 648 professional licenses he or she has.

649 2. If the sexual predator is enrolled ~~or~~ employed, whether  
 650 for compensation or as a volunteer volunteering, or carrying on  
 651 ~~a vocation~~ at an institution of higher education in this state,  
 652 the sexual predator shall also provide to the department the  
 653 name, address, and county of each institution, including each  
 654 campus attended, and the sexual predator's enrollment,  
 655 volunteer, or employment status.

656 3. If the sexual predator's place of residence is a motor  
 657 vehicle, trailer, mobile home, or manufactured home, as defined  
 658 in chapter 320, the sexual predator shall also provide the  
 659 vehicle identification number; the license tag number; the  
 660 registration number; and a description, including color scheme,  
 661 of the motor vehicle, trailer, mobile home, or manufactured  
 662 home. If the sexual predator's place of residence is a vessel,  
 663 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 664 sexual predator shall also provide the hull identification  
 665 number; the manufacturer's serial number; the name of the  
 666 vessel, live-aboard vessel, or houseboat; the registration  
 667 number; and a description, including color scheme, of the  
 668 vessel, live-aboard vessel, or houseboat.

669 (10) PENALTIES.—

670 (a) Except as otherwise specifically provided, a sexual

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671 predator who fails to register; who fails, after registration,  
 672 to maintain, acquire, or renew a driver license or an  
 673 identification card; who fails to provide required location  
 674 information, electronic mail address information before use,  
 675 Internet identifier information before use, all home telephone  
 676 numbers and cellular telephone numbers, employment information,  
 677 change in status at an institution of higher education, or  
 678 change-of-name information; who fails to make a required report  
 679 in connection with vacating a permanent residence; who fails to  
 680 reregister as required; who fails to respond to any address  
 681 verification correspondence from the department within 3 weeks  
 682 of the date of the correspondence; who knowingly provides false  
 683 registration information by act or omission; or who otherwise  
 684 fails, by act or omission, to comply with the requirements of  
 685 this section commits a felony of the third degree, punishable as  
 686 provided in s. 775.082, s. 775.083, or s. 775.084.

687 (b) A sexual predator who has been convicted of or found to  
 688 have committed, or has pled nolo contendere or guilty to,  
 689 regardless of adjudication, any violation, or attempted  
 690 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
 691 the victim is a minor ~~and the defendant is not the victim's~~  
 692 ~~parent or guardian~~; s. 794.011, excluding s. 794.011(10); s.  
 693 794.05; former s. 796.03; former s. 796.035; s. 800.04; s.  
 694 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s.  
 695 985.701(1); or a violation of a similar law of another  
 696 jurisdiction when the victim of the offense was a minor, and who  
 697 works, whether for compensation or as a volunteer, at any  
 698 business, school, child care facility, park, playground, or  
 699 other place where children regularly congregate, commits a

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700 felony of the third degree, punishable as provided in s.  
 701 775.082, s. 775.083, or s. 775.084.

702 (c) Any person who misuses public records information  
 703 relating to a sexual predator, as defined in this section, or a  
 704 sexual offender, as defined in s. 943.0435 or s. 944.607, to  
 705 secure a payment from such a predator or offender; who knowingly  
 706 distributes or publishes false information relating to such a  
 707 predator or offender which the person misrepresents as being  
 708 public records information; or who materially alters public  
 709 records information with the intent to misrepresent the  
 710 information, including documents, summaries of public records  
 711 information provided by law enforcement agencies, or public  
 712 records information displayed by law enforcement agencies on  
 713 websites or provided through other means of communication,  
 714 commits a misdemeanor of the first degree, punishable as  
 715 provided in s. 775.082 or s. 775.083.

716 (e) An arrest on charges of failure to register, the  
 717 service of an information or a complaint for a violation of this  
 718 section, or an arraignment on charges for a violation of this  
 719 section constitutes actual notice of the duty to register when  
 720 the predator has been provided and advised of his or her  
 721 statutory obligation to register under subsection (6). A sexual  
 722 predator's failure to immediately register as required by this  
 723 section following such arrest, service, or arraignment  
 724 constitutes grounds for a subsequent charge of failure to  
 725 register. A sexual predator charged with the crime of failure to  
 726 register who asserts, or intends to assert, a lack of notice of  
 727 the duty to register as a defense to a charge of failure to  
 728 register shall immediately register as required by this section.

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729 A sexual predator who is charged with a subsequent failure to  
 730 register may not assert the defense of a lack of notice of the  
 731 duty to register.

732 Section 2. Subsection (1) of section 856.022, Florida  
 733 Statutes, is amended, and subsections (2), (3), and (4) of that  
 734 section are republished, to read:

735 856.022 Loitering or prowling by certain offenders in close  
 736 proximity to children; penalty.—

737 (1) Except as provided in subsection (2), this section  
 738 applies to a person convicted of committing, or attempting,  
 739 soliciting, or conspiring to commit, any of the criminal  
 740 offenses proscribed in the following statutes in this state or  
 741 similar offenses in another jurisdiction against a victim who  
 742 was under 18 years of age at the time of the offense: s. 787.01,  
 743 s. 787.02, or s. 787.025(2)(c), where the victim is a minor ~~and~~  
 744 ~~the offender was not the victim's parent or guardian~~; s.  
 745 787.06(3)(g); s. 794.011, excluding s. 794.011(10); s. 794.05;  
 746 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s.  
 747 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 748 847.0137; s. 847.0138; s. 847.0145; s. 985.701(1); or any  
 749 similar offense committed in this state which has been  
 750 redesignated from a former statute number to one of those listed  
 751 in this subsection, if the person has not received a pardon for  
 752 any felony or similar law of another jurisdiction necessary for  
 753 the operation of this subsection and a conviction of a felony or  
 754 similar law of another jurisdiction necessary for the operation  
 755 of this subsection has not been set aside in any postconviction  
 756 proceeding.

757 (2) This section does not apply to a person who has been

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758 removed from the requirement to register as a sexual offender or  
759 sexual predator pursuant to s. 943.04354.

760 (3) A person described in subsection (1) commits loitering  
761 and prowling by a person convicted of a sexual offense against a  
762 minor if, in committing loitering and prowling, he or she was  
763 within 300 feet of a place where children were congregating.

764 (4) It is unlawful for a person described in subsection (1)  
765 to:

766 (a) Knowingly approach, contact, or communicate with a  
767 child under 18 years of age in any public park building or on  
768 real property comprising any public park or playground with the  
769 intent to engage in conduct of a sexual nature or to make a  
770 communication of any type with any content of a sexual nature.  
771 This paragraph applies only to a person described in subsection  
772 (1) whose offense was committed on or after May 26, 2010.

773 (b)1. Knowingly be present in any child care facility or  
774 school containing any students in prekindergarten through grade  
775 12 or on real property comprising any child care facility or  
776 school containing any students in prekindergarten through grade  
777 12 when the child care facility or school is in operation unless  
778 the person had previously provided written notification of his  
779 or her intent to be present to the school board, superintendent,  
780 principal, or child care facility owner;

781 2. Fail to notify the child care facility owner or the  
782 school principal's office when he or she arrives and departs the  
783 child care facility or school; or

784 3. Fail to remain under direct supervision of a school  
785 official or designated chaperone when present in the vicinity of  
786 children. As used in this paragraph, the term "school official"

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787 means a principal, a school resource officer, a teacher or any  
788 other employee of the school, the superintendent of schools, a  
789 member of the school board, a child care facility owner, or a  
790 child care provider.

791 (c) A person is not in violation of paragraph (b) if:

792 1. The child care facility or school is a voting location  
793 and the person is present for the purpose of voting during the  
794 hours designated for voting; or

795 2. The person is only dropping off or picking up his or her  
796 own children or grandchildren at the child care facility or  
797 school.

798 Section 3. Subsection (1) of section 943.0435, Florida  
799 Statutes, is reordered and amended, and subsection (2),  
800 paragraphs (a) and (e) of subsection (4), subsection (7),  
801 subsection (11), and paragraphs (b) and (c) of subsection (14)  
802 of that section are amended, to read:

803 943.0435 Sexual offenders required to register with the  
804 department; penalty.—

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

806 (h)~~(a)~~1. "Sexual offender" means a person who meets the  
807 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
808 subparagraph c., or sub-subparagraph d., as follows:

809 a.(I) Has been convicted of committing, or attempting,  
810 soliciting, or conspiring to commit, any of the criminal  
811 offenses proscribed in the following statutes in this state or  
812 similar offenses in another jurisdiction: s. 393.135(2); s.  
813 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
814 the victim is a minor ~~and the defendant is not the victim's~~  
815 ~~parent or guardian~~; s. 787.06(3)(b), (d), (f), or (g); former s.

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816 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05;  
817 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);  
818 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
819 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.

820 916.1075(2); or s. 985.701(1); or any similar offense committed  
821 in this state which has been redesignated from a former statute  
822 number to one of those listed in this sub-sub-subparagraph; and

823 (II) Has been released on or after October 1, 1997, from  
824 the sanction imposed for any conviction of an offense described  
825 in sub-sub-subparagraph (I). For purposes of sub-sub-  
826 subparagraph (I), a sanction imposed in this state or in any  
827 other jurisdiction includes, but is not limited to, a fine,  
828 probation, community control, parole, conditional release,  
829 control release, or incarceration in a state prison, federal  
830 prison, private correctional facility, or local detention  
831 facility;

832 b. Establishes or maintains a residence in this state and  
833 who has not been designated as a sexual predator by a court of  
834 this state but who has been designated as a sexual predator, as  
835 a sexually violent predator, or by another sexual offender  
836 designation in another state or jurisdiction and was, as a  
837 result of such designation, subjected to registration or  
838 community or public notification, or both, or would be if the  
839 person were a resident of that state or jurisdiction, without  
840 regard to whether the person otherwise meets the criteria for  
841 registration as a sexual offender;

842 c. Establishes or maintains a residence in this state who  
843 is in the custody or control of, or under the supervision of,  
844 any other state or jurisdiction as a result of a conviction for

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845 committing, or attempting, soliciting, or conspiring to commit,  
846 any of the criminal offenses proscribed in the following  
847 statutes or similar offense in another jurisdiction: s.  
848 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.

849 787.025(2)(c), where the victim is a minor ~~and the defendant is~~  
850 ~~not the victim's parent or guardian~~; s. 787.06(3)(b), (d), (f),  
851 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.

852 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
853 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.  
854 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.  
855 847.0145; s. 916.1075(2); or s. 985.701(1); or any similar  
856 offense committed in this state which has been redesignated from  
857 a former statute number to one of those listed in this sub-  
858 subparagraph; or

859 d. On or after July 1, 2007, has been adjudicated  
860 delinquent for committing, or attempting, soliciting, or  
861 conspiring to commit, any of the criminal offenses proscribed in  
862 the following statutes in this state or similar offenses in  
863 another jurisdiction when the juvenile was 14 years of age or  
864 older at the time of the offense:

865 (I) Section 794.011, excluding s. 794.011(10);

866 (II) Section 800.04(4)(a)2. where the victim is under 12  
867 years of age or where the court finds sexual activity by the use  
868 of force or coercion;

869 (III) Section 800.04(5)(c)1. where the court finds  
870 molestation involving unclothed genitals; or

871 (IV) Section 800.04(5)(d) where the court finds the use of  
872 force or coercion and unclothed genitals.

873 (V) Any similar offense committed in this state which has

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874 been redesignated from a former statute number to one of those  
 875 listed in this sub-subparagraph.

876 2. For all qualifying offenses listed in sub-subparagraph  
 877 1.d. (1)(a)1.d., the court shall make a written finding of the  
 878 age of the offender at the time of the offense.

879  
 880 For each violation of a qualifying offense listed in this  
 881 subsection, except for a violation of s. 794.011, the court  
 882 shall make a written finding of the age of the victim at the  
 883 time of the offense. For a violation of s. 800.04(4), the court  
 884 shall also make a written finding indicating whether the offense  
 885 involved sexual activity and indicating whether the offense  
 886 involved force or coercion. For a violation of s. 800.04(5), the  
 887 court shall also make a written finding that the offense did or  
 888 did not involve unclothed genitals or genital area and that the  
 889 offense did or did not involve the use of force or coercion.

890 (b) "Convicted" means that there has been a determination  
 891 of guilt as a result of a trial or the entry of a plea of guilty  
 892 or nolo contendere, regardless of whether adjudication is  
 893 withheld, and includes an adjudication of delinquency of a  
 894 juvenile as specified in this section. Conviction of a similar  
 895 offense includes, but is not limited to, a conviction by a  
 896 federal or military tribunal, including courts-martial conducted  
 897 by the Armed Forces of the United States, and includes a  
 898 conviction or entry of a plea of guilty or nolo contendere  
 899 resulting in a sanction in any state of the United States or  
 900 other jurisdiction. A sanction includes, but is not limited to,  
 901 a fine, probation, community control, parole, conditional  
 902 release, control release, or incarceration in a state prison,

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903 federal prison, private correctional facility, or local  
 904 detention facility.

905 ~~(f)(e)~~ "Permanent residence," "temporary residence," and  
 906 "transient residence" have the same meaning as provided ascribed  
 907 in s. 775.21.

908 (d) "Institution of higher education" has the same meaning  
 909 as provided in s. 775.21 ~~means a career center, community~~  
 910 ~~college, college, state university, or independent postsecondary~~  
 911 ~~institution.~~

912 ~~(a)(e)~~ "Change in enrollment or employment status at an  
 913 institution of higher education" has the same meaning as  
 914 provided in s. 775.21 ~~means the commencement or termination of~~  
 915 ~~enrollment or employment or a change in location of enrollment~~  
 916 ~~or employment.~~

917 ~~(c)(f)~~ "Electronic mail address" has the same meaning as  
 918 provided in s. 668.602.

919 ~~(e)(g)~~ "Internet identifier" has the same meaning as  
 920 provided in s. 775.21.

921 ~~(i)(h)~~ "Vehicles owned" has the same meaning as provided in  
 922 s. 775.21.

923 (g) "Professional license" has the same meaning as provided  
 924 in s. 775.21.

925 (2) A sexual offender shall:

926 (a) Report in person at the sheriff's office:

927 1. In the county in which the offender establishes or  
 928 maintains a permanent, temporary, or transient residence within  
 929 48 hours after:

930 a. Establishing permanent, temporary, or transient  
 931 residence in this state; or

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932 b. Being released from the custody, control, or supervision  
933 of the Department of Corrections or from the custody of a  
934 private correctional facility; or

935 2. In the county where he or she was convicted within 48  
936 hours after being convicted for a qualifying offense for  
937 registration under this section if the offender is not in the  
938 custody or control of, or under the supervision of, the  
939 Department of Corrections, or is not in the custody of a private  
940 correctional facility.

941

942 Any change in the information required to be provided pursuant  
943 to paragraph (b), including, but not limited to, any change in  
944 the sexual offender's permanent, temporary, or transient  
945 residence; ~~name;~~ electronic mail addresses; ~~or~~ Internet  
946 identifiers; home telephone numbers and cellular telephone  
947 numbers; and employment information and any change in status at  
948 an institution of higher education, required to be provided  
949 pursuant to paragraph (4) (e), after the sexual offender reports  
950 in person at the sheriff's office, must be accomplished in the  
951 manner provided in subsections (4), (7), and (8).

952 (b) Provide his or her name; date of birth; social security  
953 number; race; sex; height; weight; hair and eye color; tattoos  
954 or other identifying marks; fingerprints; palm prints;  
955 photograph; ~~occupation and place of employment information~~  
956 required to be provided pursuant to paragraph (4) (e); address of  
957 permanent or legal residence or address of any current temporary  
958 residence, within the state or out of state, including a rural  
959 route address and a post office box; if no permanent or  
960 temporary address, any transient residence within the state,

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961 address, location or description, and dates of any current or  
962 known future temporary residence within the state or out of  
963 state; the make, model, color, vehicle identification number  
964 (VIN), and license tag number of all vehicles owned; all home  
965 telephone numbers and cellular telephone numbers required to be  
966 provided pursuant to paragraph (4) (e); all electronic mail  
967 addresses and all Internet identifiers required to be provided  
968 pursuant to paragraph (4) (e); date and place of each conviction;  
969 and a brief description of the crime or crimes committed by the  
970 offender. A post office box may not be provided in lieu of a  
971 physical residential address. The sexual offender shall also  
972 produce his or her passport, if he or she has a passport, and,  
973 if he or she is an alien, shall produce or provide information  
974 about documents establishing his or her immigration status. The  
975 sexual offender shall also provide information about any  
976 professional licenses he or she has.

977 1. If the sexual offender's place of residence is a motor  
978 vehicle, trailer, mobile home, or manufactured home, as defined  
979 in chapter 320, the sexual offender shall also provide to the  
980 department through the sheriff's office written notice of the  
981 vehicle identification number; the license tag number; the  
982 registration number; and a description, including color scheme,  
983 of the motor vehicle, trailer, mobile home, or manufactured  
984 home. If the sexual offender's place of residence is a vessel,  
985 live-aboard vessel, or houseboat, as defined in chapter 327, the  
986 sexual offender shall also provide to the department written  
987 notice of the hull identification number; the manufacturer's  
988 serial number; the name of the vessel, live-aboard vessel, or  
989 houseboat; the registration number; and a description, including

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990 color scheme, of the vessel, live-aboard vessel, or houseboat.

991 2. If the sexual offender is enrolled ~~or~~, employed, whether  
 992 for compensation or as a volunteer volunteering, or carrying on  
 993 ~~a vocation~~ at an institution of higher education in this state,  
 994 the sexual offender shall also provide to the department  
 995 pursuant to paragraph (4) (e) through the sheriff's office the  
 996 name, address, and county of each institution, including each  
 997 campus attended, and the sexual offender's enrollment,  
 998 volunteer, or employment status. ~~Each change in enrollment,~~  
 999 ~~volunteer, or employment status must be reported in person at~~  
 1000 ~~the sheriff's office, within 48 hours after any change in~~  
 1001 ~~status.~~ The sheriff, the Department of Corrections, or the  
 1002 Department of Juvenile Justice shall promptly notify each  
 1003 institution of higher education of the sexual offender's  
 1004 presence and any change in the sexual offender's enrollment,  
 1005 volunteer, or employment status.

1006 3. A sexual offender shall report in person to the  
 1007 sheriff's office within 48 hours after any change in vehicles  
 1008 owned to report those vehicle information changes.

1009 (c) Provide any other information determined necessary by  
 1010 the department, including criminal and corrections records;  
 1011 nonprivileged personnel and treatment records; and evidentiary  
 1012 genetic markers, when available.

1013  
 1014 When a sexual offender reports at the sheriff's office, the  
 1015 sheriff shall take a photograph, a set of fingerprints, and palm  
 1016 prints of the offender and forward the photographs, palm prints,  
 1017 and fingerprints to the department, along with the information  
 1018 provided by the sexual offender. The sheriff shall promptly

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1019 provide to the department the information received from the  
 1020 sexual offender.

1021 (4) (a) Each time a sexual offender's driver license or  
 1022 identification card is subject to renewal, and, without regard  
 1023 to the status of the offender's driver license or identification  
 1024 card, within 48 hours after any change in the offender's  
 1025 permanent, temporary, or transient residence or change in the  
 1026 offender's name by reason of marriage or other legal process,  
 1027 the offender shall report in person to a driver license office,  
 1028 and is subject to the requirements specified in subsection (3).  
 1029 The Department of Highway Safety and Motor Vehicles shall  
 1030 forward to the department all photographs and information  
 1031 provided by sexual offenders. Notwithstanding the restrictions  
 1032 set forth in s. 322.142, the Department of Highway Safety and  
 1033 Motor Vehicles may release a reproduction of a color-photograph  
 1034 or digital-image license to the Department of Law Enforcement  
 1035 for purposes of public notification of sexual offenders as  
 1036 provided in this section and ss. 943.043 and 944.606. A sexual  
 1037 offender who is unable to secure or update a driver license or  
 1038 an identification card with the Department of Highway Safety and  
 1039 Motor Vehicles as provided in subsection (3) and this subsection  
 1040 shall also report any change in the sexual offender's permanent,  
 1041 temporary, or transient residence or change in the offender's  
 1042 name by reason of marriage or other legal process within 48  
 1043 hours after the change to the sheriff's office in the county  
 1044 where the offender resides or is located and provide  
 1045 confirmation that he or she reported such information to the  
 1046 Department of Highway Safety and Motor Vehicles. The reporting  
 1047 requirements under this paragraph do not negate the requirement

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1048 for a sexual offender to obtain a Florida driver license or an  
 1049 identification card as required in this section.

1050 (e)1. A sexual offender shall register all electronic mail  
 1051 addresses and Internet identifiers with the department through  
 1052 the department's online system or in person at the sheriff's  
 1053 office before using such electronic mail addresses and Internet  
 1054 identifiers. If the sexual offender is in the custody or  
 1055 control, or under the supervision, of the Department of  
 1056 Corrections, he or she must report all electronic mail addresses  
 1057 and Internet identifiers to the Department of Corrections before  
 1058 using such electronic mail addresses or Internet identifiers. If  
 1059 the sexual offender is in the custody or control, or under the  
 1060 supervision, of the Department of Juvenile Justice, he or she  
 1061 must report all electronic mail addresses and Internet  
 1062 identifiers to the Department of Juvenile Justice before using  
 1063 such electronic mail addresses or Internet identifiers.

1064 2. A sexual offender shall register all changes to home  
 1065 telephone numbers and cellular telephone numbers, including  
 1066 added and deleted numbers, all changes to employment  
 1067 information, and all changes in status related to enrollment,  
 1068 volunteering, or employment at institutions of higher education,  
 1069 through the department's online system; in person at the  
 1070 sheriff's office; in person at the Department of Corrections if  
 1071 the sexual offender is in the custody or control, or under the  
 1072 supervision, of the Department of Corrections; or in person at  
 1073 the Department of Juvenile Justice if the sexual offender is in  
 1074 the custody or control, or under the supervision, of the  
 1075 Department of Juvenile Justice. All changes required to be  
 1076 reported under this subparagraph must be reported within 48

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1077 hours after the change.

1078 3. The department shall establish an online system through  
 1079 which sexual offenders may securely access, submit, and update  
 1080 all changes in status to electronic mail address and Internet  
 1081 identifier information, home telephone numbers and cellular  
 1082 telephone numbers, employment information, and institution of  
 1083 higher education information.

1084 (7) A sexual offender who intends to establish a permanent,  
 1085 temporary, or transient residence in another state or  
 1086 jurisdiction other than the State of Florida shall report in  
 1087 person to the sheriff of the county of current residence within  
 1088 48 hours before the date he or she intends to leave this state  
 1089 to establish residence in another state or jurisdiction or at  
 1090 least within 21 days before the date he or she intends to travel  
 1091 before his or her planned departure date if the intended  
 1092 residence of 5 days or more is outside of the United States. Any  
 1093 travel that is not known by the sexual offender 21 days before  
 1094 the departure date must be reported in person to the sheriff's  
 1095 office as soon as possible before departure. The sexual offender  
 1096 shall provide to the sheriff ~~The notification must include~~ the  
 1097 address, municipality, county, state, and country of intended  
 1098 residence. For international travel, the sexual offender shall  
 1099 also provide travel information, including, but not limited to,  
 1100 expected departure and return dates, flight number, airport of  
 1101 departure, cruise port of departure, or any other means of  
 1102 intended travel. The sheriff shall promptly provide to the  
 1103 department the information received from the sexual offender.  
 1104 The department shall notify the statewide law enforcement  
 1105 agency, or a comparable agency, in the intended state,

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1106 jurisdiction, or country of residence of the sexual offender's  
1107 intended residence. The failure of a sexual offender to provide  
1108 his or her intended place of residence is punishable as provided  
1109 in subsection (9).

1110 (11) Except as provided in s. 943.04354, a sexual offender  
1111 shall maintain registration with the department for the duration  
1112 of his or her life unless the sexual offender has received a  
1113 full pardon or has had a conviction set aside in a  
1114 postconviction proceeding for any offense that meets the  
1115 criteria for classifying the person as a sexual offender for  
1116 purposes of registration. However, a sexual offender shall be  
1117 considered for removal of the requirement to register as a  
1118 sexual offender only if the person:

- 1119 (a)1. ~~Who~~ Has been lawfully released from confinement,  
1120 supervision, or sanction, whichever is later, for at least 25  
1121 years and has not been arrested for any felony or misdemeanor  
1122 offense since release, provided that the sexual offender's  
1123 requirement to register was not based upon an adult conviction:
- 1124 a. For a violation of s. 787.01 or s. 787.02;
  - 1125 b. For a violation of s. 794.011, excluding s. 794.011(10);
  - 1126 c. For a violation of s. 800.04(4)(a)2. where the court  
1127 finds the offense involved a victim under 12 years of age or  
1128 sexual activity by the use of force or coercion;
  - 1129 d. For a violation of s. 800.04(5)(b);
  - 1130 e. For a violation of s. 800.04(5)(c)2. where the court  
1131 finds the offense involved the use of force or coercion and  
1132 unclothed genitals or genital area;
  - 1133 f. For a violation of s. 825.1025(2)(a);
  - 1134 g. ~~f.~~ For any attempt or conspiracy to commit any such

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- 1135 offense;
- 1136 ~~h.g.~~ For a violation of similar law of another  
1137 jurisdiction; or
  - 1138 ~~i.h.~~ For a violation of a similar offense committed in this  
1139 state which has been redesignated from a former statute number  
1140 to one of those listed in this subparagraph.7
  - 1141 2. If the sexual offender meets the criteria in  
1142 subparagraph 1., the sexual offender may, for the purpose of  
1143 removing the requirement for registration as a sexual offender,  
1144 petition the criminal division of the circuit court of the  
1145 circuit:
    - 1146 a. Where the conviction or adjudication occurred, for a  
1147 conviction in this state;
    - 1148 b. Where the sexual offender resides, for a conviction of a  
1149 violation of similar law of another jurisdiction; or
    - 1150 c. Where the sexual offender last resided, for a sexual  
1151 offender with a conviction of a violation of similar law of  
1152 another jurisdiction who no longer resides in this state ~~for the~~  
1153 purpose of removing the requirement for registration as a sexual  
1154 offender.
  - 1155 ~~3.2.~~ The court may grant or deny relief if the offender  
1156 demonstrates to the court that he or she has not been arrested  
1157 for any crime since release; the requested relief complies with  
1158 ~~the provisions of~~ the federal Adam Walsh Child Protection and  
1159 Safety Act of 2006 and any other federal standards applicable to  
1160 the removal of registration requirements for a sexual offender  
1161 or required to be met as a condition for the receipt of federal  
1162 funds by the state; and the court is otherwise satisfied that  
1163 the offender is not a current or potential threat to public

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1164 safety. The state attorney in the circuit in which the petition  
 1165 is filed must be given notice of the petition at least 3 weeks  
 1166 before the hearing on the matter. The state attorney may present  
 1167 evidence in opposition to the requested relief or may otherwise  
 1168 demonstrate the reasons why the petition should be denied. If  
 1169 the court denies the petition, the court may set a future date  
 1170 at which the sexual offender may again petition the court for  
 1171 relief, subject to the standards for relief provided in this  
 1172 subsection.

1173 ~~4.3.~~ The department shall remove an offender from  
 1174 classification as a sexual offender for purposes of registration  
 1175 if the offender provides to the department a certified copy of  
 1176 the court's written findings or order that indicates that the  
 1177 offender is no longer required to comply with the requirements  
 1178 for registration as a sexual offender.

1179 ~~4. For purposes of this paragraph:~~

1180 ~~a. The registration period of a sexual offender sentenced~~  
 1181 ~~to a term of incarceration or committed to a residential program~~  
 1182 ~~begins upon the offender's release from incarceration or~~  
 1183 ~~commitment for the most recent conviction that required the~~  
 1184 ~~offender to register.~~

1185 ~~b. A sexual offender's registration period is tolled during~~  
 1186 ~~any period in which the offender is incarcerated, civilly~~  
 1187 ~~committed, detained pursuant to chapter 985, or committed to a~~  
 1188 ~~residential program.~~

1189 ~~c. Except as provided in sub-subparagraph c., if the sexual~~  
 1190 ~~offender is only sentenced to a term of supervision for the most~~  
 1191 ~~recent conviction that required the offender to register as a~~  
 1192 ~~sexual offender or is only subject to a period of supervision~~

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1193 ~~for that conviction, the registration period begins when the~~  
 1194 ~~term or period of supervision for that conviction begins.~~

1195 ~~d. Except as provided in sub-subparagraph c., if the sexual~~  
 1196 ~~offender is sentenced to a term of supervision that follows a~~  
 1197 ~~term of incarceration for the most recent conviction that~~  
 1198 ~~required the offender to register as a sexual offender or is~~  
 1199 ~~subject to a period of supervision that follows commitment to a~~  
 1200 ~~residential program for that conviction, the registration period~~  
 1201 ~~begins when the term or period of supervision for that~~  
 1202 ~~conviction begins.~~

1203 ~~e. If a sexual offender is sentenced to a term of more than~~  
 1204 ~~25 years' supervision for the most recent conviction that~~  
 1205 ~~required the offender to register as a sexual offender, the~~  
 1206 ~~sexual offender may not petition for removal of the requirement~~  
 1207 ~~for registration as a sexual offender until the term of~~  
 1208 ~~supervision for that conviction is completed.~~

1209 (b) As defined in sub-subparagraph (1)(h)1.b. ~~(1)(a)1.b.~~  
 1210 must maintain registration with the department for the duration  
 1211 of his or her life until the person provides the department with  
 1212 an order issued by the court that designated the person as a  
 1213 sexual predator, as a sexually violent predator, or by another  
 1214 sexual offender designation in the state or jurisdiction in  
 1215 which the order was issued which states that such designation  
 1216 has been removed or demonstrates to the department that such  
 1217 designation, if not imposed by a court, has been removed by  
 1218 operation of law or court order in the state or jurisdiction in  
 1219 which the designation was made, and provided such person no  
 1220 longer meets the criteria for registration as a sexual offender  
 1221 under the laws of this state.

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1222 (14)

1223 (b) However, a sexual offender who is required to register

1224 as a result of a conviction for:

1225 1. Section 787.01 or s. 787.02 where the victim is a minor

1226 ~~and the offender is not the victim's parent or guardian;~~

1227 2. Section 794.011, excluding s. 794.011(10);

1228 3. Section 800.04(4)(a)2. where the court finds the offense

1229 involved a victim under 12 years of age or sexual activity by

1230 the use of force or coercion;

1231 4. Section 800.04(5)(b);

1232 5. Section 800.04(5)(c)1. where the court finds molestation

1233 involving unclothed genitals or genital area;

1234 6. Section 800.04(5)(c)2. where the court finds molestation

1235 involving the use of force or coercion and unclothed genitals or

1236 genital area;

1237 7. Section 800.04(5)(d) where the court finds the use of

1238 force or coercion and unclothed genitals or genital area;

1239 8. Section 825.1025(2)(a);

1240 9.8- Any attempt or conspiracy to commit such offense;

1241 10.9- A violation of a similar law of another jurisdiction;

1242 or

1243 11.10- A violation of a similar offense committed in this

1244 state which has been redesignated from a former statute number

1245 to one of those listed in this paragraph,

1246

1247 must reregister each year during the month of the sexual

1248 offender's birthday and every third month thereafter.

1249 (c) The sheriff's office may determine the appropriate

1250 times and days for reporting by the sexual offender, which must

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1251 be consistent with the reporting requirements of this

1252 subsection. Reregistration must include any changes to the

1253 following information:

1254 1. Name; social security number; age; race; sex; date of

1255 birth; height; weight; tattoos or other identifying marks; hair

1256 and eye color; address of any permanent residence and address of

1257 any current temporary residence, within the state or out of

1258 state, including a rural route address and a post office box; if

1259 no permanent or temporary address, any transient residence

1260 within the state; address, location or description, and dates of

1261 any current or known future temporary residence within the state

1262 or out of state; all electronic mail addresses or Internet

1263 identifiers required to be provided pursuant to paragraph

1264 (4)(e); all home telephone numbers and cellular telephone

1265 numbers required to be provided pursuant to paragraph (4)(e);

1266 date and place of any employment information required to be

1267 provided pursuant to paragraph (4)(e); the make, model, color,

1268 vehicle identification number (VIN), and license tag number of

1269 all vehicles owned; fingerprints; palm prints; and photograph. A

1270 post office box may not be provided in lieu of a physical

1271 residential address. The sexual offender shall also produce his

1272 or her passport, if he or she has a passport, and, if he or she

1273 is an alien, shall produce or provide information about

1274 documents establishing his or her immigration status. The sexual

1275 offender shall also provide information about any professional

1276 licenses he or she has.

1277 2. If the sexual offender is enrolled ~~or, volunteering,~~

1278 ~~employed, whether for compensation or as a volunteer, or~~

1279 ~~carrying on a vocation~~ at an institution of higher education in

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1280 this state, the sexual offender shall also provide to the  
 1281 department the name, address, and county of each institution,  
 1282 including each campus attended, and the sexual offender's  
 1283 enrollment, volunteer, or employment status.

1284 3. If the sexual offender's place of residence is a motor  
 1285 vehicle, trailer, mobile home, or manufactured home, as defined  
 1286 in chapter 320, the sexual offender shall also provide the  
 1287 vehicle identification number; the license tag number; the  
 1288 registration number; and a description, including color scheme,  
 1289 of the motor vehicle, trailer, mobile home, or manufactured  
 1290 home. If the sexual offender's place of residence is a vessel,  
 1291 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 1292 sexual offender shall also provide the hull identification  
 1293 number; the manufacturer's serial number; the name of the  
 1294 vessel, live-aboard vessel, or houseboat; the registration  
 1295 number; and a description, including color scheme, of the  
 1296 vessel, live-aboard vessel or houseboat.

1297 4. Any sexual offender who fails to report in person as  
 1298 required at the sheriff's office, who fails to respond to any  
 1299 address verification correspondence from the department within 3  
 1300 weeks of the date of the correspondence, who fails to report all  
 1301 electronic mail addresses and all Internet identifiers before  
 1302 ~~prior to~~ use, or who knowingly provides false registration  
 1303 information by act or omission commits a felony of the third  
 1304 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 1305 775.084.

1306 Section 4. Subsections (1) and (2) of section 943.04354,  
 1307 Florida Statutes, are amended to read:

1308 943.04354 Removal of the requirement to register as a

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1309 sexual offender or sexual predator in special circumstances.-

1310 (1) For purposes of this section, a person shall be  
 1311 considered for removal of the requirement to register as a  
 1312 sexual offender or sexual predator only if the person:

1313 (a) Was convicted, regardless of adjudication, or  
 1314 adjudicated delinquent of a violation of ~~s. 794.011~~, s. 800.04,  
 1315 s. 827.071, or s. 847.0135(5) or of a similar offense in another  
 1316 jurisdiction and if the person does not have any other  
 1317 conviction, regardless of adjudication, or adjudication of  
 1318 delinquency for a violation of s. 794.011, s. 800.04, s.  
 1319 827.071, or s. 847.0135(5) or for a similar offense in another  
 1320 jurisdiction;

1321 (b)1. Was convicted, regardless of adjudication, or  
 1322 adjudicated delinquent of an offense listed in paragraph (a) and  
 1323 is required to register as a sexual offender or sexual predator  
 1324 solely on the basis of this conviction or adjudication; or

1325 2. Was convicted, regardless of adjudication, or  
 1326 adjudicated delinquent of an offense in another jurisdiction  
 1327 which is similar to an offense listed in paragraph (a) and no  
 1328 longer meets the criteria for registration as a sexual offender  
 1329 or sexual predator under the laws of the jurisdiction in which  
 1330 the similar offense occurred; and

1331 (c) Is not more than 4 years older than the victim of this  
 1332 violation who was 13 years of age or older but younger than 18  
 1333 years of age at the time the person committed this violation.

1334 (2) (a) If a person meets the criteria in subsection (1),  
 1335 the person may, for the purpose of removing the requirement that  
 1336 he or she register as a sexual offender or sexual predator, move  
 1337 the criminal division of the circuit court of the circuit:

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1338 ~~1. the person may move the criminal division of the circuit~~  
 1339 ~~court of the circuit~~ Where the conviction or adjudication for  
 1340 the qualifying offense occurred for a conviction in this state;  
 1341 2. Where the sexual offender or sexual predator resides for  
 1342 a conviction for a violation of similar law of another  
 1343 jurisdiction; or  
 1344 3. Where the sexual offender or sexual predator last  
 1345 resided for a sexual offender or sexual predator with a  
 1346 conviction of a violation of a similar law of another  
 1347 jurisdiction who no longer resides in this state to remove the  
 1348 requirement that the person register as a sexual offender or  
 1349 sexual predator.

1350 (b) The person must allege in the motion that he or she  
 1351 meets the criteria in subsection (1) and that removal of the  
 1352 registration requirement will not conflict with federal law that  
 1353 requires that the sexual act be consensual, notwithstanding the  
 1354 age of the victim. A person convicted or adjudicated delinquent  
 1355 of an offense in another jurisdiction which is similar to an  
 1356 offense listed in paragraph (1) (a) must provide the court  
 1357 written confirmation that he or she is not required to register  
 1358 in the jurisdiction in which the conviction or adjudication  
 1359 occurred. The state attorney and the department must be given  
 1360 notice of the motion at least 21 days before the date of  
 1361 sentencing, disposition of the violation, or hearing on the  
 1362 motion and may present evidence in opposition to the requested  
 1363 relief or may otherwise demonstrate why the motion should be  
 1364 denied. At sentencing, disposition of the violation, or hearing  
 1365 on the motion, the court shall rule on the motion, and, if the  
 1366 court determines the person meets the criteria in subsection (1)

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1367 and the removal of the registration requirement will not  
 1368 conflict with federal law that requires that the sexual act be  
 1369 consensual, notwithstanding the age of the victim, it may grant  
 1370 the motion and order the removal of the registration  
 1371 requirement. The court shall instruct the person to provide the  
 1372 department a certified copy of the order granting relief. If the  
 1373 court denies the motion, the person is not authorized under this  
 1374 section to file another motion for removal of the registration  
 1375 requirement.

1376 Section 5. Subsection (1) of section 944.606, Florida  
 1377 Statutes, is reordered and amended, and paragraph (a) of  
 1378 subsection (3) of that section is amended, to read:  
 1379 944.606 Sexual offenders; notification upon release.—  
 1380 (1) As used in this section, the term:

1381 (a) "Convicted" means there has been a determination of  
 1382 guilt as a result of a trial or the entry of a plea of guilty or  
 1383 nolo contendere, regardless of whether adjudication is withheld.  
 1384 A conviction for a similar offense includes, but is not limited  
 1385 to, a conviction by a federal or military tribunal, including  
 1386 courts-martial conducted by the Armed Forces of the United  
 1387 States, and includes a conviction or entry of a plea of guilty  
 1388 or nolo contendere resulting in a sanction in any state of the  
 1389 United States or other jurisdiction. A sanction includes, but is  
 1390 not limited to, a fine; probation; community control; parole;  
 1391 conditional release; control release; or incarceration in a  
 1392 state prison, federal prison, private correctional facility, or  
 1393 local detention facility.

1394 ~~(f)(b)~~ "Sexual offender" means a person who has been  
 1395 convicted of committing, or attempting, soliciting, or

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1396 conspiring to commit, any of the criminal offenses proscribed in  
 1397 the following statutes in this state or similar offenses in  
 1398 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,  
 1399 s. 787.02, or s. 787.025(2)(c), where the victim is a minor ~~and~~  
 1400 ~~the defendant is not the victim's parent or guardian~~; s.  
 1401 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.  
 1402 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
 1403 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
 1404 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 1405 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.  
 1406 985.701(1); or any similar offense committed in this state which  
 1407 has been redesignated from a former statute number to one of  
 1408 those listed in this subsection, when the department has  
 1409 received verified information regarding such conviction; an  
 1410 offender's computerized criminal history record is not, in and  
 1411 of itself, verified information.

1412 (b)(e) "Electronic mail address" has the same meaning as  
 1413 provided in s. 668.602.

1414 (c)(d) "Internet identifier" has the same meaning as  
 1415 provided in s. 775.21.

1416 (d) "Permanent residence," "temporary residence," and  
 1417 "transient residence" have the same meaning as provided in s.  
 1418 775.21.

1419 (e) "Professional license" has the same meaning as provided  
 1420 in s. 775.21.

1421 (3)(a) The department shall provide information regarding  
 1422 any sexual offender who is being released after serving a period  
 1423 of incarceration for any offense, as follows:

1424 1. The department shall provide: the sexual offender's

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1425 name, any change in the offender's name by reason of marriage or  
 1426 other legal process, and any alias, if known; the correctional  
 1427 facility from which the sexual offender is released; the sexual  
 1428 offender's social security number, race, sex, date of birth,  
 1429 height, weight, and hair and eye color; tattoos or other  
 1430 identifying marks; address of any planned permanent residence or  
 1431 temporary residence, within the state or out of state, including  
 1432 a rural route address and a post office box; if no permanent or  
 1433 temporary address, any transient residence within the state;  
 1434 address, location or description, and dates of any known future  
 1435 temporary residence within the state or out of state; date and  
 1436 county of sentence and each crime for which the offender was  
 1437 sentenced; a copy of the offender's fingerprints, palm prints,  
 1438 and a digitized photograph taken within 60 days before release;  
 1439 the date of release of the sexual offender; all electronic mail  
 1440 addresses and all Internet identifiers required to be provided  
 1441 pursuant to s. 943.0435(4)(e); employment information, if known,  
 1442 provided pursuant to s. 943.0435(4)(e); all home telephone  
 1443 numbers and cellular telephone numbers required to be provided  
 1444 pursuant to s. 943.0435(4)(e); information about any  
 1445 professional licenses the offender has, if known; and passport  
 1446 information, if he or she has a passport, and, if he or she is  
 1447 an alien, information about documents establishing his or her  
 1448 immigration status. The department shall notify the Department  
 1449 of Law Enforcement if the sexual offender escapes, absconds, or  
 1450 dies. If the sexual offender is in the custody of a private  
 1451 correctional facility, the facility shall take the digitized  
 1452 photograph of the sexual offender within 60 days before the  
 1453 sexual offender's release and provide this photograph to the

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1454 Department of Corrections and also place it in the sexual  
 1455 offender's file. If the sexual offender is in the custody of a  
 1456 local jail, the custodian of the local jail shall register the  
 1457 offender within 3 business days after intake of the offender for  
 1458 any reason and upon release, and shall notify the Department of  
 1459 Law Enforcement of the sexual offender's release and provide to  
 1460 the Department of Law Enforcement the information specified in  
 1461 this paragraph and any information specified in subparagraph 2.  
 1462 that the Department of Law Enforcement requests.

1463 2. The department may provide any other information deemed  
 1464 necessary, including criminal and corrections records,  
 1465 nonprivileged personnel and treatment records, when available.

1466 Section 6. Subsection (1) of section 944.607, Florida  
 1467 Statutes, is reordered and amended, and subsections (4) and (13)  
 1468 of that section are amended, to read:

1469 944.607 Notification to Department of Law Enforcement of  
 1470 information on sexual offenders.—

1471 (1) As used in this section, the term:

1472 (f)(a) "Sexual offender" means a person who is in the  
 1473 custody or control of, or under the supervision of, the  
 1474 department or is in the custody of a private correctional  
 1475 facility:

1476 1. On or after October 1, 1997, as a result of a conviction  
 1477 for committing, or attempting, soliciting, or conspiring to  
 1478 commit, any of the criminal offenses proscribed in the following  
 1479 statutes in this state or similar offenses in another  
 1480 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
 1481 787.02, or s. 787.025(2)(c), where the victim is a minor ~~and the~~  
 1482 ~~defendant is not the victim's parent or guardian;~~ s.

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1483 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.  
 1484 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
 1485 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
 1486 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 1487 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.  
 1488 985.701(1); or any similar offense committed in this state which  
 1489 has been redesignated from a former statute number to one of  
 1490 those listed in this paragraph; or

1491 2. Who establishes or maintains a residence in this state  
 1492 and who has not been designated as a sexual predator by a court  
 1493 of this state but who has been designated as a sexual predator,  
 1494 as a sexually violent predator, or by another sexual offender  
 1495 designation in another state or jurisdiction and was, as a  
 1496 result of such designation, subjected to registration or  
 1497 community or public notification, or both, or would be if the  
 1498 person were a resident of that state or jurisdiction, without  
 1499 regard as to whether the person otherwise meets the criteria for  
 1500 registration as a sexual offender.

1501 (g)(b) "Vehicles owned" has the same meaning as provided in  
 1502 s. 775.21.

1503 (b)(e) "Conviction" means a determination of guilt which is  
 1504 the result of a trial or the entry of a plea of guilty or nolo  
 1505 contendere, regardless of whether adjudication is withheld.  
 1506 Conviction of a similar offense includes, but is not limited to,  
 1507 a conviction by a federal or military tribunal, including  
 1508 courts-martial conducted by the Armed Forces of the United  
 1509 States, and includes a conviction or entry of a plea of guilty  
 1510 or nolo contendere resulting in a sanction in any state of the  
 1511 United States or other jurisdiction. A sanction includes, but is

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1512 not limited to, a fine; probation; community control; parole;  
 1513 conditional release; control release; or incarceration in a  
 1514 state prison, federal prison, private correctional facility, or  
 1515 local detention facility.

1516 (d) "Institution of higher education" has the same meaning  
 1517 as provided in s. 775.21 ~~means a career center, community~~  
 1518 ~~college, college, state university, or independent postsecondary~~  
 1519 ~~institution.~~

1520 ~~(a)(c)~~ "Change in enrollment or employment status at an  
 1521 institution of higher education" has the same meaning as  
 1522 provided in s. 775.21 ~~means the commencement or termination of~~  
 1523 ~~enrollment or employment or a change in location of enrollment~~  
 1524 ~~or employment.~~

1525 ~~(c)(f)~~ "Electronic mail address" has the same meaning as  
 1526 provided in s. 668.602.

1527 ~~(e)(g)~~ "Internet identifier" has the same meaning as  
 1528 provided in s. 775.21.

1529 (4) A sexual offender, as described in this section, who is  
 1530 under the supervision of the Department of Corrections but is  
 1531 not incarcerated shall register with the Department of  
 1532 Corrections within 3 business days after sentencing for a  
 1533 registrable offense and otherwise provide information as  
 1534 required by this subsection.

1535 (a) The sexual offender shall provide his or her name; date  
 1536 of birth; social security number; race; sex; height; weight;  
 1537 hair and eye color; tattoos or other identifying marks; all  
 1538 electronic mail addresses and Internet identifiers required to  
 1539 be provided pursuant to s. 943.0435(4) (e); employment  
 1540 information required to be provided pursuant to s.

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1541 943.0435(4) (e); all home telephone numbers and cellular  
 1542 telephone numbers required to be provided pursuant to s.  
 1543 943.0435(4) (e); the make, model, color, vehicle identification  
 1544 number (VIN), and license tag number of all vehicles owned;  
 1545 permanent or legal residence and address of temporary residence  
 1546 within the state or out of state while the sexual offender is  
 1547 under supervision in this state, including any rural route  
 1548 address or post office box; if no permanent or temporary  
 1549 address, any transient residence within the state; and address,  
 1550 location or description, and dates of any current or known  
 1551 future temporary residence within the state or out of state. The  
 1552 sexual offender shall also produce his or her passport, if he or  
 1553 she has a passport, and, if he or she is an alien, shall produce  
 1554 or provide information about documents establishing his or her  
 1555 immigration status. The sexual offender shall also provide  
 1556 information about any professional licenses he or she has. The  
 1557 Department of Corrections shall verify the address of each  
 1558 sexual offender in the manner described in ss. 775.21 and  
 1559 943.0435. The department shall report to the Department of Law  
 1560 Enforcement any failure by a sexual predator or sexual offender  
 1561 to comply with registration requirements.

1562 (b) If the sexual offender is enrolled ~~or~~ employed,  
 1563 whether for compensation or as a volunteer ~~volunteering, or~~  
 1564 ~~carrying on a vocation~~ at an institution of higher education in  
 1565 this state, the sexual offender shall provide the name, address,  
 1566 and county of each institution, including each campus attended,  
 1567 and the sexual offender's enrollment, volunteer, or employment  
 1568 status required to be provided pursuant to s. 943.0435(4) (e).  
 1569 Each change in enrollment, ~~volunteer, or employment~~ status at an

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1570 institution of higher education must be reported to the  
 1571 department within 48 hours after the change in status at an  
 1572 institution of higher education as provided pursuant to s.  
 1573 943.0435(4)(e). The Department of Corrections shall promptly  
 1574 notify each institution of the sexual offender's presence and  
 1575 any change in the sexual offender's enrollment, volunteer, or  
 1576 employment status.

1577 (c) A sexual offender shall report in person to the  
 1578 sheriff's office within 48 hours after any change in vehicles  
 1579 owned to report those vehicle information changes.

1580 (13)(a) A sexual offender must report in person each year  
 1581 during the month of the sexual offender's birthday and during  
 1582 the sixth month following the sexual offender's birth month to  
 1583 the sheriff's office in the county in which he or she resides or  
 1584 is otherwise located to reregister.

1585 (b) However, a sexual offender who is required to register  
 1586 as a result of a conviction for:

- 1587 1. Section 787.01 or s. 787.02 where the victim is a minor  
 1588 ~~and the offender is not the victim's parent or guardian;~~
- 1589 2. Section 794.011, excluding s. 794.011(10);
- 1590 3. Section 800.04(4)(a)2. where the victim is under 12  
 1591 years of age or where the court finds sexual activity by the use  
 1592 of force or coercion;
- 1593 4. Section 800.04(5)(b);
- 1594 5. Section 800.04(5)(c)1. where the court finds molestation  
 1595 involving unclothed genitals or genital area;
- 1596 6. Section 800.04(5)(c)2. where the court finds molestation  
 1597 involving use of force or coercion and unclothed genitals or  
 1598 genital area;

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1599 7. Section 800.04(5)(d) where the court finds the use of  
 1600 force or coercion and unclothed genitals or genital area;  
 1601 8. Section 825.1025(2)(a);  
 1602 9.8- Any attempt or conspiracy to commit such offense;  
 1603 10.9- A violation of a similar law of another jurisdiction;  
 1604 or  
 1605 11.10- A violation of a similar offense committed in this  
 1606 state which has been redesignated from a former statute number  
 1607 to one of those listed in this paragraph,  
 1608  
 1609 must reregister each year during the month of the sexual  
 1610 offender's birthday and every third month thereafter.  
 1611 (c) The sheriff's office may determine the appropriate  
 1612 times and days for reporting by the sexual offender, which must  
 1613 be consistent with the reporting requirements of this  
 1614 subsection. Reregistration must include any changes to the  
 1615 following information:  
 1616 1. Name; social security number; age; race; sex; date of  
 1617 birth; height; weight; tattoos or other identifying marks; hair  
 1618 and eye color; address of any permanent residence and address of  
 1619 any current temporary residence, within the state or out of  
 1620 state, including a rural route address and a post office box; if  
 1621 no permanent or temporary address, any transient residence;  
 1622 address, location or description, and dates of any current or  
 1623 known future temporary residence within the state or out of  
 1624 state; all electronic mail addresses and Internet identifiers  
 1625 required to be provided pursuant to s. 943.0435(4)(e); all home  
 1626 telephone numbers and cellular telephone numbers required to be  
 1627 provided pursuant to s. 943.0435(4)(e); ~~date and place of any~~

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1628 employment information required to be provided pursuant to s.  
 1629 943.0435(4)(e); the make, model, color, vehicle identification  
 1630 number (VIN), and license tag number of all vehicles owned;  
 1631 fingerprints; palm prints; and photograph. A post office box may  
 1632 not be provided in lieu of a physical residential address. The  
 1633 sexual offender shall also produce his or her passport, if he or  
 1634 she has a passport, and, if he or she is an alien, shall produce  
 1635 or provide information about documents establishing his or her  
 1636 immigration status. The sexual offender shall also provide  
 1637 information about any professional licenses he or she has.

1638 2. If the sexual offender is enrolled or, employed, whether  
 1639 for compensation or as a volunteer volunteering, or carrying on  
 1640 a vocation at an institution of higher education in this state,  
 1641 the sexual offender shall also provide to the department the  
 1642 name, address, and county of each institution, including each  
 1643 campus attended, and the sexual offender's enrollment,  
 1644 volunteer, or employment status.

1645 3. If the sexual offender's place of residence is a motor  
 1646 vehicle, trailer, mobile home, or manufactured home, as defined  
 1647 in chapter 320, the sexual offender shall also provide the  
 1648 vehicle identification number; the license tag number; the  
 1649 registration number; and a description, including color scheme,  
 1650 of the motor vehicle, trailer, mobile home, or manufactured  
 1651 home. If the sexual offender's place of residence is a vessel,  
 1652 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 1653 sexual offender shall also provide the hull identification  
 1654 number; the manufacturer's serial number; the name of the  
 1655 vessel, live-aboard vessel, or houseboat; the registration  
 1656 number; and a description, including color scheme, of the

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1657 vessel, live-aboard vessel or houseboat.

1658 4. Any sexual offender who fails to report in person as  
 1659 required at the sheriff's office, who fails to respond to any  
 1660 address verification correspondence from the department within 3  
 1661 weeks of the date of the correspondence, who fails to report all  
 1662 electronic mail addresses or Internet identifiers before prior  
 1663 ~~to~~ use, or who knowingly provides false registration information  
 1664 by act or omission commits a felony of the third degree,  
 1665 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1666 (d) The sheriff's office shall, within 2 working days,  
 1667 electronically submit and update all information provided by the  
 1668 sexual offender to the Department of Law Enforcement in a manner  
 1669 prescribed by that department.

1670 Section 7. Subsection (1) and paragraph (a) of subsection  
 1671 (3) of section 985.481, Florida Statutes, are amended to read:

1672 985.481 Sexual offenders adjudicated delinquent;  
 1673 notification upon release.—

1674 (1) As used in this section:

1675 (a) "Convicted" has the same meaning as provided in s.  
 1676 943.0435.

1677 (b) "Electronic mail address" has the same meaning as  
 1678 provided in s. 668.602.

1679 (c)(b) "Internet identifier" has the same meaning as  
 1680 provided in s. 775.21.

1681 (d) "Permanent residence," "temporary residence," and  
 1682 "transient residence" have the same meaning as provided in s.  
 1683 775.21.

1684 (e) "Professional license" has the same meaning as provided  
 1685 in s. 775.21.

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1686 ~~(f)(e)~~ "Sexual offender" means a person who has been  
 1687 adjudicated delinquent as provided in s. 943.0435(1)(h)1.d. ~~s.~~  
 1688 ~~943.0435(1)(a)1.d.~~

1689 ~~(g)(d)~~ "Vehicles owned" has the same meaning as provided in  
 1690 s. 775.21.

1691 (3) (a) The department shall provide information regarding  
 1692 any sexual offender who is being released after serving a period  
 1693 of residential commitment under the department for any offense,  
 1694 as follows:

1695 1. The department shall provide the sexual offender's name,  
 1696 any change in the offender's name by reason of marriage or other  
 1697 legal process, and any alias, if known; the correctional  
 1698 facility from which the sexual offender is released; the sexual  
 1699 offender's social security number, race, sex, date of birth,  
 1700 height, weight, and hair and eye color; tattoos or other  
 1701 identifying marks; the make, model, color, vehicle  
 1702 identification number (VIN), and license tag number of all  
 1703 vehicles owned; address of any planned permanent residence or  
 1704 temporary residence, within the state or out of state, including  
 1705 a rural route address and a post office box; if no permanent or  
 1706 temporary address, any transient residence within the state;  
 1707 address, location or description, and dates of any known future  
 1708 temporary residence within the state or out of state; date and  
 1709 county of disposition and each crime for which there was a  
 1710 disposition; a copy of the offender's fingerprints, palm prints,  
 1711 and a digitized photograph taken within 60 days before release;  
 1712 the date of release of the sexual offender; all home telephone  
 1713 numbers and cellular telephone numbers required to be provided  
 1714 pursuant to s. 943.0435(4)(e); all electronic mail addresses and

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1715 Internet identifiers required to be provided pursuant to s.  
 1716 943.0435(4)(e); information about any professional licenses the  
 1717 offender has, if known; and passport information, if he or she  
 1718 has a passport, and, if he or she is an alien, information about  
 1719 documents establishing his or her immigration status. The  
 1720 department shall notify the Department of Law Enforcement if the  
 1721 sexual offender escapes, absconds, or dies. If the sexual  
 1722 offender is in the custody of a private correctional facility,  
 1723 the facility shall take the digitized photograph of the sexual  
 1724 offender within 60 days before the sexual offender's release and  
 1725 also place it in the sexual offender's file. If the sexual  
 1726 offender is in the custody of a local jail, the custodian of the  
 1727 local jail shall register the offender within 3 business days  
 1728 after intake of the offender for any reason and upon release,  
 1729 and shall notify the Department of Law Enforcement of the sexual  
 1730 offender's release and provide to the Department of Law  
 1731 Enforcement the information specified in this subparagraph and  
 1732 any information specified in subparagraph 2. which the  
 1733 Department of Law Enforcement requests.

1734 2. The department may provide any other information  
 1735 considered necessary, including criminal and delinquency  
 1736 records, when available.

1737 Section 8. Subsections (1), (4), and (13) of section  
 1738 985.4815, Florida Statutes, are amended, and paragraph (c) of  
 1739 subsection (10) is republished, to read:

1740 985.4815 Notification to Department of Law Enforcement of  
 1741 information on juvenile sexual offenders.-

1742 (1) As used in this section, the term:

1743 (a) "Change in ~~enrollment or employment~~ status at an

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1744 institution of higher education has the same meaning as  
 1745 provided in s. 775.21 means the commencement or termination of  
 1746 ~~enrollment or employment or a change in location of enrollment~~  
 1747 ~~or employment.~~

1748 (b) "Conviction" has the same meaning as provided in s.  
 1749 943.0435.

1750 (c) "Electronic mail address" has the same meaning as  
 1751 provided in s. 668.602.

1752 ~~(d)(e)~~ "Institution of higher education" has the same  
 1753 meaning as provided in s. 775.21 means a career center,  
 1754 ~~community college, college, state university, or independent~~  
 1755 ~~postsecondary institution.~~

1756 ~~(e)(d)~~ "Internet identifier" has the same meaning as  
 1757 provided in s. 775.21.

1758 (f) "Permanent residence," "temporary residence," and  
 1759 "transient residence" have the same meaning as provided in s.  
 1760 775.21.

1761 (g) "Professional license" has the same meaning as provided  
 1762 in s. 775.21.

1763 ~~(h)(e)~~ "Sexual offender" means a person who is in the care  
 1764 or custody or under the jurisdiction or supervision of the  
 1765 department or is in the custody of a private correctional  
 1766 facility and who:

- 1767 1. Has been adjudicated delinquent as provided in s.  
 1768 943.0435(1)(h)1.d. s. ~~943.0435(1)(a)1.d.~~; or
- 1769 2. Establishes or maintains a residence in this state and  
 1770 has not been designated as a sexual predator by a court of this  
 1771 state but has been designated as a sexual predator, as a  
 1772 sexually violent predator, or by another sexual offender

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1773 designation in another state or jurisdiction and was, as a  
 1774 result of such designation, subjected to registration or  
 1775 community or public notification, or both, or would be if the  
 1776 person were a resident of that state or jurisdiction, without  
 1777 regard to whether the person otherwise meets the criteria for  
 1778 registration as a sexual offender.

1779 ~~(i)(f)~~ "Vehicles owned" has the same meaning as provided in  
 1780 s. 775.21.

1781 (4) A sexual offender, as described in this section, who is  
 1782 under the supervision of the department but who is not committed  
 1783 shall register with the department within 3 business days after  
 1784 adjudication and disposition for a registrable offense and  
 1785 otherwise provide information as required by this subsection.

1786 (a) The sexual offender shall provide his or her name; date  
 1787 of birth; social security number; race; sex; height; weight;  
 1788 hair and eye color; tattoos or other identifying marks; the  
 1789 make, model, color, vehicle identification number (VIN), and  
 1790 license tag number of all vehicles owned; permanent or legal  
 1791 residence and address of temporary residence within the state or  
 1792 out of state while the sexual offender is in the care or custody  
 1793 or under the jurisdiction or supervision of the department in  
 1794 this state, including any rural route address or post office  
 1795 box; if no permanent or temporary address, any transient  
 1796 residence; address, location or description, and dates of any  
 1797 current or known future temporary residence within the state or  
 1798 out of state; all home telephone numbers and cellular telephone  
 1799 numbers required to be provided pursuant to s. 943.0435(4)(e);  
 1800 all electronic mail addresses and Internet identifiers required  
 1801 to be provided pursuant to s. 943.0435(4)(e); and the name and

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1802 address of each school attended. The sexual offender shall also  
 1803 produce his or her passport, if he or she has a passport, and,  
 1804 if he or she is an alien, shall produce or provide information  
 1805 about documents establishing his or her immigration status. The  
 1806 offender shall also provide information about any professional  
 1807 licenses he or she has. The department shall verify the address  
 1808 of each sexual offender and shall report to the Department of  
 1809 Law Enforcement any failure by a sexual offender to comply with  
 1810 registration requirements.

1811 (b) If the sexual offender is enrolled ~~or~~, employed,  
 1812 whether for compensation or as a volunteer ~~volunteering, or~~  
 1813 ~~carrying on a vocation~~ at an institution of higher education in  
 1814 this state, the sexual offender shall provide the name, address,  
 1815 and county of each institution, including each campus attended,  
 1816 and the sexual offender's enrollment, volunteer, or employment  
 1817 status. Each change in ~~enrollment, volunteer, or employment~~  
 1818 status at an institution of higher education must be reported to  
 1819 the department within 48 hours after the change in status at an  
 1820 institution of higher education. The department shall promptly  
 1821 notify each institution of the sexual offender's presence and  
 1822 any change in the sexual offender's enrollment, volunteer, or  
 1823 employment status.

1824 (c) A sexual offender shall report in person to the  
 1825 sheriff's office within 48 hours after any change in vehicles  
 1826 owned to report those vehicle information changes.

1827 (10)

1828 (c) An arrest on charges of failure to register when the  
 1829 offender has been provided and advised of his or her statutory  
 1830 obligations to register under s. 943.0435(2), the service of an

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1831 information or a complaint for a violation of this section, or  
 1832 an arraignment on charges for a violation of this section  
 1833 constitutes actual notice of the duty to register. A sexual  
 1834 offender's failure to immediately register as required by this  
 1835 section following such arrest, service, or arraignment  
 1836 constitutes grounds for a subsequent charge of failure to  
 1837 register. A sexual offender charged with the crime of failure to  
 1838 register who asserts, or intends to assert, a lack of notice of  
 1839 the duty to register as a defense to a charge of failure to  
 1840 register shall immediately register as required by this section.  
 1841 A sexual offender who is charged with a subsequent failure to  
 1842 register may not assert the defense of a lack of notice of the  
 1843 duty to register.

1844 (13) (a) A sexual offender must report in person each year  
 1845 during the month of the sexual offender's birthday and during  
 1846 every third month thereafter to the sheriff's office in the  
 1847 county in which he or she resides or is otherwise located to  
 1848 reregister.

1849 (b) The sheriff's office may determine the appropriate  
 1850 times and days for reporting by the sexual offender, which must  
 1851 be consistent with the reporting requirements of this  
 1852 subsection. Reregistration must include any changes to the  
 1853 following information:

1854 1. Name; social security number; age; race; sex; date of  
 1855 birth; height; weight; hair and eye color; tattoos or other  
 1856 identifying marks; fingerprints; palm prints; address of any  
 1857 permanent residence and address of any current temporary  
 1858 residence, within the state or out of state, including a rural  
 1859 route address and a post office box; if no permanent or

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1860 temporary address, any transient residence; address, location or  
 1861 description, and dates of any current or known future temporary  
 1862 residence within the state or out of state; passport  
 1863 information, if he or she has a passport, and, if he or she is  
 1864 an alien, information about documents establishing his or her  
 1865 immigration status; all home telephone numbers and cellular  
 1866 telephone numbers required to be provided pursuant to s.  
 1867 943.0435(4)(e); all electronic mail addresses and Internet  
 1868 identifiers required to be provided pursuant to s.  
 1869 943.0435(4)(e); name and address of each school attended; date  
 1870 and place of any employment information required to be provided  
 1871 pursuant to s. 943.0435(4)(e); the make, model, color, vehicle  
 1872 identification number (VIN), and license tag number of all  
 1873 vehicles owned; and photograph. A post office box may not be  
 1874 provided in lieu of a physical residential address. The offender  
 1875 shall also provide information about any professional licenses  
 1876 he or she has.

1877 2. If the sexual offender is enrolled or, employed, whether  
 1878 for compensation or as a volunteer volunteering, or carrying on  
 1879 a vocation at an institution of higher education in this state,  
 1880 the sexual offender shall also provide to the department the  
 1881 name, address, and county of each institution, including each  
 1882 campus attended, and the sexual offender's enrollment,  
 1883 volunteer, or employment status.

1884 3. If the sexual offender's place of residence is a motor  
 1885 vehicle, trailer, mobile home, or manufactured home, as defined  
 1886 in chapter 320, the sexual offender shall also provide the  
 1887 vehicle identification number; the license tag number; the  
 1888 registration number; and a description, including color scheme,

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1889 of the motor vehicle, trailer, mobile home, or manufactured  
 1890 home. If the sexual offender's place of residence is a vessel,  
 1891 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 1892 sexual offender shall also provide the hull identification  
 1893 number; the manufacturer's serial number; the name of the  
 1894 vessel, live-aboard vessel, or houseboat; the registration  
 1895 number; and a description, including color scheme, of the  
 1896 vessel, live-aboard vessel, or houseboat.

1897 4. Any sexual offender who fails to report in person as  
 1898 required at the sheriff's office, who fails to respond to any  
 1899 address verification correspondence from the department within 3  
 1900 weeks after the date of the correspondence, or who knowingly  
 1901 provides false registration information by act or omission  
 1902 commits a felony of the third degree, punishable as provided in  
 1903 ss. 775.082, 775.083, and 775.084.

1904 (c) The sheriff's office shall, within 2 working days,  
 1905 electronically submit and update all information provided by the  
 1906 sexual offender to the Department of Law Enforcement in a manner  
 1907 prescribed by that department.

1908 Section 9. Paragraph (b) of subsection (1) of section  
 1909 92.55, Florida Statutes, is amended to read:

1910 92.55 Judicial or other proceedings involving victim or  
 1911 witness under the age of 16, a person who has an intellectual  
 1912 disability, or a sexual offense victim or witness; special  
 1913 protections; use of registered service or therapy animals.—

1914 (1) For purposes of this section, the term:

1915 (b) "Sexual offense" means any offense specified in s.  
 1916 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I) ~~or~~  
 1917 ~~943.0435(1)(a)1.a.(I)~~.

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1918 Section 10. Subsection (2) of section 775.0862, Florida  
1919 Statutes, is amended to read:

1920 775.0862 Sexual offenses against students by authority  
1921 figures; reclassification.—

1922 (2) The felony degree of a violation of an offense listed  
1923 in s. 943.0435(1)(h)1.a. ~~s. 943.0435(1)(a)1.a.~~, unless the  
1924 offense is a violation of s. 794.011(4)(e)7. or s.  
1925 810.145(8)(a)2., shall be reclassified as provided in this  
1926 section if the offense is committed by an authority figure of a  
1927 school against a student of the school.

1928 Section 11. Subsection (3) of section 943.0515, Florida  
1929 Statutes, is amended to read:

1930 943.0515 Retention of criminal history records of minors.—

1931 (3) Notwithstanding any other provision of this section,  
1932 the Criminal Justice Information Program shall retain the  
1933 criminal history record of a minor adjudicated delinquent for a  
1934 violation committed on or after July 1, 2007, as provided in s.  
1935 943.0435(1)(h)1.d. ~~s. 943.0435(1)(a)1.d.~~ Such records may not be  
1936 destroyed and must be merged with the person's adult criminal  
1937 history record and retained as a part of the person's adult  
1938 record.

1939 Section 12. Subsection (12) of section 947.1405, Florida  
1940 Statutes, is amended to read:

1941 947.1405 Conditional release program.—

1942 (12) In addition to all other conditions imposed, for a  
1943 releasee who is subject to conditional release for a crime that  
1944 was committed on or after May 26, 2010, and who has been  
1945 convicted at any time of committing, or attempting, soliciting,  
1946 or conspiring to commit, any of the criminal offenses listed in

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1947 s. 943.0435(1)(h)1.a.(I) ~~s. 943.0435(1)(a)1.a.(I)~~, or a similar  
1948 offense in another jurisdiction against a victim who was under  
1949 18 years of age at the time of the offense, if the releasee has  
1950 not received a pardon for any felony or similar law of another  
1951 jurisdiction necessary for the operation of this subsection, if  
1952 a conviction of a felony or similar law of another jurisdiction  
1953 necessary for the operation of this subsection has not been set  
1954 aside in any postconviction proceeding, or if the releasee has  
1955 not been removed from the requirement to register as a sexual  
1956 offender or sexual predator pursuant to s. 943.04354, the  
1957 commission must impose the following conditions:

1958 (a) A prohibition on visiting schools, child care  
1959 facilities, parks, and playgrounds without prior approval from  
1960 the releasee's supervising officer. The commission may also  
1961 designate additional prohibited locations to protect a victim.  
1962 The prohibition ordered under this paragraph does not prohibit  
1963 the releasee from visiting a school, child care facility, park,  
1964 or playground for the sole purpose of attending a religious  
1965 service as defined in s. 775.0861 or picking up or dropping off  
1966 the releasee's child or grandchild at a child care facility or  
1967 school.

1968 (b) A prohibition on distributing candy or other items to  
1969 children on Halloween; wearing a Santa Claus costume, or other  
1970 costume to appeal to children, on or preceding Christmas;  
1971 wearing an Easter Bunny costume, or other costume to appeal to  
1972 children, on or preceding Easter; entertaining at children's  
1973 parties; or wearing a clown costume without prior approval from  
1974 the commission.

1975 Section 13. Subsection (4) of section 948.30, Florida

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1976 Statutes, is amended to read:

1977 948.30 Additional terms and conditions of probation or  
1978 community control for certain sex offenses.—Conditions imposed  
1979 pursuant to this section do not require oral pronouncement at  
1980 the time of sentencing and shall be considered standard  
1981 conditions of probation or community control for offenders  
1982 specified in this section.

1983 (4) In addition to all other conditions imposed, for a  
1984 probationer or community controllee who is subject to  
1985 supervision for a crime that was committed on or after May 26,  
1986 2010, and who has been convicted at any time of committing, or  
1987 attempting, soliciting, or conspiring to commit, any of the  
1988 criminal offenses listed in s. 943.0435(1)(h)1.a.(I) ~~s.~~  
1989 ~~943.0435(1)(a)1.a.(I)~~, or a similar offense in another  
1990 jurisdiction, against a victim who was under the age of 18 at  
1991 the time of the offense; if the offender has not received a  
1992 pardon for any felony or similar law of another jurisdiction  
1993 necessary for the operation of this subsection, if a conviction  
1994 of a felony or similar law of another jurisdiction necessary for  
1995 the operation of this subsection has not been set aside in any  
1996 postconviction proceeding, or if the offender has not been  
1997 removed from the requirement to register as a sexual offender or  
1998 sexual predator pursuant to s. 943.04354, the court must impose  
1999 the following conditions:

2000 (a) A prohibition on visiting schools, child care  
2001 facilities, parks, and playgrounds, without prior approval from  
2002 the offender's supervising officer. The court may also designate  
2003 additional locations to protect a victim. The prohibition  
2004 ordered under this paragraph does not prohibit the offender from

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2005 visiting a school, child care facility, park, or playground for  
2006 the sole purpose of attending a religious service as defined in  
2007 s. 775.0861 or picking up or dropping off the offender's  
2008 children or grandchildren at a child care facility or school.

2009 (b) A prohibition on distributing candy or other items to  
2010 children on Halloween; wearing a Santa Claus costume, or other  
2011 costume to appeal to children, on or preceding Christmas;  
2012 wearing an Easter Bunny costume, or other costume to appeal to  
2013 children, on or preceding Easter; entertaining at children's  
2014 parties; or wearing a clown costume; without prior approval from  
2015 the court.

2016 Section 14. Section 948.31, Florida Statutes, is amended to  
2017 read:

2018 948.31 Evaluation and treatment of sexual predators and  
2019 offenders on probation or community control.—The court may  
2020 require any probationer or community controllee who is required  
2021 to register as a sexual predator under s. 775.21 or sexual  
2022 offender under s. 943.0435, s. 944.606, or s. 944.607 to undergo  
2023 an evaluation, at the probationer or community controllee's  
2024 expense, by a qualified practitioner to determine whether such  
2025 probationer or community controllee needs sexual offender  
2026 treatment. If the qualified practitioner determines that sexual  
2027 offender treatment is needed and recommends treatment, the  
2028 probationer or community controllee must successfully complete  
2029 and pay for the treatment. Such treatment must be obtained from  
2030 a qualified practitioner as defined in s. 948.001. Treatment may  
2031 not be administered by a qualified practitioner who has been  
2032 convicted or adjudicated delinquent of committing, or  
2033 attempting, soliciting, or conspiring to commit, any offense

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2034 that is listed in s. 943.0435(1)(h)1.a.(I) ~~s.~~  
 2035 ~~943.0435(1)(a)1.a.(I)~~.

2036 Section 15. Subsection (4) of section 1012.315, Florida  
 2037 Statutes, is amended to read:

2038 1012.315 Disqualification from employment.—A person is  
 2039 ineligible for educator certification, and instructional  
 2040 personnel and school administrators, as defined in s. 1012.01,  
 2041 are ineligible for employment in any position that requires  
 2042 direct contact with students in a district school system,  
 2043 charter school, or private school that accepts scholarship  
 2044 students under s. 1002.39 or s. 1002.395, if the person,  
 2045 instructional personnel, or school administrator has been  
 2046 convicted of:

2047 (4) Any delinquent act committed in this state or any  
 2048 delinquent or criminal act committed in another state or under  
 2049 federal law which, if committed in this state, qualifies an  
 2050 individual for inclusion on the Registered Juvenile Sex Offender  
 2051 List under s. 943.0435(1)(h)1.d. ~~s. 943.0435(1)(a)1.d.~~

2052 Section 16. Paragraph (g) of subsection (2) of section  
 2053 1012.467, Florida Statutes, is amended to read:

2054 1012.467 Noninstructional contractors who are permitted  
 2055 access to school grounds when students are present; background  
 2056 screening requirements.—

2057 (2)

2058 (g) A noninstructional contractor for whom a criminal  
 2059 history check is required under this section may not have been  
 2060 convicted of any of the following offenses designated in the  
 2061 Florida Statutes, any similar offense in another jurisdiction,  
 2062 or any similar offense committed in this state which has been

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2063 redesignated from a former provision of the Florida Statutes to  
 2064 one of the following offenses:

2065 1. Any offense listed in s. 943.0435(1)(h)1. ~~s.~~  
 2066 ~~943.0435(1)(a)1.~~, relating to the registration of an individual  
 2067 as a sexual offender.

2068 2. Section 393.135, relating to sexual misconduct with  
 2069 certain developmentally disabled clients and the reporting of  
 2070 such sexual misconduct.

2071 3. Section 394.4593, relating to sexual misconduct with  
 2072 certain mental health patients and the reporting of such sexual  
 2073 misconduct.

2074 4. Section 775.30, relating to terrorism.

2075 5. Section 782.04, relating to murder.

2076 6. Section 787.01, relating to kidnapping.

2077 7. Any offense under chapter 800, relating to lewdness and  
 2078 indecent exposure.

2079 8. Section 826.04, relating to incest.

2080 9. Section 827.03, relating to child abuse, aggravated  
 2081 child abuse, or neglect of a child.

2082 Section 17. For the purpose of incorporating the amendment  
 2083 made by this act to section 775.21, Florida Statutes, in a  
 2084 reference thereto, section 938.085, Florida Statutes, is  
 2085 reenacted to read:

2086 938.085 Additional cost to fund rape crisis centers.—In  
 2087 addition to any sanction imposed when a person pleads guilty or  
 2088 nolo contendere to, or is found guilty of, regardless of  
 2089 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and  
 2090 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;  
 2091 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.

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2092 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.  
 2093 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.  
 2094 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.  
 2095 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.  
 2096 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.  
 2097 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.  
 2098 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and  
 2099 (14)(c); or s. 985.701(1), the court shall impose a surcharge of  
 2100 \$151. Payment of the surcharge shall be a condition of  
 2101 probation, community control, or any other court-ordered  
 2102 supervision. The sum of \$150 of the surcharge shall be deposited  
 2103 into the Rape Crisis Program Trust Fund established within the  
 2104 Department of Health by chapter 2003-140, Laws of Florida. The  
 2105 clerk of the court shall retain \$1 of each surcharge that the  
 2106 clerk of the court collects as a service charge of the clerk's  
 2107 office.

2108 Section 18. For the purpose of incorporating the amendments  
 2109 made by this act to sections 775.21 and 943.0435, Florida  
 2110 Statutes, in references thereto, subsection (1) of section  
 2111 794.056, Florida Statutes, is reenacted to read:

2112 794.056 Rape Crisis Program Trust Fund.—

2113 (1) The Rape Crisis Program Trust Fund is created within  
 2114 the Department of Health for the purpose of providing funds for  
 2115 rape crisis centers in this state. Trust fund moneys shall be  
 2116 used exclusively for the purpose of providing services for  
 2117 victims of sexual assault. Funds credited to the trust fund  
 2118 consist of those funds collected as an additional court  
 2119 assessment in each case in which a defendant pleads guilty or  
 2120 nolo contendere to, or is found guilty of, regardless of

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2121 adjudication, an offense provided in s. 775.21(6) and (10)(a),  
 2122 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.  
 2123 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.  
 2124 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.  
 2125 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;  
 2126 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.  
 2127 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.  
 2128 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.  
 2129 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.  
 2130 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),  
 2131 (13), and (14)(c); or s. 985.701(1). Funds credited to the trust  
 2132 fund also shall include revenues provided by law, moneys  
 2133 appropriated by the Legislature, and grants from public or  
 2134 private entities.

2135 Section 19. For the purpose of incorporating the amendments  
 2136 made by this act to sections 775.21, 943.0435, 944.607, and  
 2137 985.4815, Florida Statutes, in references thereto, paragraph (g)  
 2138 of subsection (3) of section 921.0022, Florida Statutes, is  
 2139 reenacted to read:

2140 921.0022 Criminal Punishment Code; offense severity ranking  
 2141 chart.—

2142 (3) OFFENSE SEVERITY RANKING CHART

2143 (g) LEVEL 7

2144

Florida Statute	Felony Degree	Description
2145 316.027(2)(c)	1st	Accident involving death, failure to stop; leaving

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2146	316.193(3)(c)2.	3rd		DUI resulting in serious bodily injury.
2147	316.1935(3)(b)	1st		Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
2148	327.35(3)(c)2.	3rd		Vessel BUI resulting in serious bodily injury.
2149	402.319(2)	2nd		Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
2150	409.920 (2)(b)1.a.	3rd		Medicaid provider fraud; \$10,000 or less.
2151				

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	409.920 (2)(b)1.b.	2nd		Medicaid provider fraud; more than \$10,000, but less than \$50,000.
2152	456.065(2)	3rd		Practicing a health care profession without a license.
2153	456.065(2)	2nd		Practicing a health care profession without a license which results in serious bodily injury.
2154	458.327(1)	3rd		Practicing medicine without a license.
2155	459.013(1)	3rd		Practicing osteopathic medicine without a license.
2156	460.411(1)	3rd		Practicing chiropractic medicine without a license.
2157	461.012(1)	3rd		Practicing podiatric medicine without a license.
2158	462.17	3rd		Practicing naturopathy

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				without a license.
2159	463.015(1)	3rd		Practicing optometry without a license.
2160	464.016(1)	3rd		Practicing nursing without a license.
2161	465.015(2)	3rd		Practicing pharmacy without a license.
2162	466.026(1)	3rd		Practicing dentistry or dental hygiene without a license.
2163	467.201	3rd		Practicing midwifery without a license.
2164	468.366	3rd		Delivering respiratory care services without a license.
2165	483.828(1)	3rd		Practicing as clinical laboratory personnel without a license.
2166	483.901(9)	3rd		Practicing medical physics without a license.
2167				

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	484.013(1)(c)	3rd		Preparing or dispensing optical devices without a prescription.
2168	484.053	3rd		Dispensing hearing aids without a license.
2169	494.0018(2)	1st		Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
2170	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.
2171	560.125(5)(a)	3rd		Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
2172	655.50(10)(b)1.	3rd		Failure to report financial transactions

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			exceeding \$300 but less than \$20,000 by financial institution.
2173	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
2174	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
2175	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
2176	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
2177	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of

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	7-01110A-16		20161662__
			another (manslaughter).
2178	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
2179	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
2180	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
2181	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
2182	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
2183	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.

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2184	784.048(7)	3rd	Aggravated stalking; violation of court order.
2185	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
2186	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
2187	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
2188	784.081(1)	1st	Aggravated battery on specified official or employee.
2189	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
2190	784.083(1)	1st	Aggravated battery on code inspector.
2191	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.

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2192	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.
2193	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
2194	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
2195	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
2196	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
2197	790.166(3)	2nd	Possessing, selling, using, or attempting to

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			use a hoax weapon of mass destruction.	
2198	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.	
2199	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.	
2200	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.	
2201	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.	
2202	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.	
2203				

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	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.	
2204	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.	
2205	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.	
2206	806.01(2)	2nd	Maliciously damage structure by fire or explosive.	
2207	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.	
2208				

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2209	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
2210	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
2211	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
2212	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
2213	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
2214	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.

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2215	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
2216	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
2217	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
2218	812.131(2)(a)	2nd	Robbery by sudden snatching.
2219	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
2220	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.

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2221	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
2222	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
2223	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
2224	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
2225	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
2226	825.103 (3) (b)	2nd	Exploiting an elderly person or disabled adult

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			and property is valued at \$10,000 or more, but less than \$50,000.
2227	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
2228	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
2229	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
2230	838.015	2nd	Bribery.
2231	838.016	2nd	Unlawful compensation or reward for official behavior.
2232	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
2233	838.22	2nd	Bid tampering.

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2234	843.0855(2)	3rd	Impersonation of a public officer or employee.
2235	843.0855(3)	3rd	Unlawful simulation of legal process.
2236	843.0855(4)	3rd	Intimidation of a public officer or employee.
2237	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
2238	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
2239	872.06	2nd	Abuse of a dead human body.
2240	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
2241	874.10	1st,PBL	Knowingly initiates, organizes, plans,

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			finances, directs, manages, or supervises criminal gang-related activity.
2242	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
2243	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.
2244			

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	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
2245	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
2246	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
2247	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
2248	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
2249	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
2250	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.

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2251	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
2252	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
2253	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
2254	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
2255	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
2256	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
2257	893.135	1st	Trafficking in 1,4-

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	(1) (j) 1.a.		Butanediol, 1 kilogram or more, less than 5 kilograms.	
2258	893.135	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.	
	(1) (k) 2.a.			
2259	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.	
2260	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.	
2261	896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.	
2262	943.0435 (4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with	

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			reporting requirements.	
2263	943.0435 (8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.	
2264	943.0435 (9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.	
2265	943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.	
2266	943.0435 (14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.	
2267	944.607 (9)	3rd	Sexual offender; failure to comply with reporting requirements.	
2268				

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	944.607(10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
2269			
	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2270			
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2271			
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
2272			
	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2273			
	985.4815(13)	3rd	Sexual offender; failure to report and reregister;

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			failure to respond to address verification; providing false registration information.
2274			
2275			Section 20. For the purpose of incorporating the amendments
2276			made by this act to sections 775.21, 943.0435, 944.606, 944.607,
2277			985.481, and 985.4815, Florida Statutes, in references thereto,
2278			paragraph (b) of subsection (6) of section 985.04, Florida
2279			Statutes, is reenacted to read:
2280			985.04 Oaths; records; confidential information.-
2281			(6)
2282			(b) Sexual offender and predator registration information
2283			as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481,
2284			and 985.4815 is a public record pursuant to s. 119.07(1) and as
2285			otherwise provided by law.
2286			Section 21. For the purpose of incorporating the amendments
2287			made by this act to sections 775.21, 943.0435, and 944.607,
2288			Florida Statutes, in references thereto, subsections (3) and (4)
2289			of section 322.141, Florida Statutes, are reenacted to read:
2290			322.141 Color or markings of certain licenses or
2291			identification cards.-
2292			(3) All licenses for the operation of motor vehicles or
2293			identification cards originally issued or reissued by the
2294			department to persons who are designated as sexual predators
2295			under s. 775.21 or subject to registration as sexual offenders
2296			under s. 943.0435 or s. 944.607, or who have a similar
2297			designation or are subject to a similar registration under the
2298			laws of another jurisdiction, shall have on the front of the

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2299 license or identification card the following:

2300 (a) For a person designated as a sexual predator under s.  
2301 775.21 or who has a similar designation under the laws of  
2302 another jurisdiction, the marking "SEXUAL PREDATOR."

2303 (b) For a person subject to registration as a sexual  
2304 offender under s. 943.0435 or s. 944.607, or subject to a  
2305 similar registration under the laws of another jurisdiction, the  
2306 marking "943.0435, F.S."

2307 (4) Unless previously secured or updated, each sexual  
2308 offender and sexual predator shall report to the department  
2309 during the month of his or her reregistration as required under  
2310 s. 775.21(8), s. 943.0435(14), or s. 944.607(13) in order to  
2311 obtain an updated or renewed driver license or identification  
2312 card as required by subsection (3).

2313 Section 22. For the purpose of incorporating the amendments  
2314 made by this act to sections 775.21, 943.0435, and 944.607,  
2315 Florida Statutes, in references thereto, subsection (4) of  
2316 section 948.06, Florida Statutes, is reenacted to read:

2317 948.06 Violation of probation or community control;  
2318 revocation; modification; continuance; failure to pay  
2319 restitution or cost of supervision.—

2320 (4) Notwithstanding any other provision of this section, a  
2321 felony probationer or an offender in community control who is  
2322 arrested for violating his or her probation or community control  
2323 in a material respect may be taken before the court in the  
2324 county or circuit in which the probationer or offender was  
2325 arrested. That court shall advise him or her of the charge of a  
2326 violation and, if such charge is admitted, shall cause him or  
2327 her to be brought before the court that granted the probation or

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2328 community control. If the violation is not admitted by the  
2329 probationer or offender, the court may commit him or her or  
2330 release him or her with or without bail to await further  
2331 hearing. However, if the probationer or offender is under  
2332 supervision for any criminal offense proscribed in chapter 794,  
2333 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a  
2334 registered sexual predator or a registered sexual offender, or  
2335 is under supervision for a criminal offense for which he or she  
2336 would meet the registration criteria in s. 775.21, s. 943.0435,  
2337 or s. 944.607 but for the effective date of those sections, the  
2338 court must make a finding that the probationer or offender is  
2339 not a danger to the public prior to release with or without  
2340 bail. In determining the danger posed by the offender's or  
2341 probationer's release, the court may consider the nature and  
2342 circumstances of the violation and any new offenses charged; the  
2343 offender's or probationer's past and present conduct, including  
2344 convictions of crimes; any record of arrests without conviction  
2345 for crimes involving violence or sexual crimes; any other  
2346 evidence of allegations of unlawful sexual conduct or the use of  
2347 violence by the offender or probationer; the offender's or  
2348 probationer's family ties, length of residence in the community,  
2349 employment history, and mental condition; his or her history and  
2350 conduct during the probation or community control supervision  
2351 from which the violation arises and any other previous  
2352 supervisions, including disciplinary records of previous  
2353 incarcerations; the likelihood that the offender or probationer  
2354 will engage again in a criminal course of conduct; the weight of  
2355 the evidence against the offender or probationer; and any other  
2356 facts the court considers relevant. The court, as soon as is

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2357 practicable, shall give the probationer or offender an  
 2358 opportunity to be fully heard on his or her behalf in person or  
 2359 by counsel. After the hearing, the court shall make findings of  
 2360 fact and forward the findings to the court that granted the  
 2361 probation or community control and to the probationer or  
 2362 offender or his or her attorney. The findings of fact by the  
 2363 hearing court are binding on the court that granted the  
 2364 probation or community control. Upon the probationer or offender  
 2365 being brought before it, the court that granted the probation or  
 2366 community control may revoke, modify, or continue the probation  
 2367 or community control or may place the probationer into community  
 2368 control as provided in this section. However, the probationer or  
 2369 offender shall not be released and shall not be admitted to  
 2370 bail, but shall be brought before the court that granted the  
 2371 probation or community control if any violation of felony  
 2372 probation or community control other than a failure to pay costs  
 2373 or fines or make restitution payments is alleged to have been  
 2374 committed by:

2375 (a) A violent felony offender of special concern, as  
 2376 defined in this section;

2377 (b) A person who is on felony probation or community  
 2378 control for any offense committed on or after the effective date  
 2379 of this act and who is arrested for a qualifying offense as  
 2380 defined in this section; or

2381 (c) A person who is on felony probation or community  
 2382 control and has previously been found by a court to be a  
 2383 habitual violent felony offender as defined in s. 775.084(1)(b),  
 2384 a three-time violent felony offender as defined in s.  
 2385 775.084(1)(c), or a sexual predator under s. 775.21, and who is

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2386 arrested for committing a qualifying offense as defined in this  
 2387 section on or after the effective date of this act.

2388 Section 23. For the purpose of incorporating the amendments  
 2389 made by this act to sections 775.21, 943.0435, and 944.607,  
 2390 Florida Statutes, in references thereto, section 948.063,  
 2391 Florida Statutes, is reenacted to read:

2392 948.063 Violations of probation or community control by  
 2393 designated sexual offenders and sexual predators.—

2394 (1) If probation or community control for any felony  
 2395 offense is revoked by the court pursuant to s. 948.06(2)(e) and  
 2396 the offender is designated as a sexual offender pursuant to s.  
 2397 943.0435 or s. 944.607 or as a sexual predator pursuant to s.  
 2398 775.21 for unlawful sexual activity involving a victim 15 years  
 2399 of age or younger and the offender is 18 years of age or older,  
 2400 and if the court imposes a subsequent term of supervision  
 2401 following the revocation of probation or community control, the  
 2402 court must order electronic monitoring as a condition of the  
 2403 subsequent term of probation or community control.

2404 (2) If the probationer or offender is required to register  
 2405 as a sexual predator under s. 775.21 or as a sexual offender  
 2406 under s. 943.0435 or s. 944.607 for unlawful sexual activity  
 2407 involving a victim 15 years of age or younger and the  
 2408 probationer or offender is 18 years of age or older and has  
 2409 violated the conditions of his or her probation or community  
 2410 control, but the court does not revoke the probation or  
 2411 community control, the court shall nevertheless modify the  
 2412 probation or community control to include electronic monitoring  
 2413 for any probationer or offender not then subject to electronic  
 2414 monitoring.

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2415 Section 24. For the purpose of incorporating the amendment  
 2416 made by this act to section 943.0435, Florida Statutes, in a  
 2417 reference thereto, paragraph (c) of subsection (10) of section  
 2418 944.607, Florida Statutes, is reenacted to read:

2419 944.607 Notification to Department of Law Enforcement of  
 2420 information on sexual offenders.—

2421 (10)

2422 (c) An arrest on charges of failure to register when the  
 2423 offender has been provided and advised of his or her statutory  
 2424 obligations to register under s. 943.0435(2), the service of an  
 2425 information or a complaint for a violation of this section, or  
 2426 an arraignment on charges for a violation of this section  
 2427 constitutes actual notice of the duty to register. A sexual  
 2428 offender's failure to immediately register as required by this  
 2429 section following such arrest, service, or arraignment  
 2430 constitutes grounds for a subsequent charge of failure to  
 2431 register. A sexual offender charged with the crime of failure to  
 2432 register who asserts, or intends to assert, a lack of notice of  
 2433 the duty to register as a defense to a charge of failure to  
 2434 register shall immediately register as required by this section.  
 2435 A sexual offender who is charged with a subsequent failure to  
 2436 register may not assert the defense of a lack of notice of the  
 2437 duty to register.

2438 Section 25. For the purpose of incorporating the amendment  
 2439 made by this act to section 943.04354, Florida Statutes, in a  
 2440 reference thereto, subsection (2) of section 397.4872, Florida  
 2441 Statutes, is reenacted to read:

2442 397.4872 Exemption from disqualification; publication.—

2443 (2) The department may exempt a person from ss. 397.487(6)

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2444 and 397.4871(5) if it has been at least 3 years since the person  
 2445 has completed or been lawfully released from confinement,  
 2446 supervision, or sanction for the disqualifying offense. An  
 2447 exemption from the disqualifying offenses may not be given under  
 2448 any circumstances for any person who is a:

2449 (a) Sexual predator pursuant to s. 775.21;

2450 (b) Career offender pursuant to s. 775.261; or

2451 (c) Sexual offender pursuant to s. 943.0435, unless the  
 2452 requirement to register as a sexual offender has been removed  
 2453 pursuant to s. 943.04354.

2454 Section 26. For the purpose of incorporating the amendment  
 2455 made by this act to section 943.04354, Florida Statutes, in a  
 2456 reference thereto, paragraph (b) of subsection (4) of section  
 2457 435.07, Florida Statutes, is reenacted to read:

2458 435.07 Exemptions from disqualification.—Unless otherwise  
 2459 provided by law, the provisions of this section apply to  
 2460 exemptions from disqualification for disqualifying offenses  
 2461 revealed pursuant to background screenings required under this  
 2462 chapter, regardless of whether those disqualifying offenses are  
 2463 listed in this chapter or other laws.

2464 (4)

2465 (b) Disqualification from employment under this chapter may  
 2466 not be removed from, nor may an exemption be granted to, any  
 2467 person who is a:

2468 1. Sexual predator as designated pursuant to s. 775.21;

2469 2. Career offender pursuant to s. 775.261; or

2470 3. Sexual offender pursuant to s. 943.0435, unless the  
 2471 requirement to register as a sexual offender has been removed  
 2472 pursuant to s. 943.04354.

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2473 Section 27. For the purpose of incorporating the amendments  
 2474 made by this act to sections 944.606 and 944.607, Florida  
 2475 Statutes, in references thereto, section 775.25, Florida  
 2476 Statutes, is reenacted to read:

2477 775.25 Prosecutions for acts or omissions.—A sexual  
 2478 predator or sexual offender who commits any act or omission in  
 2479 violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s.  
 2480 944.607, or former s. 947.177 may be prosecuted for the act or  
 2481 omission in the county in which the act or omission was  
 2482 committed, in the county of the last registered address of the  
 2483 sexual predator or sexual offender, in the county in which the  
 2484 conviction occurred for the offense or offenses that meet the  
 2485 criteria for designating a person as a sexual predator or sexual  
 2486 offender, in the county where the sexual predator or sexual  
 2487 offender was released from incarceration, or in the county of  
 2488 the intended address of the sexual predator or sexual offender  
 2489 as reported by the predator or offender prior to his or her  
 2490 release from incarceration. In addition, a sexual predator may  
 2491 be prosecuted for any such act or omission in the county in  
 2492 which he or she was designated a sexual predator.

2493 Section 28. For the purpose of incorporating the amendment  
 2494 made by this act to section 944.607, Florida Statutes, in a  
 2495 reference thereto, subsection (2) of section 775.24, Florida  
 2496 Statutes, is reenacted to read:

2497 775.24 Duty of the court to uphold laws governing sexual  
 2498 predators and sexual offenders.—

2499 (2) If a person meets the criteria in this chapter for  
 2500 designation as a sexual predator or meets the criteria in s.  
 2501 943.0435, s. 944.606, s. 944.607, or any other law for

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2502 classification as a sexual offender, the court may not enter an  
 2503 order, for the purpose of approving a plea agreement or for any  
 2504 other reason, which:

2505 (a) Exempts a person who meets the criteria for designation  
 2506 as a sexual predator or classification as a sexual offender from  
 2507 such designation or classification, or exempts such person from  
 2508 the requirements for registration or community and public  
 2509 notification imposed upon sexual predators and sexual offenders;

2510 (b) Restricts the compiling, reporting, or release of  
 2511 public records information that relates to sexual predators or  
 2512 sexual offenders; or

2513 (c) Prevents any person or entity from performing its  
 2514 duties or operating within its statutorily conferred authority  
 2515 as such duty or authority relates to sexual predators or sexual  
 2516 offenders.

2517 Section 29. For the purpose of incorporating the amendment  
 2518 made by this act to section 944.607, Florida Statutes, in a  
 2519 reference thereto, subsection (7) of section 944.608, Florida  
 2520 Statutes, is reenacted to read:

2521 944.608 Notification to Department of Law Enforcement of  
 2522 information on career offenders.—

2523 (7) A career offender who is under the supervision of the  
 2524 department but who is not incarcerated shall, in addition to the  
 2525 registration requirements provided in subsection (3), register  
 2526 in the manner provided in s. 775.261(4)(c), unless the career  
 2527 offender is a sexual predator, in which case he or she shall  
 2528 register as required under s. 775.21, or is a sexual offender,  
 2529 in which case he or she shall register as required in s.  
 2530 944.607. A career offender who fails to comply with the

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2531 requirements of s. 775.261(4) is subject to the penalties  
2532 provided in s. 775.261(8).

2533 Section 30. This act shall take effect October 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** January 15, 2016

---

I respectfully request that **Senate Bill # 1662**, relating to Sexual Offenders, 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", 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)

FEB 8, 2016

*Meeting Date*

1662

*Bill Number (if applicable)*

Topic Sex Offenders

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-274-3599

*Street*

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

*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)

2/18/16

Meeting Date

SB1662

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Ron Book

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

Address 104 W. Jefferson

Phone 850 - 224 3427

Street

FLH

City

State

32301

Zip

Email \_\_\_\_\_

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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/2014

Meeting Date

SB 1662

Bill Number (if applicable)

Topic Sexual Offenders

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham Drive

Phone 850-219-3631

Street

Tallahassee FL

32308

Email amercer@fpc9.com

City

State

Zip

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**  
**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 Committee on Criminal Justice

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BILL: SPB 7006

INTRODUCER: Criminal Justice Committee

SUBJECT: Corrections

DATE: February 9, 2016

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

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Cannon		<b>CJ Submitted as Committee Bill</b>

---

**I. Summary:**

SPB 7006:

- Requires the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders which must also include the ethnicity and health status of those elderly offenders;
- Removes the current restriction against assessing victim injury sentencing points against a correctional officer or employee who commits sexual misconduct with an inmate without committing sexual battery;
- Expands the ability of an inmate to get a one-time award of gain-time for educational attainment without violating the requirement for every inmate to serve 85 percent of their court imposed sentence;
- Creates a new felony for Department of Corrections (DOC) employees or employees of a private provider who withhold water, food, and other essential services; and
- Increases the frequency of mental and physical health care surveys conducted by the Correctional Medical Authority at prisons from every three years to every 18 months.

**II. Present Situation:**

**Criminal Justice Estimating Conference**

Consensus Estimating Conferences have statutory authority under ss. 216.133 – 216.138, F.S., to forecast economic, demographic, caseload, and revenue information for a variety of governmental planning and budgeting functions. This ensures that the “State meets the constitutional balanced budget requirement.”<sup>1</sup> The forecasts are “primarily used in the development of the constitutionally required Long-Range Financial Outlook, the Governor’s budget recommendations and the General Appropriations Act. Economic and demographic forecasts are also used to support estimates of revenues and demands for state services.”<sup>4</sup>

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<sup>1</sup> <http://edr.state.fl.us/Content/conferences/index.cfm>

Specifically, the Criminal Justice Estimating Conference is statutorily tasked under s. 216.136(6), F.S., with developing forecasts of prison admissions and population and of supervised felony offender admissions and population; developing information relating to the number of eligible discharges and the projected number of civil commitments for determining needs for space; and developing information relating to the number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring.

### **Elderly Inmates in Prison**

- The majority of elderly inmates in prison on June 30, 2015, were serving time for sex offenses (21.7 percent), murder/manslaughter (21.0 percent), or drug offenses (12.5 percent).
- The 21,620 elderly inmates in prison on June 30, 2014, represented 21.6 percent of the total inmate population.
- 94.4 percent of the elderly inmates in prison were male; 5.6 percent were female.
- 46.1 percent of the elderly inmates in prison had no prior prison commitments.
- On June 30, 2015, the department housed three inmates whose age was 93.<sup>2</sup>

Though the department does not house or treat inmates based solely on age, the elderly inmates are housed in the following institutions consistent with their custody level and medical status:

- RMC and the South Unit at CFRC house inmates that have intensive long term medical issues. They may not necessarily be elderly;
- Zephyrhills CI houses both inmates who are elderly (age 50 and older) and they also have an intensive medical unit;
- Union CI houses elderly inmates (age 50 and older);
- South Florida South Unit houses elderly inmates (age 59 and older); and
- Lowell CI-Annex has a dormitory designated for female inmates (age 59 and older).<sup>3</sup>

### **Increased Costs for Elderly Inmates**

Florida Tax Watch in September 2014 reported that the department budget had grown by \$560 million (35 percent) from 2000-2012. The health care cost had grown by \$176 million or 76 percent. The report states that the elderly patients accounted for 49 percent of all hospital in days in 2012. By assuming that hospitalization is a representation of overall prison health care costs, the report states the elderly prison population is responsible for approximately half of the \$408 million in prisoner healthcare costs in 2012.

The DOC reports that the Pew Center on Research estimated that the overall cost of managing an elderly prisoner is \$70,000 annually. This yields a per diem cost of \$192 per inmate compared to the average DOC per diem of \$50 per inmate.<sup>4</sup>

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<sup>2</sup> <http://www.dc.state.fl.us/pub/annual/1314/AnnualReport-1314.pdf>

<sup>3</sup> Id.

<sup>4</sup> Id.

## **Sentencing for Sexual Misconduct with an Inmate or Supervised Offender**

Section 944.35(3)(b)2., F.S., prohibits an employee of the department or a private correctional facility from engaging in sexual misconduct with an inmate or an offender on community supervision. "Sexual misconduct" is defined as the "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty."<sup>5</sup> Sexual misconduct is prohibited regardless of whether the activity is non-consensual or consensual. However, if the activity is non-consensual, the more serious offense of sexual battery could be charged. The offense is a third degree felony, punishable by imprisonment for a maximum five years and a potential fine not exceeding \$5,000.

Sexual Misconduct with an Inmate or Supervised Offender is ranked by default as a Level 1 offense, which means that four sentencing points are scored. No victim injury points can be assessed for sexual contact or sexual penetration for a violation of s. 944.35(3)(b)2., F.S., and correctional employees can be expected to have no significant prior offenses for which sentencing points would be added. Therefore, it is unlikely that there would be more than 22 total sentencing points. Because s. 944.35(3)(b)2., F.S., is not a forcible felony and the sentencing points total would likely be 22 or lower, s. 775.082(10), F.S., would limit the sentence to a nonprison sanction.

### **Gain-Time**

*Gain-time* is authorized in s. 944.275, F.S., and is a means by which eligible inmates can earn a reduction in the sentence that was imposed by the court. Current forms of gain-time are based upon the department's assessment that the inmate has behaved satisfactorily and engaged in constructive activities. As such, gain-time is a tool by which the department can encourage good behavior and motivate inmates to participate in programs and work assignments. Inmates who are serving life sentences or certain minimum mandatory sentences are not eligible for gain-time during the portion of time that the mandatory sentences are in effect. Incentive gain-time is awarded to inmates for institutional adjustment, work, and participation in programs.

*Meritorious gain-time* may be considered for an inmate who commits an outstanding deed. The maximum award is 60 days. Examples of outstanding deeds are saving a life or assisting in recapturing an escaped inmate, or in some manner performing an outstanding service.

*Educational Achievement gain-time* in the amount of 60 days may be awarded to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program. Inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

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<sup>5</sup> Section 944.35(3)(b)1., F.S.

## **Criminal Penalties and Employee Misconduct**

Employees of the department who, with malicious intent, commit a battery on an inmate supervised by the department, commit a first degree misdemeanor. Employees who, with malicious intent, commit a battery or inflict cruel or inhuman treatment by neglect causing great bodily harm, permanent disability, or permanent disfigurement to an inmate commit a third degree felony.<sup>6</sup>

## **Correctional Medical Authority**

The Correctional Medical Authority (CMA) was created in July 1986, while the state's prison healthcare system was under the jurisdiction of the federal court as a result of litigation that began in 1972. *Costello v. Wainwright* (430 U.S. 57 (1977)) was a class action suit brought by inmates alleging that their constitutional rights had been violated by inadequate medical care, insufficient staffing, overcrowding, and poor sanitation. The CMA was created as part of the settlement of that case and continues to serve as an independent monitoring body providing oversight of the systems in place to provide health care to inmates in the Department of Corrections. In the final order closing the case, Judge Susan Black noted that creation of the CMA made it possible for the Federal Court to relinquish the prison monitoring and oversight function it had performed for the prior twenty years. In light of "Florida's affirmation of its continued commitment to the CMA's independence" and the support from the Defendant and the State of Florida, the court found that the CMA was capable of "performing an oversight and monitoring function over the department in order to assure continued compliance with the orders entered in this case."

In December 2001, the DOC entered into a settlement agreement in a lawsuit (*Osterback v. Crosby*, 16 Fla. Weekly Fed. D 513 (N.D. Fla. 2003)) involving mentally ill inmates housed in close management. The purpose of close management is to confine inmates separate from the general inmate population for reasons of security and for the order and effective management of the prison system. The Osterback agreement included a stipulation that the CMA monitor provisions of the agreement including clinical, administrative, and security components of the program designed to ensure effective treatment of mental illness in the close management population. The CMA completed its special monitoring responsibilities pending the outcome of the federal court's hearing of the case. The department completed and complied with each component of the close management corrective action plan process. The court entered a final judgment ruling in favor of the department and the case was closed on March 28, 2008. Facilities with close management are now monitored as part of the regular CMA survey process.

The CMA has stated that "Osterback, along with the multitude of lawsuits related to the provision of correctional health care, serve as reminders of the CMA's important role in ensuring proper health and mental health care is provided to incarcerated members of society."<sup>7</sup>

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<sup>6</sup> Section 944.35(3)(a), F.S.

<sup>7</sup> The first two paragraphs of this section and the designated quote are from the State of Florida, Correctional Medical Authority 2012-2013 Annual Report and Report on Aging Inmates, [http://www.flgov.com/wp-content/uploads/pdfs/correctional\\_medical\\_authority\\_2012-2013\\_annual\\_report.pdf](http://www.flgov.com/wp-content/uploads/pdfs/correctional_medical_authority_2012-2013_annual_report.pdf).

Prior to July 1, 2011, the CMA was housed within the Department of Health (DOH) for administrative purposes. During the 2011 Legislative Session two bills designed to abolish the CMA passed both chambers and were sent to the Governor for approval: Chapter 2011-69, Laws of Florida, (the 2011 General Appropriations Act), which eliminated the funding and positions related to the authority; and HB 5305, which repealed the statutes related to the CMA. The Governor vetoed HB 5305, but not the General Appropriations Act. Therefore, the CMA existed in statute but did not have the funding to operate or perform its duties for the 2011-2012 fiscal year. The CMA was funded again in 2012 and reconstituted as an independent state agency housed within the administrative structure of the Executive Office of the Governor.

The governing board of the authority is composed of nine persons appointed by the Governor subject to confirmation by the Senate. Members of the CMA are not compensated for performance of their duties but they are paid expenses incurred while engaged in the performance of such duties pursuant to s. 112.061, F.S.

### III. Effect of Proposed Changes:

**Section 1** amends s. 216.136, F.S., to require the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders which must also include the ethnicity and health status of those elderly offenders.

**Section 2** deletes s. 921.0021(7)(c), F.S., removing the prohibition against assessing victim injury points for sexual penetration or sexual contact in calculating the sentencing score for Sexual Misconduct with an Inmate or Supervised Offender (s. 944.35(3)(b)2., F.S.). By definition, the offense cannot be committed without either sexual contact or sexual penetration. Currently, in almost all cases the sentencing range would be limited to a nonprison sanction because no more than 22 sentencing points would be scored. The amendment significantly changes the sentencing range:

- If there was sexual contact, the offender would have a minimum of 44 sentencing points (four points for the base offense plus 40 victim injury points). A total sentencing score of 44 would allow the judge to impose any sentence from a nonprison sanction to the five year maximum prison sentence. If there are additional sentencing points, a prison sentence would be required unless the judge finds statutory grounds for a departure below the minimum permissible sentence.
- If there was sexual penetration, the offender would have a minimum of 84 sentencing points (four points for the base offense plus 80 victim injury points). A total sentencing score of 84 would permit the judge to impose any sentence from 42 months in prison to the five year maximum prison sentence.

**Section 3** amends s. 944.275, F.S., to allow inmates sentenced for an offense committed on or after October 1, 1995, to be eligible for education attainment gain-time in the amount of 60 days. If this bill becomes law, an inmate may receive a one-time award of 60 days of gain-time for receiving a General Education Development (GED) diploma or for earning a certificate for completion of a vocational program. Under current law, inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

**Section 4** creates a new third degree felony for an employee of the department, private provider, or private correctional facility who knowingly, and with the intent to cause an inmate great bodily harm, permanent disability, or permanent disfigurement, withholds food, water, clothing, shelter, supervision, medicine, or medical services from the inmate and causes an inmate to suffer great bodily harm, permanent disability, or permanent disfigurement by such action.

**Section 5** amends s. 945.6031, F.S., to change the CMA's frequency of surveys of the physical and mental health care system at each institution from every three years to every 18 months.

**Section 6** conforms a cross reference.

**Section 7, 8, 9** reenacts ss. 944.023, 435.04, and 921.022, F.S., for the purpose of incorporating amendments made in the bill.

**Section 10** 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.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

##### **Correctional Medical Authority**

The increase in the frequency of CMA surveys from every 4 years to every 18 months has an estimated fiscal impact of approximately \$790,000 for additional personnel and expenses.

**Education Gain-time**

According to the 2015 projections by the department, approximately 650 inmates will immediately receive the one-time 60 day additional gain-time award for past educational attainments. It is estimated that approximately 60 of these inmates will be immediately released due to this award since this group is within 60 days of release. In terms of future impact on prison bed space, the department estimates 24,000 inmate-days will be saved per year as a result of this bill. In other words, the average daily prison population is projected to be reduced by 66 inmates over the course of the year. Reduction of the average daily population by 66 inmates would reduce costs by approximately \$1.2 million each year at the current inmate per diem cost of \$49.49.

The table below shows the prison bed impact resulting from the passage of the education gain-time provision in the bill. Over the next five years the award of additional gain-time will result in the need for 390 fewer prison beds with a cost avoidance of over \$36 million.

<b>Corrections: Education Attainment Gain-Time</b>					
<b>Fiscal Year</b>	<b>Projected Additional Annual Prison Beds Required</b>	<b>FUNDS REQUIRED</b>			
		<b>Annual Operating Costs</b>	<b>Annual Fixed Capital Outlay Costs</b>	<b>TOTAL Annual Funds</b>	<b>TOTAL Cumulative Funds</b>
2016-2017	-126	(\$1,223,460)	(\$11,876,928)	<b>(\$13,100,388)</b>	<b>(\$13,100,388)</b>
2017-2018	-66	(\$1,912,800)	(\$4,221,492)	<b>(\$6,134,292)</b>	<b>(\$19,234,680)</b>
2018-2019	-66	(\$1,345,278)	(\$4,356,594)	<b>(\$5,701,872)</b>	<b>(\$24,936,552)</b>
2019-2020	-66	(1,377,618)	(\$4,482,918)	<b>(\$5,860,536)</b>	<b>(\$30,797,088)</b>
2020-2021	-66	(\$1,412,004)	(\$4,603,962)	<b>(\$6,015,966)</b>	<b>(\$36,813,054)</b>
<b>Total</b>	<b>-390</b>	<b>(\$7,271,160)</b>	<b>(\$29,541,894)</b>	<b>(\$36,813,054)</b>	<b>(\$36,813,054)</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 27, 2016.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Between May and September, 2015, Governor Rick Scott signed three Executive Orders addressing reforms and initiatives for the Department of Corrections. Executive Order No. 15-102 addresses providing a safe and humane environment for offenders and staff and increased security. Executive Order 15-134 calls for an independent audit of the Department’s operations by the National Institute of Corrections and the Association of State Correctional Administrators,<sup>8</sup> and creating a partnership between the Department of Corrections, the Department of Juvenile Justice, and the Department of Children and Families to establish best management practices in order to improve mental health services using facilities in Broward County. Executive Order 15-175 is an addendum to Executive Order 15-134 and adds the Department of Health and the Agency for Health Care Administration to the partnership and expands the pilot mental health programs to Alachua and Pinellas Counties.

<sup>8</sup> The Order establishes two prototype institutions in Lake and Liberty Counties focused on identifying and measuring enhanced operational methods.

The study by the National Institute of Corrections (NIC) was completed pursuant to Executive Order No. 15-134. In the description of the problem the NIC stated it was to provide assistance to DOC by providing an evaluation of staffing adequacy, the application of appropriate relief factors consistent with national practices, and a review of the agency's use of special assignment allocations. The study made nine specific findings related to staffing and hiring practices including discontinuing the use of 12-hour shifts with its most "fervent" recommendation that Florida return to its leadership role in prison staffing protocols and performance.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 212.136, 921.0021, 944.275, 944.35, 945.6031, and 951.221.

**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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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/09/2016	.	
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The Committee on Criminal Justice (Gibson) recommended the following:

**Senate Amendment**

Delete line 47  
and insert:  
populations for elderly felony offenders. The projections shall  
also include the ethnicity and health status of those elderly  
offenders.



328176

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/09/2016	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 85 and 86

insert:

Section 3. Section 943.11, Florida Statutes, is amended to read:

943.11 Criminal Justice Standards and Training Commission; membership; meetings; compensation.—

(1) (a) There is created a Criminal Justice Standards and Training Commission within the Department of Law Enforcement.



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11 The commission shall be composed of 21 ~~19~~ members, consisting of  
12 the Secretary of Corrections or a designated assistant; the  
13 Attorney General or a designee; the Director of the Division of  
14 the Florida Highway Patrol; 1 circuit court judge with past  
15 criminal jurisdiction designated by the Office of the State  
16 Court Administrator; 1 state attorney designated by the Florida  
17 Prosecuting Attorneys Association; and 16 members appointed by  
18 the Governor, consisting of 3 sheriffs; 3 chiefs of police; 5  
19 law enforcement officers who are of the rank of captain ~~sergeant~~  
20 or below within the employing agency; 2 correctional officers, 1  
21 of whom is an administrator of a state correctional institution  
22 and 1 of whom is of the rank of captain ~~sergeant~~ or below within  
23 the employing agency; ~~1 training center director;~~ 1 person who  
24 is in charge of a county correctional institution; ~~and~~ 2  
25 residents ~~1 resident~~ of the state who have never been employed  
26 by any of the departments, institutions, or agencies in any  
27 ~~falls into none~~ of the foregoing classifications. Prior to the  
28 appointment, the sheriff, chief of police, law enforcement  
29 officer, and correctional officer members must have had at least  
30 4 years' experience as law enforcement officers or correctional  
31 officers.

32 (b) The Governor, in making appointments under this  
33 section, shall take into consideration representation by  
34 geography, population, and other relevant factors in order that  
35 the representation on the commission be apportioned to give  
36 representation to the state at large rather than to a particular  
37 area. Of the appointed members, and except for correctional  
38 officers of a state institution, there may be only one  
39 appointment from any employing agency.



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40           1. In appointing one circuit judge, the Governor shall  
41 choose the appointment from a list of two nominees submitted by  
42 the Office of the State Court Administrator. The Office of the  
43 State Court Administrator shall submit its list of two nominees  
44 at least three months before the expiration of the term of any  
45 circuit judge.

46           2. In appointing one state attorney, the Governor shall  
47 choose the appointment from a list of two nominees submitted by  
48 the Florida Prosecuting Attorneys Association. The Florida  
49 Prosecuting Attorneys Association shall submit its list of two  
50 nominees at least 3 months before the expiration of the term of  
51 any state attorney.

52           3. 1. In appointing the three sheriffs, the Governor shall  
53 choose each appointment from a list of six nominees submitted by  
54 the Florida Sheriffs Association. The Florida Sheriffs  
55 Association shall submit its list of six nominees at least 3  
56 months before the expiration of the term of any sheriff member.

57           4. 2. In appointing the three chiefs of police, the  
58 Governor shall choose each appointment from a list of six  
59 nominees submitted by the Florida Police Chiefs Association. The  
60 Florida Police Chiefs Association shall submit its list of six  
61 nominees at least 3 months before the expiration of the term of  
62 any police chief member.

63           5. 3. In appointing the five law enforcement officers and  
64 one correctional officer of the rank of captain ~~sergeant~~ or  
65 below, the Governor shall choose each appointment from a list of  
66 six nominees submitted by a committee comprised of three members  
67 of the collective bargaining agent for the largest number of  
68 certified law enforcement bargaining units, two members of the



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69 collective bargaining agent for the second largest number of  
70 certified law enforcement bargaining units, and one member of  
71 the collective bargaining agent representing the largest number  
72 of state law enforcement officers in certified law enforcement  
73 bargaining units. At least one of the names submitted for each  
74 of the five appointments who are law enforcement officers must  
75 be an officer who is not in a collective bargaining unit.

76 (c) Members appointed by the Governor shall be appointed  
77 for terms of 4 years, and no member shall serve beyond the time  
78 he or she ceases to hold the office or employment by reason of  
79 which the member was eligible for appointment to the commission.  
80 Any member appointed to fill a vacancy occurring because of  
81 death, resignation, or ineligibility for membership shall serve  
82 only for the unexpired term of his or her predecessor.

83 (d) Each member appointed by the Governor shall be  
84 accountable to the Governor for the proper performance of the  
85 duties of his or her office. The Governor may remove from office  
86 any such member for malfeasance, misfeasance, neglect of duty,  
87 incompetence, or permanent inability to perform official duties  
88 or for pleading guilty or nolo contendere to, or being found  
89 guilty of, a felony.

90 (e) Membership on the commission shall be construed as an  
91 extension of the duties of the office by which the member was  
92 appointed to the commission. Membership on the commission does  
93 not disqualify a member from holding any other public office or  
94 being employed by a public entity, except that no member of the  
95 Legislature shall serve on the commission. The Legislature finds  
96 that the commission serves a state, county, and municipal  
97 purpose and that service on the commission is consistent with a



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98 member's principal service in a public office or employment.

99 (f) Members of the commission shall serve without  
100 compensation but shall be entitled to be reimbursed for per diem  
101 and travel expenses as provided by s. 112.061.

102 (2) The commission shall annually elect its chair and other  
103 officers. The commission shall hold at least four regular  
104 meetings each year at the call of the chair or upon the written  
105 request of three members of the commission. A majority of the  
106 members of the commission constitutes a quorum.

107 (3) The Department of Legal Affairs shall serve as legal  
108 counsel to the commission.

109

110 ===== T I T L E A M E N D M E N T =====

111 And the title is amended as follows:

112 Delete lines 1 - 12

113 and insert:

114 An act relating to criminal justice; amending s.  
115 216.136, F.S.; requiring the Criminal Justice  
116 Estimating Conference to develop projections of prison  
117 admissions and populations for elderly felony  
118 offenders; amending s. 921.0021, F.S.; revising the  
119 definition of "victim injury" by removing a  
120 prohibition on assessing certain victim injury  
121 sentence points for sexual misconduct by an employee  
122 of the Department of Corrections or a private  
123 correctional facility with an inmate or an offender  
124 supervised by the department; conforming a provision  
125 to changes made by the act; amending s. 943.11, F.S.;

126 modifying the composition of the Criminal Justice



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127 Standards and Training Commission; adding to the  
128 commission a circuit court judge, a state attorney and  
129 additional resident of the state; specifying that the  
130 Governor choose the newly added appointments from  
131 lists submitted by the Office of the State Court  
132 Administrator and from the Florida Prosecuting  
133 Attorneys Association; requiring residents serving on  
134 the commission to have never been employed with  
135 certain departments, institutions, or agencies;  
136 removing the training center director from the  
137 commission; requiring that the 5 law enforcement  
138 officers and one correctional officer appointed to the  
139 commission be of the rank of captain or below;  
140 amending s.



723682

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/09/2016	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

1           **Senate Substitute for Amendment (328176) (with title**  
2 **amendment)**

3  
4           Between lines 85 and 86  
5 insert:

6           Section 3. Section 943.11, Florida Statutes, is amended to  
7 read:

8           943.11 Criminal Justice Standards and Training Commission;  
9 membership; meetings; compensation.—

10           (1) (a) There is created a Criminal Justice Standards and



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11 Training Commission within the Department of Law Enforcement.  
12 The commission shall be composed of 21 ~~19~~ members, consisting of  
13 the Secretary of Corrections or a designated assistant; the  
14 Attorney General or a designee; the Director of the Division of  
15 the Florida Highway Patrol; 1 circuit court judge with past  
16 criminal jurisdiction designated by the Office of the State  
17 Court Administrator; 1 state attorney designated by the Florida  
18 Prosecuting Attorneys Association; and 16 members appointed by  
19 the Governor, consisting of 3 sheriffs; 3 chiefs of police; 6 ~~5~~  
20 law enforcement officers or correctional officers who are of the  
21 rank of captain ~~sergeant~~ or below within the employing agency; 2  
22 correctional officers, 1 of whom is an administrator of a state  
23 correctional institution and 1 of whom ~~is of the rank of~~  
24 ~~sergeant or below within the employing agency; 1 training center~~  
25 ~~director; 1 person who~~ is in charge of a county correctional  
26 institution; and 2 residents ~~1 resident~~ of the state who have  
27 never been employed by any of the departments, institutions, or  
28 agencies in any ~~falls into none~~ of the foregoing  
29 classifications. Prior to the appointment, the sheriff, chief of  
30 police, law enforcement officer, and correctional officer  
31 members must have had at least 4 years' experience as law  
32 enforcement officers or correctional officers.

33 (b) The Governor, in making appointments under this  
34 section, shall take into consideration representation by  
35 geography, population, and other relevant factors in order that  
36 the representation on the commission be apportioned to give  
37 representation to the state at large rather than to a particular  
38 area. Of the appointed members, and except for correctional  
39 officers of a state institution, there may be only one



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40 appointment from any employing agency.

41 1. In appointing one circuit judge, the Governor shall  
42 choose the appointment from a list of two nominees submitted by  
43 the Office of the State Court Administrator. The Office of the  
44 State Court Administrator shall submit its list of two nominees  
45 at least three months before the expiration of the term of any  
46 circuit judge.

47 2. In appointing one state attorney, the Governor shall  
48 choose the appointment from a list of two nominees submitted by  
49 the Florida Prosecuting Attorneys Association. The Florida  
50 Prosecuting Attorneys Association shall submit its list of two  
51 nominees at least 3 months before the expiration of the term of  
52 any state attorney.

53 3. ~~1.~~ In appointing the three sheriffs, the Governor shall  
54 choose each appointment from a list of six nominees submitted by  
55 the Florida Sheriffs Association. The Florida Sheriffs  
56 Association shall submit its list of six nominees at least 3  
57 months before the expiration of the term of any sheriff member.

58 4. ~~2.~~ In appointing the three chiefs of police, the  
59 Governor shall choose each appointment from a list of six  
60 nominees submitted by the Florida Police Chiefs Association. The  
61 Florida Police Chiefs Association shall submit its list of six  
62 nominees at least 3 months before the expiration of the term of  
63 any police chief member.

64 5. ~~3.~~ For appointments made on or after July 1, 2016, in  
65 appointing the ~~five~~ law enforcement officers and ~~one~~  
66 correctional officers ~~officer~~ of the rank of captain ~~sergeant~~ or  
67 below, the Governor shall choose each appointment from a list of  
68 six nominees submitted by a committee comprised of three members



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69 of the collective bargaining agent for the largest number of  
70 certified law enforcement or correctional officer bargaining  
71 units, two members of the collective bargaining agent for the  
72 second largest number of certified law enforcement or  
73 correctional officer bargaining units, and one member of the  
74 collective bargaining agent representing the largest number of  
75 state law enforcement officers or correctional officers in  
76 certified law enforcement bargaining units. At least one of the  
77 names submitted for each of the six ~~five~~ appointments who are  
78 law enforcement officers or correctional officers must be an  
79 officer who is not in a collective bargaining unit.

80 (c) Members appointed by the Governor shall be appointed  
81 for terms of 4 years, and no member shall serve beyond the time  
82 he or she ceases to hold the office or employment by reason of  
83 which the member was eligible for appointment to the commission.  
84 Any member appointed to fill a vacancy occurring because of  
85 death, resignation, or ineligibility for membership shall serve  
86 only for the unexpired term of his or her predecessor.

87 (d) Each member appointed by the Governor shall be  
88 accountable to the Governor for the proper performance of the  
89 duties of his or her office. The Governor may remove from office  
90 any such member for malfeasance, misfeasance, neglect of duty,  
91 incompetence, or permanent inability to perform official duties  
92 or for pleading guilty or nolo contendere to, or being found  
93 guilty of, a felony.

94 (e) Membership on the commission shall be construed as an  
95 extension of the duties of the office by which the member was  
96 appointed to the commission. Membership on the commission does  
97 not disqualify a member from holding any other public office or



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98 being employed by a public entity, except that no member of the  
99 Legislature shall serve on the commission. The Legislature finds  
100 that the commission serves a state, county, and municipal  
101 purpose and that service on the commission is consistent with a  
102 member's principal service in a public office or employment.

103 (f) Members of the commission shall serve without  
104 compensation but shall be entitled to be reimbursed for per diem  
105 and travel expenses as provided by s. 112.061.

106 (2) The commission shall annually elect its chair and other  
107 officers. The commission shall hold at least four regular  
108 meetings each year at the call of the chair or upon the written  
109 request of three members of the commission. A majority of the  
110 members of the commission constitutes a quorum.

111 (3) The Department of Legal Affairs shall serve as legal  
112 counsel to the commission.

113

114 ===== T I T L E A M E N D M E N T =====

115 And the title is amended as follows:

116 Delete lines 1 - 12

117 and insert:

118 An act relating to criminal justice; amending s.  
119 216.136, F.S.; requiring the Criminal Justice  
120 Estimating Conference to develop projections of prison  
121 admissions and populations for elderly felony  
122 offenders; amending s. 921.0021, F.S.; revising the  
123 definition of "victim injury" by removing a  
124 prohibition on assessing certain victim injury  
125 sentence points for sexual misconduct by an employee  
126 of the Department of Corrections or a private



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127       correctional facility with an inmate or an offender  
128       supervised by the department; conforming a provision  
129       to changes made by the act; amending s. 943.11, F.S.;  
130       modifying the composition of the Criminal Justice  
131       Standards and Training Commission; adding to the  
132       commission a circuit court judge, a state attorney and  
133       additional resident of the state; specifying that the  
134       Governor choose the newly added appointments from  
135       lists submitted by the Office of the State Court  
136       Administrator and from the Florida Prosecuting  
137       Attorneys Association; requiring residents serving on  
138       the commission to have never been employed with  
139       certain departments, institutions, or agencies;  
140       removing the training center director from the  
141       commission; requiring that the 6 law enforcement  
142       officers and one correctional officer appointed to the  
143       commission be of the rank of captain or below;  
144       amending s.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/09/2016	.	
	.	
	.	
	.	

---

The Committee on Criminal Justice (Gibson) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 85 and 86

insert:

Section 3. Section 943.11, Florida Statutes, is amended to read:

943.11 Criminal Justice Standards and Training Commission; membership; meetings; compensation.—

(1) (a) There is created a Criminal Justice Standards and Training Commission within the Department of Law Enforcement.



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11 The commission shall be composed of 22 ~~19~~ members, consisting of  
12 the Secretary of Corrections or a designated assistant; the  
13 Attorney General or a designee; the Director of the Division of  
14 the Florida Highway Patrol; 1 circuit judge with past criminal  
15 jurisdiction designated by the Office of the State Courts  
16 Administrators; 1 state attorney designated by the Florida  
17 Prosecuting Attorneys Association; 1 public defender designated  
18 by the Florida Public Defender Association; and 16 members  
19 appointed by the Governor, consisting of 3 sheriffs; 3 chiefs of  
20 police; 6 ~~5~~ law enforcement officers or correctional officers  
21 who are of the rank of captain ~~sergeant~~ or below within the  
22 employing agency; 2 correctional officers, 1 of whom is an  
23 administrator of a state correctional institution and 1 of whom  
24 ~~is of the rank of sergeant or below within the employing agency;~~  
25 ~~1 training center director; 1 person who is in charge of a county~~  
26 ~~correctional institution; and~~ 2 residents ~~1 resident~~ of the  
27 state who have never been employed by any of the departments,  
28 institutions, or agencies in any ~~falls into none~~ of the  
29 foregoing classifications. Prior to the appointment, the  
30 sheriff, chief of police, law enforcement officer, and  
31 correctional officer members must have had at least 4 years'  
32 experience as law enforcement officers or correctional officers.

33 (b) The Governor, in making appointments under this  
34 section, shall take into consideration representation by  
35 geography, population, and other relevant factors in order that  
36 the representation on the commission be apportioned to give  
37 representation to the state at large rather than to a particular  
38 area. Of the appointed members, and except for correctional  
39 officers of a state institution, there may be only one



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40 appointment from any employing agency.

41 1. In appointing one circuit judge, the Governor shall  
42 choose the appointment from a list of two nominees submitted by  
43 the Office of the State Courts Administrators. The Office of the  
44 State Courts Administrators shall submit its list of two  
45 nominees at least 3 months before the expiration of the term of  
46 any circuit judge.

47 2. In appointing one state attorney, the Governor shall  
48 choose the appointment from a list of two nominees submitted by  
49 the Florida Prosecuting Attorneys Association. The Florida  
50 Prosecuting Attorneys Association shall submit its list of two  
51 nominees at least 3 months before the expiration of the term of  
52 any state attorney.

53 3. In appointing one public defender, the Governor shall  
54 choose the appointment from a list of two nominees submitted by  
55 the Florida Public Defender Association. The Florida Public  
56 Defender Association shall submit its list of two nominees at  
57 least 3 months before the expiration of the term of any public  
58 defender.

59 ~~4.1.~~ In appointing the three sheriffs, the Governor shall  
60 choose each appointment from a list of six nominees submitted by  
61 the Florida Sheriffs Association. The Florida Sheriffs  
62 Association shall submit its list of six nominees at least 3  
63 months before the expiration of the term of any sheriff member.

64 ~~5.2.~~ In appointing the three chiefs of police, the Governor  
65 shall choose each appointment from a list of six nominees  
66 submitted by the Florida Police Chiefs Association. The Florida  
67 Police Chiefs Association shall submit its list of six nominees  
68 at least 3 months before the expiration of the term of any



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69 police chief member.

70 ~~6.3.~~ For appointments made on or after July 1, 2016, in  
71 appointing the ~~five~~ law enforcement officers and ~~one~~  
72 correctional ~~officers~~ ~~officer~~ of the rank of ~~captain~~ ~~sergeant~~ or  
73 below, the Governor shall choose each appointment from a list of  
74 six nominees submitted by a committee comprised of three members  
75 of the collective bargaining agent for the largest number of  
76 certified law enforcement or correctional officer bargaining  
77 units, two members of the collective bargaining agent for the  
78 second largest number of certified law enforcement or  
79 correctional officer bargaining units, and one member of the  
80 collective bargaining agent representing the largest number of  
81 state law enforcement officers or correctional officers in  
82 certified law enforcement bargaining units. At least one of the  
83 names submitted for each of the ~~six~~ ~~five~~ appointments who are  
84 law enforcement officers or correctional officers must be an  
85 officer who is not in a collective bargaining unit.

86 (c) Members appointed by the Governor shall be appointed  
87 for terms of 4 years, and no member shall serve beyond the time  
88 he or she ceases to hold the office or employment by reason of  
89 which the member was eligible for appointment to the commission.  
90 Any member appointed to fill a vacancy occurring because of  
91 death, resignation, or ineligibility for membership shall serve  
92 only for the unexpired term of his or her predecessor.

93 (d) Each member appointed by the Governor shall be  
94 accountable to the Governor for the proper performance of the  
95 duties of his or her office. The Governor may remove from office  
96 any such member for malfeasance, misfeasance, neglect of duty,  
97 incompetence, or permanent inability to perform official duties



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98 or for pleading guilty or nolo contendere to, or being found  
99 guilty of, a felony.

100 (e) Membership on the commission shall be construed as an  
101 extension of the duties of the office by which the member was  
102 appointed to the commission. Membership on the commission does  
103 not disqualify a member from holding any other public office or  
104 being employed by a public entity, except that no member of the  
105 Legislature shall serve on the commission. The Legislature finds  
106 that the commission serves a state, county, and municipal  
107 purpose and that service on the commission is consistent with a  
108 member's principal service in a public office or employment.

109 (f) Members of the commission shall serve without  
110 compensation but shall be entitled to be reimbursed for per diem  
111 and travel expenses as provided by s. 112.061.

112 (2) The commission shall annually elect its chair and other  
113 officers. The commission shall hold at least four regular  
114 meetings each year at the call of the chair or upon the written  
115 request of three members of the commission. A majority of the  
116 members of the commission constitutes a quorum.

117 (3) The Department of Legal Affairs shall serve as legal  
118 counsel to the commission.

119  
120 ===== T I T L E A M E N D M E N T =====

121 And the title is amended as follows:

122 Delete lines 2 - 12

123 and insert:

124 An act relating to criminal justice; amending s.  
125 216.136, F.S.; requiring the Criminal Justice  
126 Estimating Conference to develop projections of prison



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127 admissions and populations for elderly felony  
128 offenders; amending s. 921.0021, F.S.; revising the  
129 definition of "victim injury" by removing a  
130 prohibition on assessing certain victim injury  
131 sentence points for sexual misconduct by an employee  
132 of the Department of Corrections or a private  
133 correctional facility with an inmate or an offender  
134 supervised by the department; conforming a provision  
135 to changes made by the act; amending s. 943.11, F.S.;  
136 revising the composition of the Criminal Justice  
137 Standards and Training Commission; adding to the  
138 commission a circuit judge, a state attorney, a public  
139 defender, and an additional resident of the state;  
140 requiring that the law enforcement officers and  
141 correctional officers appointed to the commission be  
142 of the rank of captain or below; deleting the training  
143 center director from the commission; prohibiting  
144 residents serving on the commission from having been  
145 employed by certain departments, institutions, or  
146 agencies; specifying that the Governor choose the  
147 appointments from lists submitted by the Office of the  
148 State Courts Administrators, by the Florida  
149 Prosecuting Attorneys Association, and by the Florida  
150 Public Defender Association; amending s.

FOR CONSIDERATION By the Committee on Criminal Justice

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1 A bill to be entitled  
 2 An act relating to corrections; amending s. 216.136,  
 3 F.S.; requiring the Criminal Justice Estimating  
 4 Conference to develop projections of prison admissions  
 5 and populations for elderly felony offenders; amending  
 6 s. 921.0021, F.S.; revising the definition of "victim  
 7 injury" by removing a prohibition on assessing certain  
 8 victim injury sentence points for sexual misconduct by  
 9 an employee of the Department of Corrections or a  
 10 private correctional facility with an inmate or an  
 11 offender supervised by the department; conforming a  
 12 provision to changes made by the act; amending s.  
 13 944.275, F.S.; prohibiting an inmate from receiving  
 14 incentive gain-time for completing the requirements  
 15 for and receiving a high school equivalency diploma or  
 16 vocational certificate if the inmate is convicted of a  
 17 specified offense on or after a specified date;  
 18 amending s. 944.35, F.S.; expanding applicability of a  
 19 current felony offense to include employees of private  
 20 providers and private correctional facilities;  
 21 creating criminal penalties for employees who  
 22 knowingly and with the intent to cause specified harm  
 23 withhold food, water, or essential services from an  
 24 inmate; amending s. 945.6031, F.S.; increasing the  
 25 frequency of required surveys of health care systems  
 26 at correctional institutions; amending s. 951.221,  
 27 F.S.; conforming a cross-reference; reenacting s.  
 28 944.023(1)(a), F.S., relating to the definition of the  
 29 term "Criminal Justice Estimating Conference", to

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30 incorporate the amendment made to s. 216.136, F.S., in  
 31 a reference thereto; reenacting ss. 435.04(2)(uu) and  
 32 921.0022(3)(f), F.S., relating to level 2 screening  
 33 standards and level 6 of the offense severity ranking  
 34 chart, respectively, to incorporate the amendment made  
 35 to s. 944.35, F.S., in references thereto; providing  
 36 an effective date.  
 37

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

39  
 40 Section 1. Paragraph (d) is added to subsection (5) of  
 41 section 216.136, Florida Statutes, to read:

42 216.136 Consensus estimating conferences; duties and  
 43 principals.—

44 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.—The Criminal  
 45 Justice Estimating Conference shall:

46 (d) Develop projections of prison admissions and  
 47 populations for elderly felony offenders.

48 Section 2. Subsection (7) of section 921.0021, Florida  
 49 Statutes, is amended to read:

50 921.0021 Definitions.—As used in this chapter, for any  
 51 felony offense, except any capital felony, committed on or after  
 52 October 1, 1998, the term:

53 (7) (a) "Victim injury" means the physical injury or death  
 54 suffered by a person as a direct result of the primary offense,  
 55 or any additional offense, for which an offender is convicted  
 56 and which is pending before the court for sentencing at the time  
 57 of the primary offense.

58 (b) Except as provided in paragraph (c); ~~or paragraph (d),~~

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59 1. If the conviction is for an offense involving sexual  
60 contact that includes sexual penetration, the sexual penetration  
61 must be scored in accordance with the sentence points provided  
62 under s. 921.0024 for sexual penetration, regardless of whether  
63 there is evidence of any physical injury.

64 2. If the conviction is for an offense involving sexual  
65 contact that does not include sexual penetration, the sexual  
66 contact must be scored in accordance with the sentence points  
67 provided under s. 921.0024 for sexual contact, regardless of  
68 whether there is evidence of any physical injury.

69  
70 If the victim of an offense involving sexual contact suffers any  
71 physical injury as a direct result of the primary offense or any  
72 additional offense committed by the offender resulting in  
73 conviction, such physical injury must be scored separately and  
74 in addition to the points scored for the sexual contact or the  
75 sexual penetration.

76 ~~(e) The sentence points provided under s. 921.0024 for~~  
77 ~~sexual contact or sexual penetration may not be assessed for a~~  
78 ~~violation of s. 944.35(3)(b)2.~~

79 (c)(d) If the conviction is for the offense described in s.  
80 872.06, the sentence points provided under s. 921.0024 for  
81 sexual contact or sexual penetration may not be assessed.

82 (d)(e) Notwithstanding paragraph (a), if the conviction is  
83 for an offense described in s. 316.027 and the court finds that  
84 the offender caused victim injury, sentence points for victim  
85 injury may be assessed against the offender.

86 Section 3. Paragraphs (d) and (e) of subsection (4) of  
87 section 944.275, Florida Statutes, are amended, and paragraph

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88 (b) of that subsection is republished, to read:

89 944.275 Gain-time.—

90 (4)

91 (b) For each month in which an inmate works diligently,  
92 participates in training, uses time constructively, or otherwise  
93 engages in positive activities, the department may grant  
94 incentive gain-time in accordance with this paragraph. The rate  
95 of incentive gain-time in effect on the date the inmate  
96 committed the offense which resulted in his or her incarceration  
97 shall be the inmate's rate of eligibility to earn incentive  
98 gain-time throughout the period of incarceration and shall not  
99 be altered by a subsequent change in the severity level of the  
100 offense for which the inmate was sentenced.

101 1. For sentences imposed for offenses committed prior to  
102 January 1, 1994, up to 20 days of incentive gain-time may be  
103 granted. If granted, such gain-time shall be credited and  
104 applied monthly.

105 2. For sentences imposed for offenses committed on or after  
106 January 1, 1994, and before October 1, 1995:

107 a. For offenses ranked in offense severity levels 1 through  
108 7, under former s. 921.0012 or former s. 921.0013, up to 25 days  
109 of incentive gain-time may be granted. If granted, such gain-  
110 time shall be credited and applied monthly.

111 b. For offenses ranked in offense severity levels 8, 9, and  
112 10, under former s. 921.0012 or former s. 921.0013, up to 20  
113 days of incentive gain-time may be granted. If granted, such  
114 gain-time shall be credited and applied monthly.

115 3. For sentences imposed for offenses committed on or after  
116 October 1, 1995, the department may grant up to 10 days per

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117 month of incentive gain-time, except that no prisoner is  
 118 eligible to earn any type of gain-time in an amount that would  
 119 cause a sentence to expire, end, or terminate, or that would  
 120 result in a prisoner's release, prior to serving a minimum of 85  
 121 percent of the sentence imposed. For purposes of this  
 122 subparagraph, credits awarded by the court for time physically  
 123 incarcerated shall be credited toward satisfaction of 85 percent  
 124 of the sentence imposed. Except as provided by this section, a  
 125 prisoner shall not accumulate further gain-time awards at any  
 126 point when the tentative release date is the same as that date  
 127 at which the prisoner will have served 85 percent of the  
 128 sentence imposed. State prisoners sentenced to life imprisonment  
 129 shall be incarcerated for the rest of their natural lives,  
 130 unless granted pardon or clemency.

131 (d) Notwithstanding paragraph (b) subparagraphs (b)1. and  
 132 2., the education program manager shall recommend, and the  
 133 Department of Corrections may grant, a one-time award of 60  
 134 additional days of incentive gain-time to an inmate who is  
 135 otherwise eligible and who successfully completes requirements  
 136 for and is awarded a high school equivalency diploma or  
 137 vocational certificate. This incentive gain-time award may be  
 138 granted to reduce any sentence for an offense committed on or  
 139 after October 1, 1995. However, this gain-time may not be  
 140 granted to reduce any sentence for an offense committed on or  
 141 after October 1, 1995, if the inmate is, or has previously been,  
 142 convicted of a violation of s. 794.011, s. 794.05, former s.  
 143 796.03, former s. 796.035, s. 800.04, s. 825.1025, s. 827.03, s.  
 144 827.071, s. 847.0133, s. 847.0135, s. 847.0137, s. 847.0138, s.  
 145 847.0145, or s. 985.701(1), or a forcible felony offense that is

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146 specified in s. 776.08, except burglary as specified in s.  
 147 810.02(4). An inmate subject to the 85 percent minimum service  
 148 requirement pursuant to subparagraph (b)3. may not accumulate  
 149 gain-time awards at any point when the tentative release date is  
 150 the same as the 85 percent minimum service date of the sentence  
 151 imposed. Under no circumstances may an inmate receive more than  
 152 60 days for educational attainment pursuant to this section.

153 (e) Notwithstanding subparagraph (b)3. and paragraph (d),  
 154 for sentences imposed for offenses committed on or after October  
 155 1, 2014, the department may not grant incentive gain-time if the  
 156 offense is a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2.  
 157 or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s.  
 158 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

159 Section 4. Subsection (3) of section 944.35, Florida  
 160 Statutes, is amended to read:

161 944.35 Authorized use of force; malicious battery and  
 162 sexual misconduct prohibited; reporting required; penalties.—

163 (3)(a)1. Any employee of the department, a private  
 164 provider, or private correctional facility who, with malicious  
 165 intent, commits a battery upon an inmate or an offender  
 166 supervised by the department in the community, commits a  
 167 misdemeanor of the first degree, punishable as provided in s.  
 168 775.082 or s. 775.083.

169 2. Any employee of the department, a private provider, or  
 170 private correctional facility who, with malicious intent,  
 171 commits a battery or inflicts cruel or inhuman treatment by  
 172 neglect or otherwise, and in so doing causes great bodily harm,  
 173 permanent disability, or permanent disfigurement to an inmate or  
 174 an offender supervised by the department in the community,

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175 commits a felony of the third degree, punishable as provided in  
176 s. 775.082, s. 775.083, or s. 775.084.

177 (b) An employee of the department, a private provider, or  
178 private correctional facility commits a felony of the third  
179 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
180 775.084, if the employee:

181 1. Knowingly and with the intent to cause an inmate great  
182 bodily harm, permanent disability, or permanent disfigurement,  
183 withholds food, water, clothing, shelter, supervision, medicine,  
184 or medical services from the inmate; and

185 2. Causes an inmate to suffer great bodily harm, permanent  
186 disability, or permanent disfigurement by such action.

187 (c)~~(b)~~1. As used in this paragraph, the term "sexual  
188 misconduct" means the oral, anal, or vaginal penetration by, or  
189 union with, the sexual organ of another or the anal or vaginal  
190 penetration of another by any other object, but does not include  
191 an act done for a bona fide medical purpose or an internal  
192 search conducted in the lawful performance of the employee's  
193 duty.

194 2. Any employee of the department or a private correctional  
195 facility as defined in s. 944.710 who engages in sexual  
196 misconduct with an inmate or an offender supervised by the  
197 department in the community, without committing the crime of  
198 sexual battery, commits a felony of the third degree, punishable  
199 as provided in s. 775.082, s. 775.083, or s. 775.084.

200 3. The consent of the inmate or offender supervised by the  
201 department in the community to any act of sexual misconduct may  
202 not be raised as a defense to a prosecution under this  
203 paragraph.

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204 4. This paragraph does not apply to any employee of the  
205 department or any employee of a private correctional facility  
206 who is legally married to an inmate or an offender supervised by  
207 the department in the community, nor does it apply to any  
208 employee who has no knowledge, and would have no reason to  
209 believe, that the person with whom the employee has engaged in  
210 sexual misconduct is an inmate or an offender under community  
211 supervision of the department.

212 ~~(d)~~~~(e)~~ Notwithstanding prosecution, any violation of the  
213 provisions of this subsection, as determined by the Public  
214 Employees Relations Commission, shall constitute sufficient  
215 cause under s. 110.227 for dismissal from employment with the  
216 department, and such person shall not again be employed in any  
217 capacity in connection with the correctional system.

218 ~~(e)~~~~(d)~~ Each employee who witnesses, or has reasonable cause  
219 to suspect, that an inmate or an offender under the supervision  
220 of the department in the community has been unlawfully abused or  
221 is the subject of sexual misconduct pursuant to this subsection  
222 shall immediately prepare, date, and sign an independent report  
223 specifically describing the nature of the force used or the  
224 nature of the sexual misconduct, the location and time of the  
225 incident, and the persons involved. The report shall be  
226 delivered to the inspector general of the department with a copy  
227 to be delivered to the warden of the institution or the regional  
228 administrator. The inspector general shall immediately conduct  
229 an appropriate investigation, and, if probable cause is  
230 determined that a violation of this subsection has occurred, the  
231 respective state attorney in the circuit in which the incident  
232 occurred shall be notified.

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233 Section 5. Subsection (2) of section 945.6031, Florida  
 234 Statutes, is amended to read:

235 945.6031 Required reports and surveys.-

236 (2) The authority shall conduct surveys of the physical and  
 237 mental health care system at each correctional institution at  
 238 least every 18 months triennially and shall report the survey  
 239 findings for each institution to the Secretary of Corrections.

240 Section 6. Subsection (1) of section 951.221, Florida  
 241 Statutes, is amended to read:

242 951.221 Sexual misconduct between detention facility  
 243 employees and inmates; penalties.-

244 (1) Any employee of a county or municipal detention  
 245 facility or of a private detention facility under contract with  
 246 a county commission who engages in sexual misconduct, as defined  
 247 in s. 944.35(3)(c)1. ~~s. 944.35(3)(b)1.~~, with an inmate or an  
 248 offender supervised by the facility without committing the crime  
 249 of sexual battery commits a felony of the third degree,  
 250 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 251 The consent of an inmate to any act of sexual misconduct may not  
 252 be raised as a defense to prosecution under this section.

253 Section 7. For the purpose of incorporating the amendment  
 254 made by this act to section 216.136, Florida Statutes, in a  
 255 reference thereto, paragraph (a) of subsection (1) of section  
 256 944.023, Florida Statutes, is reenacted to read:

257 944.023 Comprehensive correctional master plan.-

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

259 (a) "Criminal Justice Estimating Conference" means the  
 260 Criminal Justice Estimating Conference referred to in s.  
 261 216.136(5).

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262 Section 8. For the purpose of incorporating the amendment  
 263 made by this act to section 944.35, Florida Statutes, in a  
 264 reference thereto, paragraph (uu) of subsection (2) of section  
 265 435.04, Florida Statutes, is reenacted to read:

266 435.04 Level 2 screening standards.-

267 (2) The security background investigations under this  
 268 section must ensure that no persons subject to the provisions of  
 269 this section have been arrested for and are awaiting final  
 270 disposition of, have been found guilty of, regardless of  
 271 adjudication, or entered a plea of nolo contendere or guilty to,  
 272 or have been adjudicated delinquent and the record has not been  
 273 sealed or expunged for, any offense prohibited under any of the  
 274 following provisions of state law or similar law of another  
 275 jurisdiction:

276 (uu) Section 944.35(3), relating to inflicting cruel or  
 277 inhuman treatment on an inmate resulting in great bodily harm.

278 Section 9. For the purpose of incorporating the amendment  
 279 made by this act to section 944.35, Florida Statutes, in a  
 280 reference thereto, paragraph (f) of subsection (3) of section  
 281 921.0022, Florida Statutes, is reenacted to read:

282 921.0022 Criminal Punishment Code; offense severity ranking  
 283 chart.-

284 (3) OFFENSE SEVERITY RANKING CHART

285 (f) LEVEL 6

286

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a

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			crash involving serious	
288			bodily injury.	
	316.193(2)(b)	3rd	Felony DUI, 4th or	
			subsequent conviction.	
289				
	400.9935(4)(c)	2nd	Operating a clinic, or	
			offering services	
			requiring licensure,	
290			without a license.	
	499.0051(3)	2nd	Knowing forgery of	
			pedigree papers.	
291				
	499.0051(4)	2nd	Knowing purchase or	
			receipt of prescription	
			drug from unauthorized	
			person.	
292				
	499.0051(5)	2nd	Knowing sale or transfer	
			of prescription drug to	
			unauthorized person.	
293				
	775.0875(1)	3rd	Taking firearm from law	
			enforcement officer.	
294				
	784.021(1)(a)	3rd	Aggravated assault;	
			deadly weapon without	
			intent to kill.	

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295				
	784.021(1)(b)	3rd	Aggravated assault;	
			intent to commit felony.	
296				
	784.041	3rd	Felony battery; domestic	
			battery by	
			strangulation.	
297				
	784.048(3)	3rd	Aggravated stalking;	
			credible threat.	
298				
	784.048(5)	3rd	Aggravated stalking of	
			person under 16.	
299				
	784.07(2)(c)	2nd	Aggravated assault on	
			law enforcement officer.	
300				
	784.074(1)(b)	2nd	Aggravated assault on	
			sexually violent	
			predators facility	
			staff.	
301				
	784.08(2)(b)	2nd	Aggravated assault on a	
			person 65 years of age	
			or older.	
302				
	784.081(2)	2nd	Aggravated assault on	
			specified official or	
			employee.	

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303	591-00528-16		20167006pb
	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
304	784.083(2)	2nd	Aggravated assault on code inspector.
305	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
306	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
307	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
308	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
309			

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	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
310	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
311	794.05(1)	2nd	Unlawful sexual activity with specified minor.
312	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.
313	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
314	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
315			

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	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
316			
	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
317			
	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
318			
	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
319			
	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
320			
	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
321			
	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).

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

	591-00528-16		20167006pb
322	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
323			
	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
324			
	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
325			
	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
326			
	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
327			
	827.03(2)(c)	3rd	Abuse of a child.
328			
	827.03(2)(d)	3rd	Neglect of a child.
329			
	827.071(2) & (3)	2nd	Use or induce a child in

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

	591-00528-16		20167006pb	
			a sexual performance, or	
			promote or direct such	
330			performance.	
	836.05	2nd	Threats; extortion.	
331				
	836.10	2nd	Written threats to kill	
			or do bodily injury.	
332				
	843.12	3rd	Aids or assists person	
			to escape.	
333				
	847.011	3rd	Distributing, offering	
			to distribute, or	
			possessing with intent	
			to distribute obscene	
			materials depicting	
334			minors.	
	847.012	3rd	Knowingly using a minor	
			in the production of	
			materials harmful to	
			minors.	
335				
	847.0135(2)	3rd	Facilitates sexual	
			conduct of or with a	
			minor or the visual	
			depiction of such	
			conduct.	

	591-00528-16		20167006pb	
336				
	914.23	2nd	Retaliation against a	
			witness, victim, or	
			informant, with bodily	
			injury.	
337				
	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.	
338				
	944.40	2nd	Escapes.	
339				
	944.46	3rd	Harboring, concealing,	
			aiding escaped	
			prisoners.	
340				
	944.47(1)(a)5.	2nd	Introduction of	
			contraband (firearm,	
			weapon, or explosive)	
			into correctional	
			facility.	
341				
	951.22(1)	3rd	Intoxicating drug,	
			firearm, or weapon	

591-00528-16

20167006pb

introduced into county  
facility.

342

343

344

Section 10. This act shall take effect July 1, 2016.

**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 Committee on Criminal Justice

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BILL: SPB 7066

INTRODUCER: Criminal Justice Committee

SUBJECT: Criminal Justice

DATE: February 9, 2016

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

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon		<b>CJ Submitted as Committee Bill</b>

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**I. Summary:**

SPB 7066 makes several significant changes to Florida’s sentencing and gain-time laws. Specifically, the bill:

- Requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public;
- Authorizes a court to depart from a mandatory minimum term of imprisonment for a nonviolent felony or misdemeanor if the court finds that specified criteria are met; and
- Increases the amount of incentive gain-time the Department of Corrections may grant and provides that an offender who commits a nonviolent felony is not eligible to earn any type of gain-time in an amount that would cause the offender to serve less than 65 percent of his or her sentence (currently 85 percent of the offender’s sentence).

All three provisions in the bill will result in substantially fewer nonviolent inmates coming to state prison and substantially more inmates serving shorter sentences. The most significant cost reduction will be achieved by modifying the gain-time law. By decreasing the 85 percent “time-served” mandate to 65 percent “time-served” for nonviolent inmates, the bill is estimated to result in a reduction of 7,772 inmates over the next five fiscal years, with a cost avoidance of nearly \$1 billion.

## II. Present Situation:

### Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code<sup>1</sup> (“Code”) as Florida’s “primary sentencing policy.”<sup>2</sup> The Code has been described as “unique in that it has features of both structured and unstructured sentencing policies.”<sup>3</sup>

From a structured sentencing perspective, the Code provides for a uniform evaluation of relevant factors present at sentencing, such as the offense before the court for sentencing, prior criminal record, victim injury, and others. It also provides for a lowest permissible sentence that the court must impose in any given sentencing event, absent a valid reason for departure.

The Code also contains some characteristics of unstructured sentencing, such as broad judicial discretion and the allowance for the imposition of lengthy terms of incarceration.

The Code is effective for offenses committed on or after October 1, 1998 and is unlike the state’s preceding sentencing guidelines, which provided for narrow ranges of permissible sentences in all non-capital sentencing events.<sup>4</sup>

Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>5</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>6</sup> Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury.<sup>7</sup> Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible prison sentence in months.<sup>8</sup> Absent mitigation,<sup>9</sup> the permissible sentencing range is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>10</sup>

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<sup>1</sup> Sections 921.002-921.0027, F.S. See chapters 97-194 and 98-204, L.O.F.

<sup>2</sup> *Florida’s Criminal Punishment Code: A Comparative Assessment* (Executive Summary), Florida Department of Corrections (Sept. 2013), available at [http://www.dc.state.fl.us/pub/sg\\_annual/1213/executives.html](http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html) (last visited on February 2, 2016).

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

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

<sup>5</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by “default” based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>6</sup> Section 921.0024, F.S.

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

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

<sup>9</sup> The court may “depart downward” from the lowest permissible sentence scored if the court finds there is a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

<sup>10</sup> *Id.* If the lowest permissible sentence scored exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. *Id.* If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. *Id.*

## Length of Stay

According to a recent study of the operations of the Florida Department of Corrections (DOC), length of stay (LOS) in Florida correctional facilities exceeds the national LOS average. LOS has consistently increased in Florida:

... [T]he length of stay (LOS) in correctional facilities has risen from just under 30 months on average in 2008 to almost 40 months by 2015. This LOS is well above the national average of 30 months reported by the Bureau of Justice Statistics. If Florida had an LOS that approximated the national average of 30 months, its inmate population would be approximately 80,000. The longer LOS also explains to a large degree Florida's significantly higher incarceration rate of 522 per 100,000 population versus the U.S. state incarceration rate of 416 per 100,000.<sup>11</sup>

The study notes a 10-year increase in LOS in Florida [2004-05 to 2014-2015], which the authors attribute to "longer sentences being imposed by the courts that began in 2006 and continued through 2013."<sup>12</sup> In 2004-05, the average calculated LOS was 29.9 months; in 2014-15, the average calculated LOS was 38.0 months. This was a 2.5 percent increase over the 10-year period.

## Statutory Diversion from Prison Sanctions

An exception to typical Code sentencing is found in s. 775.082(10), F.S. Under this subsection, if a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony<sup>13</sup> 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. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility.

## Mandatory Minimum Terms of Imprisonment

Mandatory minimum terms of imprisonment<sup>14</sup> limit judicial discretion in sentencing under the Code. "If the lowest permissible sentence is less than the mandatory minimum sentence, the

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<sup>11</sup> *Study of Operations of the Florida Department of Corrections* (prepared by Carter Goble Associates, LLC), Report No. 15-FDC, November 2015, Office of Program Policy Analysis and Government Accountability, Florida Legislature, p. 80 (footnote omitted). This study is available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=15-FDC> (last visited on February 2, 2016). This study is further referenced as "*Study of Operations of the Florida Department of Corrections.*"

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

<sup>13</sup> Section 776.08, F.S., defines a "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. However, s. 775.082(10), F.S., provides that any third degree felony violation under chapter 810, F.S., may be considered.

<sup>14</sup> According to one study of sentencing, the first mandatory minimum term of imprisonment (3 years) was enacted by the Legislature in 1975 and applied to using a firearm in the commission of a felony. Crow, Matthew S. *Florida's Evolving Sentencing Policy: An Analysis of the Impact of Sentencing Guidelines Transformations* (April 1, 2005), Doctoral dissertation for the School of Criminology and Criminal Justice, Florida State University (Spring Semester 2005) (on file with Senate Committee on Criminal Justice).

mandatory minimum sentence takes precedence.”<sup>15</sup> If the mandatory minimum sentence is longer than the scored lowest permissible sentence, the sentencing range is narrowed.

With few exceptions, the sentencing court must impose the mandatory minimum term. Staff is aware of three circumstances in which a sentencing court is authorized to impose a sentence below the mandatory minimum term. The first circumstance is when the court sentences a defendant as a youthful offender.<sup>16</sup> The second circumstance is when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant.<sup>17</sup>

The third circumstance, which is perhaps most relevant to the bill, applies to an offense in which a driver who is involved in a fatal crash fails to stop and remain at the scene of a crash as required.<sup>18</sup> This offense is a first degree felony with a 4-year mandatory minimum term of imprisonment.<sup>19</sup> However, the defendant may move to depart from the mandatory minimum term if he or she was not driving under the influence.<sup>20</sup> The state may object to the departure. The court may grant the motion if it finds that a factor, consideration, or circumstance clearly demonstrates that imposing a mandatory minimum term would constitute or result in an injustice.

Senate staff was able to identify 108 mandatory minimum terms in Florida law. This inventory excludes repeat offender sanctions. Mandatory minimum terms for felony offenses range from 18 months to life imprisonment. Mandatory minimum terms for misdemeanors range from 5 days to one year. Section 893.135, F.S., which punishes drug trafficking, contains the most mandatory minimum terms (47) for felonies. Section 379.407, F.S., which punishes saltwater product violations, contains the most mandatory minimum terms (12) for misdemeanor violations.

<b>INVENTORY OF FLORIDA’S MANDATORY MINIMUM TERMS</b>	
<b>Offense/Penalty Provision &amp; Number of Mandatory Minimum Terms</b>	<b>Description of Mandatory Minimum Term(s)</b>
Driving under the influence; various offenses (ss. 316.027 and 316.193). <b>Four mandatory minimum terms.</b>	4 years, 2 years, not less than 30 days, not less than 10 days
Fleeing or eluding; various offenses (s. 316.1935). <b>Two mandatory minimum terms.</b>	3 years
Boating under the influence; various offenses (s. 327.35). <b>Two mandatory minimum terms.</b>	Not less than 30 days, not less than 10 days
Saltwater product violations; various offenses (s. 379.407). <b>Twelve mandatory minimum terms.</b>	1 year, 6 months

<sup>15</sup> Fla.R.Crim.P. Rule 3.704(26). A mandatory minimum term is also not subject to mitigation. *See State v. Vanderhoff*, 14 So. 3d 1185 (Fla. 5th DCA 2009).

<sup>16</sup> Section 958.04, F.S. *See Christian v. State*, 84 So. 3d 437 (Fla. 5th DCA 2012).

<sup>17</sup> Sections 790.163(2), 790.164(2), and 893.135(4), F.S.

<sup>18</sup> Section 316.027(2)(c), F.S.

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

<sup>20</sup> Section 316.027(2)(g), F.S.

<b>INVENTORY OF FLORIDA'S MANDATORY MINIMUM TERMS</b>	
<b>Offense/Penalty Provision &amp; Number of Mandatory Minimum Terms</b>	<b>Description of Mandatory Minimum Term(s)</b>
Phosphogypsum management violation (s. 403.4154). <b>One mandatory minimum term.</b>	5 years
Unlawfully practicing health care profession; various offenses (s. 456.065). <b>Three mandatory minimum terms.</b>	1 year, 30 days
Unlawfully selling, etc., horse meat (s. 500.451). <b>One mandatory minimum term.</b>	1 year
Unlawfully acting as insurer; various offenses (s. 624.401). <b>Three mandatory minimum terms.</b>	2 years, 18 months, 1 year
Domestic violence offender intentionally causes bodily harm (s. 741.283). <b>One mandatory minimum term.</b>	5 days (unless court imposes prison sentence)
"10-20-Life" (s. 775.087). <b>Eight mandatory minimum terms.</b>	Not less than 25 years and not more than life, 20 years, 15 years, 10 years, 3 years
Murder or attempted murder of law enforcement officer (s. 782.065). <b>One mandatory minimum term.</b>	Life
Assault or battery on law enforcement officer or other specified persons (s. 784.07). <b>Four mandatory minimum terms.</b>	8 years, 5 years, 3 years
Aggravated assault or aggravated battery upon person 65 years of age or older (s. 784.08). <b>One mandatory minimum term.</b>	3 years
Possession of a firearm, etc., by a violent career criminal (s. 790.235). <b>One mandatory minimum term.</b>	15 years
Deriving support from proceeds of prostitution; third or subsequent violation (s. 796.05). <b>One mandatory minimum term.</b>	10 years
Prostitution-related offenses; second or subsequent violation (s. 796.07). <b>One mandatory minimum term.</b>	10 days
Fraud; motor vehicle crash offenses (s. 817.234). <b>Two mandatory minimum terms.</b>	2 years
Criminal use of personal ID information; various offenses (s. 817.568). <b>Six mandatory minimum terms.</b>	10 years, 5 years, 3 years
Animal cruelty (death, etc.); second or subsequent violation (s. 828.12). <b>One mandatory minimum term.</b>	6 months
Unlawful killing, etc., of horse or cattle (s. 828.125).	1 year

<b>INVENTORY OF FLORIDA’S MANDATORY MINIMUM TERMS</b>	
<b>Offense/Penalty Provision &amp; Number of Mandatory Minimum Terms</b>	<b>Description of Mandatory Minimum Term(s)</b>
<b>Two mandatory minimum terms.</b>	
Intentionally defective workmanship; defense or war materials (s. 876.39). <b>One mandatory minimum term.</b>	Not less than 1 year in state prison (effectively, more than one year)
Sale, etc., of specified controlled substances within 1,000 feet of real property of K-12 school and other places (s. 893.13). <b>One mandatory minimum term.</b>	3 years
Manufacturing methamphetamine/phencyclidine; various offenses (child present) (s. 893.13). <b>Two mandatory minimum terms.</b>	10 calendar years, 5 calendar years
Drug trafficking; various offenses (s. 893.135). <b>Forty-seven mandatory minimum terms.</b>	Life, 25 years, 15 years, 7 years, 3 years
<b>TOTAL MANDATORY MINIMUM TERMS: 108</b>	

**Service of 85 Percent of Sentence and Incentive Gain-Time**

According to a 2012 study of time served in prison by the PEW Center on the States (“PEW”),<sup>21</sup> in 1990, the average length of stay (LOS) in Florida prisons was 1.1 years, the shortest LOS for that year among states reviewed by the PEW Center for which data was available. According to PEW “[t]hroughout the prior decade, a capacity crunch combined with court limits on prison overcrowding drove Florida to copy generous policies on ‘gaintime’ that reduced offenders time in prison.”<sup>22</sup> Some of these credits were “automatic, rather than awarded based on program participation or good behavior.”<sup>23</sup> “As a result, inmates in that era served only about 30 percent of their court-ordered terms.”<sup>24</sup>

PEW further observed:

By the mid-1990s, the national truth-in-sentencing movement was at full throttle, and Florida—where outrage lingered over the murders of two Miami police officers by an ex-offender released after serving only half his term—was ready for a pendulum swing. Prison capacity had increased, the 1993 killing of a British vacationer had stained the state’s image as a tourist playground, and a group called Stop Turning Out Prisoners (STOP) was attracting a large following. STOP’s push for a state constitutional amendment requiring offenders to serve 85 percent of their sentence was blocked by the

<sup>21</sup> *Time Served: The High Cost, Low Return of Longer Prison Terms* (2012), The PEW Center on the States, available at [http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing\\_and\\_corrections/prisontimeservedpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/prisontimeservedpdf.pdf) (last visited on February 2, 2016).

<sup>22</sup> *Id.* at p. 26.

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

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

Florida Supreme Court. But in early 1995, the state legislature voted unanimously to enact the 85 percent rule for all offenders, regardless of the crime.<sup>25</sup>

PEW found that Florida had the greatest increase in average time served among the states it studied over the time period of 1999 to 2008 (a 166 percent increase). Florida also led other states for this time period in increasing average time served for offenses in three crime categories studied by PEW: violent (a 137 percent increase); property (a 181 percent increase); and drugs (a 194 percent increase). As a specific comparison, the states with the next greatest increase in average time served for drug offenses were Arkansas and Oklahoma (both states increasing average time served for drug crimes by 122 percent).

In the previously referenced study of the operations of the Florida Department of Corrections, “[o]ne factor that was tested by the FDC [Florida Department of Corrections] and was not found to have an impact on lowering or increasing recidivism rates was the length of imprisonment. In other words, whether an inmate served one, two, three, or more years, there was no associated reduction or increase in the recidivism rates. This finding is consistent with other research studies that found amount of time served is not a predictor of recidivism.”<sup>26</sup>

As noted by PEW, when the Legislature created a requirement that inmates serve at least 85 percent of their sentence, the Legislature made the requirement applicable to both nonviolent felony offenders and violent felony offenders. Section 921.002(1)(e), F.S., of the Code provides that for noncapital felonies offenses committed on or after October 1, 1998, the sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4)(b)3., F.S.<sup>27</sup>

Incentive gain-time is gain-time that the Department of Corrections may award monthly to an inmate for working diligently, participating in training, using time constructively, or otherwise engaging in positive activities. Incentive gain-time is also gain-time the department may award one-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate.<sup>28</sup>

For sentences imposed for offenses committed on or after October 1, 1995:

- Applicable to monthly incentive gain-time, the department may grant up to 10 days per month of incentive gain-time; and

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

<sup>26</sup> *Study of Operations of the Florida Department of Corrections*, at p. 83 (footnotes omitted).

<sup>27</sup> Persons sentenced for offenses committed prior to October 1, 1998 are not subject to the 85 percent law. However, the Department of Corrections notes that the “vast majority of the inmates being released from prison today have been sentenced under the 85 percent law[.]” See <http://www.dc.state.fl.us/pub/timeserv/doing/> (last visited on February 2, 2016).

<sup>28</sup> Section 944.275(4)(b) and (d), F.S. Section 944.275(4)(e), F.S., provides that for sentences imposed for offenses committed on or after October 1, 2014, the department may not grant incentive gain-time if the offense is a violation of: s. 782.04(1)(a)2.c., F.S. (murder while engaged in sexual battery); s. 787.01(3)(a)2. or 3., F.S. (sexual battery or lewd act during commission of kidnapping of child under 13); s. 787.02(3)(a)2. or 3., F.S. (sexual battery or lewd act during commission of false imprisonment of child under 13); s. 794.011, F.S. (sexual battery), excluding s. 794.011(10), F.S.; s. 800.04, F.S. (lewd acts on child); s. 825.1025, F.S. (lewd acts on elderly or disabled adult); or s. 847.0135(5), F.S. (computer transmission to child of lewd exhibition).

- Applicable to one-time award of incentive gain-time (high school equivalency diploma or vocational certificate, 60 days of incentive gain-time.<sup>29</sup>

However, for sentences imposed for offenses committed on or after October 1, 1995, no prisoner is eligible to earn *any type of gain-time* in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed. Credits awarded by the court for time physically incarcerated shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by s. 944.275, F.S., a prisoner shall not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.<sup>30</sup>

### III. Effect of Proposed Changes:

The bill, which is effective on October 1, 2016, makes several significant changes to Florida's sentencing and gain-time laws. The changes are described as follows:

*The bill requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public.*

The bill amends s. 775.082, F.S., to provide that if a defendant is sentenced for a primary offense of possession of a controlled substance committed on or after October 1, 2016, and if the total sentence points pursuant to s. 921.0024, F.S., are 60 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility.

The bill defines "possession of a controlled substance" as possession of a controlled substance in violation of s. 893.13, F.S., but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135, F.S., which punishes drug trafficking.

*The bill authorizes a court to depart from a mandatory minimum term of imprisonment for a nonviolent felony or misdemeanor if the court finds that specified criteria are met.*

The bill amends s. 775.082, F.S., to provide that a person who is convicted of an offense committed on or after October 1, 2016, which requires that a mandatory minimum term of imprisonment be imposed, may move the sentencing court to depart from the mandatory minimum term and, if applicable, the mandatory fine. The state attorney may file an objection to the motion.

The court may grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence that all of the following criteria are met:

<sup>29</sup> Section 944.275(4)(b)3., F.S. When a prisoner is found guilty of an infraction of the laws of this state or the rules of the department, gain-time may be forfeited according to law. Section 944.275(5), F.S.

<sup>30</sup> Unless otherwise indicated, information in this paragraph is from s. 944.275(4)(b)3., F.S.

- The defendant has not previously received a departure under this section and has not been previously convicted for the same offense for which the defendant requests a departure under this section.
- The offense is not a forcible felony<sup>31</sup> or a misdemeanor which involves the use or threat of physical force or violence against another person.
- The offense does not involve physical injury to another person or coercion of another person; and
- The offense does not involve a victim who is a minor or the use of a minor in the commission of the offense.

The bill defines “coercion” as: using or threatening to use physical force against another person; or restraining, isolating, or confining or threatening to restrain, isolate, or confine another person without lawful authority and against her or his will (essentially physical restraint or false imprisonment).

The bill specifies that the departure provision does not apply to repeat offender sentencing pursuant to s. 775.082(9), F.S. (prison release reoffender), s. 775.0837, F.S. (habitual misdemeanor offender), s. 775.084, F.S. (habitual felony offender, habitual violent felony offender, three-time violent felony offender, and violent career criminal), or s. 794.0115, F.S. (dangerous sexual felony offender).

*The bill increases the amount of incentive gain-time the Department of Corrections may grant and provides that an offender who commits a nonviolent felony is not eligible to earn any type of gain-time in an amount that would cause the offender to serve less than 65 percent of his or her sentence (currently 85 percent of the offender’s sentence).*

The bill amends s. 944.275, F.S., to increase monthly incentive gain-time awards that the Department of Corrections may grant from up to 10 days to up to 20 days<sup>32</sup> for offenders sentenced for offenses committed on or after October 1, 2016. The bill provides that gain-time of whatever form cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony<sup>33</sup> or 85 percent of time served if the offense is not a nonviolent felony.

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

##### **A. Municipality/County Mandates Restrictions:**

None.

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

None.

<sup>31</sup> Burglary of an unoccupied structure or conveyance is not considered a forcible felony for purposes of this provision.

<sup>32</sup> Prior to 1994, Florida authorized a monthly incentive gain-time award of up to 20 days. Section 947.275(4)(b)1., F.S.

<sup>33</sup> “Nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S. Section 948.08(6), F.S., defines a “nonviolent felony” as a third degree felony violation of chapter 810, F.S., or any other felony offense that is not a forcible felony.

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 final, official estimate of prison bed impact, if any, of legislation has provided estimates regarding provisions of the bill.<sup>34</sup> The CJIC notes that its impact statements regarding prison diversion of certain drug possession offenders and gain-time application to nonviolent offenders are “not intended to represent the direct appropriations impact of this bill. Rather, it provides a standalone estimate of the prison bed need of this particular bill. Cost data are included to allow a comparison of the impact of this bill with other proposed legislation. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.”

**Departure from a Mandatory Minimum Term**

The CJIC is unable to quantify the bed impact of the provision of the bill authorizing a court to depart from a mandatory term of imprisonment if certain criteria are met. “Per DOC, in FY 14-15, 1,534 inmates were admitted to prison who received mandatory minimum sentences that could be impacted by this bill language. However, there is no data available to determine what type of sentences offenders with mandatory minimums might receive once they are no longer subject to a required sentencing option.”

**Divert from Prison Drug Possession Offenders**

The CJIC estimates that the provision of the bill diverting certain drug possession offenders from prison will result in a cumulative decrease of 989 prison beds over the next 5 years (FY 2016-17 to FY 2020-21) with a cumulative cost avoidance of \$125,921,573 (\$61,286,845 in operating costs<sup>35</sup> and \$64,634,728 in fixed capital outlay

<sup>34</sup> See <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SBDraft591-01710C-16.pdf> (last visited on February 2, 2016). All information in this section of the analysis is from this source.

<sup>35</sup> FY 2014-15 operating costs per inmate were obtained from the Department of Corrections. “The \$51.65 per diem (\$18,852 annual cost) is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference.”

costs).<sup>36</sup> A complete breakdown of projected annual prison bed reductions and cost savings is provided in the table below:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2016-2017	-146	-146	(\$1,417,660)	(34,826,617)	<b>(\$36,244,277)</b>	<b>(\$36,244,277)</b>
2017-2018	-563	-417	(\$7,063,413)	(\$15,926,538)	<b>(\$22,989,951)</b>	<b>(\$59,234,228)</b>
2018-2019	-812	-249	(\$14,013,313)	(\$8,053,098)	<b>(\$22,066,411)</b>	<b>(\$81,300,638)</b>
2019-2020	-934	-122	(\$18,222,129)	(\$3,735,765)	<b>(\$21,957,894)</b>	<b>(\$103,258,532)</b>
2020-2021	-989	-55	(\$20,570,331)	(\$2,092,710)	<b>(\$22,663,041)</b>	<b>(\$125,921,573)</b>
<b>Total</b>	<b>-989</b>	<b>-989</b>	<b>(\$61,286,845)</b>	<b>(\$64,634,728)</b>	<b>(\$125,921,573)</b>	<b>(\$125,921,573)</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, December 22, 2015.

**Change Percent of Sentence that must be Served by Nonviolent Offenders**

The CJIC estimates that the provisions of the bill requiring nonviolent offenders to serve at least 65 percent of their sentence will result in a cumulative decrease of 7,772 prison beds over the next 5 years (FY 2016-17 to FY 2020-21) with a cumulative cost avoidance of \$939,505,915 (\$418,587,778 in operating costs and \$520,918,137 in fixed capital outlay costs). A complete breakdown of projected annual prison bed reductions and cost savings is provided in the table below:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2016-2017	-701	-701	(\$6,806,710)	(\$194,422,837)	<b>(\$201,229,547)</b>	<b>(\$201,229,547)</b>
2017-2018	-3,143	-2,442	(\$38,295,850)	(\$146,409,018)	<b>(\$184,704,868)</b>	<b>(385,934,415)</b>
2018-2019	-5,432	-2,289	(\$87,392,113)	(\$98,287,401)	<b>(\$185,679,514)</b>	<b>(\$571,613,929)</b>
2019-2020	-6,921	-1,489	(\$128,922,085)	(\$57,802,473)	<b>(\$186,724,558)</b>	<b>(\$758,338,486)</b>
2020-2021	-7,772	-851	(\$157,171,021)	(\$23,996,408)	<b>(\$181,167,429)</b>	<b>(\$939,505,915)</b>
<b>Total</b>	<b>-7,772</b>	<b>-7,772</b>	<b>(\$418,587,778)</b>	<b>(\$520,918,137)</b>	<b>(\$939,505,915)</b>	<b>(\$939,505,915)</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 6, 2016.

A cautionary note on determining the fiscal impact for the entire bill: because section 1 of the bill diverts nonviolent offenders from state prison and section 2 shortens the length of stay in state prison for nonviolent offenders, the entire bill’s cumulative bed space impact will be less than the combination of the two estimates.

**VI. Technical Deficiencies:**

None.

<sup>36</sup> “FY 2006-07 capital costs per bed were based on Department of Corrections cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc.”

**VII. Related Issues:****Oklahoma’s “Justice Safety Valve Act” (Departure from Mandatory Minimum Terms)**

The mandatory minimum departure provision of the bill bears some similarity to recent legislation that passed the Oklahoma Legislature.<sup>37</sup> The Oklahoma legislation allows a court to depart from mandatory minimum terms applicable to many nonviolent offenses if the court finds that certain criteria are met. However, unlike the bill, the Oklahoma legislation does not preclude a departure if the offender has previously received on or previously has been convicted of the same offense for which the offender is seeking departure.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.082, 921.002, and 944.275.

**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>37</sup> HB 1528 (“Justice Safety Valve Act”), 55th Leg., 1st Reg. Sess., Okla. Stat., tit. 22, §§ 22-985, 22-985.1, and 22-985.2 (effective November 1, 2015), available at [http://webserver1.lsb.state.ok.us/cf\\_pdf/2015-16%20ENR/hB/HB1518%20ENR.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20ENR/hB/HB1518%20ENR.PDF) (last visited on February 2, 2016).

FOR CONSIDERATION By the Committee on Criminal Justice

591-01710D-16

20167066pb

A bill to be entitled

An act relating to criminal justice; amending s. 775.082, F.S.; requiring a defendant who is sentenced for a primary offense of possession of a controlled substance committed on or after a specified date to be sentenced to a nonstate prison sanction under certain circumstances unless the court makes specified written findings; defining the term "possession of a controlled substance"; authorizing a defendant to move the sentencing court to depart from a mandatory minimum term of imprisonment or a mandatory fine, if the offense is committed on or after a specified date; authorizing the state attorney to file an objection to the motion; authorizing the sentencing court to grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence that specified criteria are met; defining the term "coercion"; providing applicability; amending s. 921.002, F.S.; revising a principle of the Criminal Punishment Code relating to a prisoner's required minimum term of imprisonment; amending s. 944.275, F.S.; revising the incentive gain-time that the Department of Corrections may grant a prisoner for offenses committed on or after a specified date; providing exceptions; providing an effective date.

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

Section 1. Present subsection (11) of section 775.082, Florida Statutes, is redesignated as subsection (13), and new subsections (11) and (12) are added to that section, to read:  
775.082 Penalties; applicability of sentencing structures;

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

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mandatory minimum sentences for certain reoffenders previously released from prison.-

(11) If a defendant is sentenced for a primary offense of possession of a controlled substance committed on or after October 1, 2016, and if the total sentence points pursuant to s. 921.0024 are 60 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section. As used in this subsection, the term "possession of a controlled substance" means possession of a controlled substance in violation of s. 893.13 but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135.

(12) (a) A person who is convicted of an offense committed on or after October 1, 2016, which requires that a mandatory minimum term of imprisonment be imposed may move the sentencing court to depart from the mandatory minimum term and, if applicable, the mandatory fine. The state attorney may file an objection to the motion.

(b) The court may grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence that all of the following criteria are met:

1. The defendant has not previously received a departure under this section and has not been previously convicted of the same offense for which the defendant requests a departure under this section;

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62 2. The offense is not a forcible felony as defined in s.  
 63 776.08 or a misdemeanor that involves the use or threat of  
 64 physical force or violence against another person. However,  
 65 burglary of an unoccupied structure or conveyance is not  
 66 considered a forcible felony for purposes of this subparagraph;

67 3. The offense does not involve physical injury to another  
 68 person or coercion of another person; and

69 4. The offense does not involve a victim who is a minor or  
 70 the use of a minor in the commission of the offense.

71 (c) As used in this subsection, the term "coercion" means:

72 1. Using or threatening to use physical force against  
 73 another person; or

74 2. Restraining or confining or threatening to restrain or  
 75 confine another person without lawful authority and against his  
 76 or her will.

77 (d) This subsection does not apply to sentencing pursuant  
 78 to subsection (9), s. 775.0837, s. 775.084, or s. 794.0115.

79 Section 2. Paragraph (e) of subsection (1) of section  
 80 921.002, Florida Statutes, is amended to read:

81 921.002 The Criminal Punishment Code.—The Criminal  
 82 Punishment Code shall apply to all felony offenses, except  
 83 capital felonies, committed on or after October 1, 1998.

84 (1) The provision of criminal penalties and of limitations  
 85 upon the application of such penalties is a matter of  
 86 predominantly substantive law and, as such, is a matter properly  
 87 addressed by the Legislature. The Legislature, in the exercise  
 88 of its authority and responsibility to establish sentencing  
 89 criteria, to provide for the imposition of criminal penalties,  
 90 and to make the best use of state prisons so that violent

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91 criminal offenders are appropriately incarcerated, has  
 92 determined that it is in the best interest of the state to  
 93 develop, implement, and revise a sentencing policy. The Criminal  
 94 Punishment Code embodies the principles that:

95 (e) The sentence imposed by the sentencing judge reflects  
 96 the length of actual time to be served, shortened only by the  
 97 application of incentive and meritorious gain-time as provided  
 98 by law, and may not be shortened if the defendant would  
 99 consequently serve less than 65 percent of his or her term of  
 100 imprisonment as provided in s. 944.275(4)(b)4.a. or 85 percent  
 101 of his or her term of imprisonment as provided in s.

102 944.275(4)(b)3. or s. 944.275(4)(b)4.b. The provisions of  
 103 chapter 947, relating to parole, shall not apply to persons  
 104 sentenced under the Criminal Punishment Code.

105 Section 3. Paragraph (b) of subsection (4) of section  
 106 944.275, Florida Statutes, is amended to read:

107 944.275 Gain-time.—

108 (4)

109 (b) For each month in which an inmate works diligently,  
 110 participates in training, uses time constructively, or otherwise  
 111 engages in positive activities, the department may grant  
 112 incentive gain-time in accordance with this paragraph. The rate  
 113 of incentive gain-time in effect on the date the inmate  
 114 committed the offense ~~that which~~ resulted in his or her  
 115 incarceration shall be the inmate's rate of eligibility to earn  
 116 incentive gain-time throughout the period of incarceration and  
 117 ~~may shall~~ not be altered by a subsequent change in the severity  
 118 level of the offense for which the inmate was sentenced.

119 1. For sentences imposed for offenses committed before

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120 ~~prior to~~ January 1, 1994, up to 20 days of incentive gain-time  
 121 may be granted. If granted, such gain-time shall be credited and  
 122 applied monthly.

123 2. For sentences imposed for offenses committed on or after  
 124 January 1, 1994, and before October 1, 1995:

125 a. For offenses ranked in offense severity levels 1 through  
 126 7, under former s. 921.0012 or former s. 921.0013, up to 25 days  
 127 of incentive gain-time may be granted. If granted, such gain-  
 128 time shall be credited and applied monthly.

129 b. For offenses ranked in offense severity levels 8, 9, and  
 130 10, under former s. 921.0012 or former s. 921.0013, up to 20  
 131 days of incentive gain-time may be granted. If granted, such  
 132 gain-time shall be credited and applied monthly.

133 3. For sentences imposed for offenses committed on or after  
 134 October 1, 1995, the department may grant up to 10 days per  
 135 month of incentive gain-time, except that no prisoner is  
 136 eligible to earn any type of gain-time in an amount that would  
 137 cause a sentence to expire, end, or terminate, or that would  
 138 result in a prisoner's release, before ~~prior to~~ serving a  
 139 minimum of 85 percent of the sentence imposed. For purposes of  
 140 this subparagraph, credits awarded by the court for time  
 141 physically incarcerated shall be credited toward satisfaction of  
 142 85 percent of the sentence imposed. Except as provided by this  
 143 section, a prisoner ~~may shall~~ not accumulate further gain-time  
 144 awards at any point when the tentative release date is the same  
 145 as that date at which the prisoner will have served 85 percent  
 146 of the sentence imposed. State prisoners sentenced to life  
 147 imprisonment shall be incarcerated for the rest of their natural  
 148 lives, unless granted pardon or clemency.

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149 4. For sentences imposed for offenses committed on or after  
 150 October 1, 2016, the department may grant up to 20 days per  
 151 month of incentive gain-time, except that:

152 a. If the offense is a nonviolent felony, as defined in s.  
 153 948.08(6), the prisoner is not eligible to earn any type of  
 154 gain-time in an amount that would cause a sentence to expire,  
 155 end, or terminate, or that would result in a prisoner's release,  
 156 before serving a minimum of 65 percent of the sentence imposed.  
 157 For purposes of this sub-subparagraph, credits awarded by the  
 158 court for time physically incarcerated shall be credited toward  
 159 satisfaction of 65 percent of the sentence imposed. A prisoner  
 160 who is granted incentive gain-time pursuant to this sub-  
 161 subparagraph may not accumulate further gain-time awards at any  
 162 point when the tentative release date is the same as that date  
 163 at which the prisoner will have served 65 percent of the  
 164 sentence imposed. State prisoners sentenced to life imprisonment  
 165 shall be incarcerated for the rest of their natural lives,  
 166 unless granted pardon or clemency.

167 b. If the offense is not a nonviolent felony, as defined in  
 168 s. 948.08(6), the prisoner is not eligible to earn any type of  
 169 gain-time in an amount that would cause a sentence to expire,  
 170 end, or terminate, or that would result in a prisoner's release,  
 171 before serving a minimum of 85 percent of the sentence imposed.  
 172 For purposes of this sub-subparagraph, credits awarded by the  
 173 court for time physically incarcerated shall be credited toward  
 174 satisfaction of 85 percent of the sentence imposed. A prisoner  
 175 who is granted incentive gain-time pursuant to this sub-  
 176 subparagraph may not accumulate further gain-time awards at any  
 177 point when the tentative release date is the same as that date

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178 at which the prisoner will have served 85 percent of the  
179 sentence imposed. State prisoners sentenced to life imprisonment  
180 shall be incarcerated for the rest of their natural lives,  
181 unless granted pardon or clemency.

182 Section 4. This act shall take effect October 1, 2016.

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

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

FEB 8, 2016

7066

*Meeting Date*

*Bill Number (if applicable)*

Topic Corrections

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-274-3599

*Street*

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

*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)

2/8/16

Meeting Date

7066

Bill Number (if applicable)

Topic Sentencing Reform

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Public Defender, 2nd Circuit

Address Leon County Courthouse #401

Phone 850 606-1010

Street

Tallahassee

City

FL

State

32301

Zip

Email nancy.daniels@flpd2.com

Speaking:  For  Against  Information

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

Representing Florida Public Defender 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.

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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)

2-8-16  
Meeting Date

SB 7066  
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933  
Street

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City State Zip

Email gnewburn@fammm.org

Speaking:  For  Against  Information

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

Representing Families Against Mandatory Minimums

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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/2016  
Meeting Date

7066  
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

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Phone (850) 687-0029

Tallahassee, FL 32301  
City State Zip

Email jorge@flapadvers.com

Speaking:  For  Against  Information

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

Representing Fla Assoc of Criminal Defense Lawyers

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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16

Meeting Date

SPB 7066

Bill Number (if applicable)

Topic Incentive gain time

Amendment Barcode (if applicable)

Name Ed Brodsky

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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 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.

**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 Committee on Criminal Justice

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BILL: SPB 7068

INTRODUCER: Criminal Justice Committee

SUBJECT: Sentencing for Capital Felonies

DATE: February 9, 2016

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

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cellon	Cannon		<b>CJ Submitted as Committee Bill</b>

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**I. Summary:**

SPB 7068 makes changes to Florida’s capital sentencing scheme.

On January 12, 2016, the United State Supreme Court held Florida’s capital sentencing scheme unconstitutional in an 8 to 1 opinion.<sup>1</sup> The Court ruled that “the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death.”<sup>2</sup> Several provisions contained within the bill are intended to comply with the United State’s Supreme Court ruling.

Specifically, the bill amends Florida’s capital sentencing scheme in the following ways:

- The prosecutor is required to provide notice to the defendant and file notice with the court when the state is seeking the death penalty and the notice must contain a list of the aggravating factors the state intends to prove;
- The jury is required to identify each aggravating factor found to exist by a unanimous vote in order for a defendant to be eligible for a sentence of death;
- The jury is required to determine whether the aggravating factors outweigh the mitigating circumstances in reaching its sentencing recommendation;
- The jury is required to render a unanimous verdict in recommending a sentence of death;
- The jury is required to recommend a sentence of life imprisonment without the possibility of parole if the recommendation for a death sentence was less than unanimous;
- The judge is permitted to impose a sentence of life imprisonment without the possibility of parole when the jury unanimously recommends a sentence of death; and
- The judge is no longer permitted to “override” the jury’s sentence of life imprisonment recommendation by imposing a sentence of death.

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<sup>1</sup> *Hurst v. Florida*, 577 U.S. \_\_\_\_ (2016), 2016 WL 112683, at \*3 (2016).

<sup>2</sup> *Id.* at \*1.

## II. Present Situation:

### Florida's Capital Sentencing Law

#### *Notice of Intent to Seek the Death Penalty*

The Florida Rules of Criminal Procedure require the state to give notice to the defendant of its intent to seek the death penalty.

Notice of Intent to Seek Death Penalty. The provisions of this rule apply only in those capital cases in which the state gives written notice of its intent to seek the death penalty within 45 days from the date of arraignment. Failure to give timely written notice under this subdivision does not preclude the state from seeking the death penalty. FL R.Cr.P. 3.202(a).

The rule does not require that any further information be conveyed in the notice, however Florida has broad pretrial discovery and should the defendant elect to participate in the discovery process the state's evidence against him or her will become known during the discovery process.

There is no statutory requirement that the aggravating factors upon which the state intends to rely in seeking death be enumerated before the state's evidence is presented at trial or the sentencing phase.

The Florida Supreme Court has not required the state to divulge the aggravating factors upon which it will rely in seeking the death penalty.<sup>3</sup> However, acknowledging the trial court's discretion, the Court has held that "a trial court does not depart from the essential requirements of law by requiring the State to provide pre-penalty phase notice of aggravating factors."<sup>4</sup>

#### *The Jury's Role in Sentencing*

In Florida, after a guilty verdict in a capital case, the jury issues a sentencing recommendation – death or life imprisonment – unless the jury is waived.<sup>5</sup> During the sentencing phase the jury hears evidence to establish statutory aggravating factors and statutory or nonstatutory mitigating

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<sup>3</sup> "We have consistently held that because Florida's death penalty statute limits aggravating factors to those listed, ... there is no reason to require the state to notify defendants of the aggravating factors that the state intends to prove." *Hitchcock v. State*, 413 So.2d 741, 746 (Fla.1982) (citation omitted); see also *Kormondy v. State*, 845 So.2d 41, 54 (Fla.2003); *Lynch v. State*, 841 So.2d 362, 378 (Fla.2003); *Cox v. State*, 819 So.2d 705, 725 (Fla.2002); *Vining v. State*, 637 So.2d 921, 927 (Fla.1994).

<sup>4</sup> *State v. Steele*, 921 So.2d 538, 542-544 (Fla. 2005).

<sup>5</sup> With the issue of guilt or innocence disposed of, the jury can then view the question of penalty as a separate and distinct issue. The fact that the defendant has committed the crime no longer determines automatically that he must die in the absence of a mercy recommendation. They must consider from the facts presented to them-facts in addition to those necessary to prove the commission of the crime-whether the crime was accompanied by aggravating circumstances sufficient to require death, or whether there were mitigating circumstances which require a lesser penalty. *State v. Dixon*, 283 So.2d 1(Fla. 1973).

circumstances.<sup>6</sup> The aggravating factors must be established beyond a reasonable doubt.<sup>7</sup> The fact-finder must only be convinced by the greater weight of the evidence (a lower standard of proof than beyond a reasonable doubt) as to the existence of mitigating factors.<sup>8</sup>

If the jury finds one or more aggravating circumstances and determines that these circumstances are sufficient to recommend the death penalty, it must determine whether sufficient mitigating circumstances exist to outweigh the aggravating circumstances. Based upon these considerations, the jury must recommend whether the defendant should be sentenced to life imprisonment or death.<sup>9</sup> However, even if the aggravating circumstances are found to outweigh the mitigating circumstances, the jury is never required to return a recommendation for death and must be so instructed.<sup>10</sup>

A simple majority of the jury is necessary for recommendation of the death penalty. It is not necessary for the jury to list on the verdict the aggravating and mitigating circumstances it finds or to disclose the number of jurors making such findings.<sup>11</sup>

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<sup>6</sup> “An aggravating circumstance is a standard to guide the jury in making the choice between the alternative recommendations of life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance which increases the gravity of a crime or the harm to a victim.” *Fla. Standard Jury Instructions, Criminal Cases*, Penalty Proceedings Capital Cases, Instr. 7.11.

<sup>7</sup> “An aggravating circumstance must be proven beyond a reasonable doubt before it may be considered by you in arriving at your recommendation. In order to consider the death penalty as a possible penalty, you must determine that at least one aggravating circumstance has been proven.” ... “If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole.” *Id.*

<sup>8</sup> “Should you find sufficient aggravating circumstances do exist to justify recommending the imposition of the death penalty, it will then be your duty to determine whether the mitigating circumstances outweigh the aggravating circumstances that you find to exist.

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant. In other words, a mitigating circumstance may include any aspect of the defendant’s character, background or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proved by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed.” *Id.*

<sup>9</sup> “The process of weighing aggravating and mitigating factors to determine the proper punishment is not a mechanical process. The law contemplates that different factors may be given different weight or values by different jurors. In your decision-making process, you, and you alone, are to decide what weight is to be given to a particular factor.” *Id.*

<sup>10</sup> “The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. If, after weighing the aggravating and mitigating circumstances, you determine that at least one aggravating circumstance is found to exist and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, you may recommend that a sentence of death be imposed rather than a sentence of life in prison without the possibility of parole. Regardless of your findings in this respect, however, you are neither compelled nor required to recommend a sentence of death. If, on the other hand, you determine that no aggravating circumstances are found to exist, or that the mitigating circumstances outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are not sufficient, you must recommend imposition of a sentence of life in prison without the possibility of parole rather than a sentence of death.” *Id.*

<sup>11</sup> “If a majority of the jury, seven or more, determine that (defendant) should be sentenced to death, your advisory sentence will be:

A majority of the jury by a vote of \_\_\_\_\_ to \_\_\_\_\_ advise and recommend to the court that it impose the death penalty upon (defendant).

The aggravating and mitigating circumstances and the method by which they must be determined to apply for sentencing are set forth in s. 921.141, F.S., as follows:

(2) **ADVISORY SENTENCE BY THE JURY.**—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

- (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
- (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) **FINDINGS IN SUPPORT OF SENTENCE OF DEATH.**—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

- (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
- (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

(5) **AGGRAVATING CIRCUMSTANCES.**—Aggravating circumstances shall be limited to the following:

- (a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
- (b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- (c) The defendant knowingly created a great risk of death to many persons.
- (d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary;

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On the other hand, if by six or more votes the jury determines that (defendant) should not be sentenced to death, your advisory sentence will be:

The jury advises and recommends to the court that it impose a sentence of life imprisonment upon (defendant) without possibility of parole.” *Id.*

kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.

(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.

(l) The victim of the capital felony was a person less than 12 years of age.

(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.

(n) The capital felony was committed by a criminal gang member, as defined in s. 874.03.

(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.

(p) The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

(6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

(h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.<sup>12</sup>

### ***Judicial Determination of Sentence***

After receiving the jury's recommendation the judge must then decide the appropriate sentence.<sup>13</sup> The judge weighs the jury's recommendation and conducts his or her own analysis of the aggravating and mitigating factors. The recommendation of the jury must be given great weight in the judge's decision-making process on the sentence handed down.<sup>14</sup> The judge may sentence a defendant in a different manner than the jury recommends – this is known as an “override.”

Records suggest that no Florida judge has overridden a jury's verdict of a life sentence since 1999. According to U.S. Supreme Court Justice Sotomayor's opinion dissenting from the Court's denial of certiorari review in the Alabama death penalty case of *Woodward v. Alabama*:

Even after this Court upheld Florida's capital sentencing scheme in *Spaziano v. Florida*, 468 U. S. 447 (1984), the practice of judicial overrides consistently declined in that State. Since 1972, 166 death sentences have been imposed in Florida following a jury recommendation of life imprisonment. Between 1973 and 1989, an average of eight people was sentenced to death on an override each year. That average number dropped by 50 percent between 1990 and 1994, and by an additional 70 percent from 1995 to 1999. The practice then stopped completely. It has been more than 14 years since the last life-to-death override in Florida; the last person sentenced to death after a jury recommendation of life imprisonment was Jeffrey Weaver, sentenced in August 1999.<sup>15</sup>

### **The Sixth Amendment, *Ring*, and *Hurst***

The Sixth Amendment of the United States Constitution provides: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . .”<sup>16</sup> This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to a jury beyond a reasonable doubt.<sup>17</sup>

Applying this right, the United States Supreme Court held in 2000 that any facts increasing the penalty for a defendant must be submitted to a jury and proved beyond a reasonable doubt.<sup>18</sup>

<sup>12</sup> Aggravating and mitigating circumstances appear in s. 921.142, F.S., which applies to Capital Drug Trafficking Felonies. Section 921.142, F.S., is also amended by this bill.

<sup>13</sup> “The punishment for this crime is either death or life imprisonment without the possibility of parole. The final decision as to which punishment shall be imposed rests with the judge of this court; however, the law requires that you, the jury, render to the court an advisory sentence as to which punishment should be imposed upon the defendant.” *Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases*, Instr. 7.11.

<sup>14</sup> What is referred to as the *Tedder* “Great Weight” Standard was announced by the Florida Supreme Court in *Tedder v. State*, 322 So.2d 908 (Fla. 1975). In that case, the court determined that “[a] jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ.”

<sup>15</sup> 571 U.S. \_\_\_\_ (2013), in which Justice Breyer joined this part of the dissent.

<sup>16</sup> U.S. CONST. Amend. VI.

<sup>17</sup> *United States v. Gaudin*, 515 U.S. 506, 510 (1995).

<sup>18</sup> *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

Two years later, the Court in *Ring v. Arizona*, applied this right to Arizona's capital sentencing scheme, which required a judge to determine the presence of aggravating and mitigating factors and to only sentence a defendant to death if the judge found at least one aggravating factor.<sup>19</sup> The Court struck the sentencing scheme down, finding it to be a violation of the Sixth Amendment because it permitted sentencing judges, without a jury, to find aggravating circumstances justifying imposition of the death penalty.<sup>20</sup> This ruling was subsequently held to not apply retroactively to cases already final on direct review.<sup>21</sup>

### ***Hurst v. Florida***

Until the U.S. Supreme Court issued its opinion in *Hurst v. Florida*<sup>22</sup> on January 12, 2016, Florida's capital sentencing scheme has withstood challenges based on the 8th, 14th, and 6th Amendments.<sup>23</sup>

In this case, Timothy Lee Hurst was convicted of first-degree murder for fatally stabbing his co-worker in 1998 with a box cutter.<sup>24</sup> A jury recommended a sentence of death by a seven-to-five vote; thereafter, the trial court entered a sentence of death.<sup>25</sup> Hurst challenged his sentence arguing that the jury was required to find specific aggravators and to issue a unanimous advisory sentence recommendation.<sup>26</sup> The Florida Supreme Court denied Hurst's claims that his sentence violated *Ring* by adhering to Florida's precedent of not adopting *Ring* and citing to the Eleventh Circuit's recent approval of the capital sentencing scheme.<sup>27</sup> Hurst appealed this denial to the United States Supreme Court arguing that Florida's capital sentencing scheme violated *Ring* because the jury recommends the sentence with only a simple majority, the judge finds the facts necessary for imposition of the death penalty, and the judge imposes the death penalty.<sup>28</sup>

On January 12, 2016, the United States Supreme Court held Florida's capital sentencing scheme unconstitutional in an eight-to-one opinion.<sup>29</sup> The Court ruled that "*the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death.*"<sup>30</sup>

The Court compared Florida's sentencing scheme to Arizona's in *Ring* and found Florida's distinctive factor of the advisory jury verdict immaterial. Like the unconstitutional practice in *Ring*, the judge in *Hurst* performed her own fact finding and increased *Hurst's* authorized

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<sup>19</sup> *Ring v. Arizona*, 536 U.S. 584, 592 (2002).

<sup>20</sup> *Id.* at 609.

<sup>21</sup> *Schriro v. Summerlin*, 542 U.S. 348, 358 (2004).

<sup>22</sup> 577 U.S. \_\_\_\_ (2016).

<sup>23</sup> Cruel or unusual punishment, due process and right to jury trial. *Proffitt v. Florida*, 428 U.S. 242 (1976); *Spaziano v. Florida*, 468 U.S. 447 (1984); *Hildwin v. Florida*, 490 U.S. 638 (1989).

<sup>24</sup> *Hurst v. State*, 147 So. 3d 435, 437 (Fla. 2014), *rev'd and remanded*, No. 14-7505, 2016 WL 112683 (U.S. Jan. 12, 2016).

<sup>25</sup> *Id.* at 440.

<sup>26</sup> *Id.* at 446.

<sup>27</sup> *Id.* at 446-447. *See Evans v. Secretary, Fla. Dep't of Corrections*, 699 F.3d 1249(11th Cir. 2012), *cert. denied*, 133 S.Ct. 2393 (2013)(Citing *Hildwin v. Florida*, 490 U.S. 638 (1989), where the United States Supreme Court upheld Florida capital sentencing scheme thirteen years before *Ring*).

<sup>28</sup> Brief for Petitioner at 17-52 *Hurst v. Florida*, 2016 WL 112683 (2016) (No. 14-7505), 2015 WL 3542784.

<sup>29</sup> *Hurst v. Florida*, 577 U.S. \_\_\_\_ (2016), 2016 WL 112683, at \*3 (2016).

<sup>30</sup> *Id.* at \*1.

punishment, thereby violating the Sixth Amendment.<sup>31</sup> The Court also expressly overruled its past decisions upholding Florida's capital sentencing scheme which were issued prior to *Ring*.<sup>32</sup>

The Court's opinion did not address *Hurst*'s contention that a jury's advisory verdict must be greater than a simple majority in order to comport with the Sixth and Eighth Amendments. Neither the United States Supreme Court nor the Florida Supreme Court has required unanimity in a jury's capital sentencing recommendation. Alabama's capital sentencing scheme allows the imposition of the death penalty with a 10-2 jury sentencing recommendation.<sup>33</sup> Delaware requires unanimity regarding the finding of aggravating factors, but does not require unanimity in a sentencing recommendation.<sup>34</sup>

### ***Current Effect of Hurst***

The *Apprendi/Ring/Hurst* Sixth Amendment issue has been preserved and raised on appeal in Florida death sentence cases since the *Apprendi* decision was issued by the U.S. Supreme Court in 2000. The Florida Supreme Court denied claims based on *Apprendi* and *Ring* over the last 15 years, finding that Florida's sentencing scheme in death cases had not been found to be constitutionally lacking by the U.S. Supreme Court and was therefore a valid sentencing scheme.<sup>35</sup>

The Florida Supreme Court must now decide how *Hurst* applies to death cases that have moved from the trial stage to the direct and collateral appeal process. The Court heard oral argument on February 2, 2016 in an active death warrant case, *Lambrix v. Florida*.<sup>36</sup> The Court had specifically required briefing in the case on the *Hurst* issue. After oral arguments the Court stayed the impending execution. It cannot be known when the Court will issue its ruling in the case. Meanwhile, until both the Court and the Legislature act, Florida's death penalty sentencing scheme is unsettled.

### **Florida Statistics on Jury Votes in Death Cases**

Table 1 shown below provides a fifteen year trend analysis on jury votes in death cases. Under current law and practice only 21 percent of the death cases over the past fifteen years had unanimous jury verdicts. Based on this analysis it is impossible to predict whether requiring a unanimous jury recommendation would result in a marked decline in death cases. It would appear from the current practice that a decline is likely if this bill becomes law, but the degree of the decline is uncertain.

<sup>31</sup> *Id.* at \*6.

<sup>32</sup> *Id.* at \*7.

<sup>33</sup> ALA. CODE § 13A-5-46(f) ("The decision of the jury to recommend a sentence of death must be based on a vote of at least 10 jurors."). See also *Gobble v. State*, 104 So. 3d 920, 977 (Ala. Crim. App. 2010) ("*Ring* does not require a unanimous recommendation for the death penalty before a defendant may be sentenced to death.>").

<sup>34</sup> DEL. CODE ANN. tit. 11, § 4209.

<sup>35</sup> See *Porter v. Crosby*, 840 So.2d 981 (Fla. 2003); *Hurst v. State*, 819 So.2d 689 (Fla. 2002); *Mills v. Moore*, 786 So.2d 532, 536-37 (Fla. 2001); *Bottoson v. Moore*, 833 So.2d 693 (Fla. 2002); *King v. Moore*, 831 So.2d 143 (Fla.2002).

<sup>36</sup> *Lambrix v. Florida*, Case No. SC16-8 & SC 16-56, Order Jan. 15, 2016 (available at [https://efactsscp-public.flcourts.org/casedocuments/2016/8/2016-8\\_order\\_208838.pdf](https://efactsscp-public.flcourts.org/casedocuments/2016/8/2016-8_order_208838.pdf)).

TABLE 1																		
Distribution of Jury Votes in Death Cases by Calendar Year of Disposition by Florida Supreme Court <sup>37</sup> (N=330)																		
Original Jury Vote	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	Total	% <sup>38</sup>	Cum %
7-5	6	1	4	4	0	3	0	2	4	1	3	2	2	5	3	40	12%	12%
8-4	4	6	2	6	2	0	3	0	2	9	2	1	5	2	3	47	14%	26%
9-3	4	4	3	6	2	2	11	3	5	6	6	9	5	2	1	69	21%	47%
10-2	3	12	4	3	3	3	2	2	2	5	11	1	3	2	4	60	18%	65%
11-1	2	8	5	5	3	1	1	2	1	5	5	1	3	2	1	45	14%	79%
12-0	9	6	8	4	2	3	6	7	6	0	1	6	2	6	3	69	21%	100%
Subtotal	28	37	26	28	12	12	23	16	20	26	28	20	20	19	15	330	100%	
Other <sup>39</sup>	3	1	2	3	4	2	0	0	1	4	3	1	0	1	0	25		
TOTAL	31	38	28	31	16	14	23	16	21	30	31	21	20	20	15	355		

Table 2 analyzes the degree to which a unanimous jury vote results in the case being more likely to be affirmed by the Florida Supreme Court on direct appeal. It appears that a unanimous jury vote is not strongly correlated with an affirmed sentence.

TABLE 2					
Distribution of Jury Votes in Death Cases Disposed by the Florida Supreme Court on Direct Appeal from Calendar Year 2000 to 2014 <sup>4</sup> (N=330)					
Original Jury Vote For Death	TOTAL	Death Sentence Affirmed	Percent Affirmed	Death Sentence Not Affirmed <sup>5</sup>	Percent Not Affirmed
7 to 5	40	25	62%	15	38%
8 to 4	47	34	72%	13	28%
9 to 3	69	51	74%	18	26%
10 to 2	60	43	72%	17	28%
11 to 1	45	40	89%	5	11%
12 to 0	69	47	68%	22	32%
TOTAL	330	240	72%	90	28%

<sup>37</sup> Fifteen years of data collected by the Supreme Court Clerk’s Office compiled by the Senate Criminal Justice staff.

<sup>38</sup> Calculated percentage excludes the “other” category.

<sup>39</sup> Includes waiver of penalty phase, and judicial overrides from jury recommendation of life to judge imposing death.<sup>4</sup>

Source documents: Supreme Court Death Penalty Direct Appeals Disposed- With Jury Votes, 2000 to 2012 and Supreme Court Death Penalty Direct Appeals Disposed- With Jury Votes, 2013 to 2014.<sup>5</sup> Includes: reversal and remand for trial, reduced to life, dismissal, deceased defendant, and acquittal.

### Comparison of Florida to Other States

Of the 32 U.S. states that currently authorize the death penalty, three, including Florida, do not require jury verdicts on life or death be unanimous in its final sentencing recommendation or decision. The federal government also requires unanimity.<sup>40</sup>

Of the three states:

- Alabama authorizes a jury to recommend a death sentence on a vote of 10-2, which is non-binding on the trial court.<sup>41</sup> By judicial decision, every death sentence must be based on a unanimous finding of at least one aggravating circumstance.<sup>42</sup> Alabama also permits the judge to make a decision to issue a death sentence, even after a unanimous jury makes a recommendation for life.
- Delaware requires juries to unanimously find at least one aggravating circumstance beyond a reasonable doubt. The jury must document how each juror voted on the decision of whether aggravating circumstances outweigh the mitigating circumstances. The sentencing decision is left to the trial judge.<sup>43</sup>
- Florida requires neither a unanimous jury recommendation nor a unanimous finding by the jury that any aggravating circumstance has been proved.<sup>44</sup> A Florida jury can recommend a death sentence to the trial judge on a simple majority vote of the 12 jurors, and there is no special verdict required to reflect the vote on the aggravating circumstances.<sup>45</sup>

### III. Effect of Proposed Changes:

The bill changes the current death penalty sentencing scheme in four major ways.

#### The Notice of Aggravating Factors

In premeditated first degree murder cases, felony murder cases, and felony drug trafficking cases where the death penalty is a possible sentence, if the state intends to seek the death penalty, the prosecutor must give notice to the defendant and file the notice with the court. The notice must contain a list of the aggravating factors the state intends to prove beyond a reasonable doubt in support of a death sentence.<sup>46</sup>

<sup>40</sup> Fed. R. Crim. P. 31 (a).

<sup>41</sup> Ala. Code § 13A-5-46-47 (2012).

<sup>42</sup> See, e.g., *Ex parte McNabb*, 887 So. 2d 998, 1005-05 (Ala. 2004); *Ex parte Waldrop*, 859 So. 2d 1181, 1188 (Ala. 2002); *McCray v. State*, 88 So. 3d 1, 82, and n.33 (Ala. Crim. App. 2010).

<sup>43</sup> Del. Code Ann. Tit. 11, § 4209(c)(3)(A) (West 2013).

<sup>44</sup> Even in 1976, Florida's capital sentencing scheme was particularly unique in that the jury only recommended a sentence, its recommendation need not be unanimous or by any particular numerical vote, and the trial judge was permitted to override the jury's sentencing vote, whether for a life or death sentence. See *Proffitt*, 428 U.S. at 252; *Spaziano v. Florida*, 468 U.S. 447 (1984).

<sup>45</sup> Fla. Stat. §§921.141(2)-(3) (2014); American Bar Association, *Death Penalty Due Process Review Project Section of Individual Rights and Responsibilities, Report to the House of Delegates (108A)*;  
[http://www.americanbar.org/news/reporter\\_resources/midyear-meeting-2015/house-of-delegates-resolutions/108a.html](http://www.americanbar.org/news/reporter_resources/midyear-meeting-2015/house-of-delegates-resolutions/108a.html)

<sup>46</sup> Section 782.04(1)(b), F.S.

The court may allow the prosecutor to amend the notice upon a showing of good cause. This provision gives the court discretion to make decisions to allow for changing circumstances and evidentiary considerations as the case progresses.

### **The Jury's Findings Making the Defendant Death Eligible or Ineligible**

Sections 921.141 and 921.142, F.S., are amended to require a more specified role for the jury in sentencing in cases where death is a possible sentence.

Having found the defendant guilty, in the penalty phase the jury must first find whether the defendant is death eligible. In order to find the defendant death eligible, the jury must deliberate and determine whether the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor.

The jury must return specific findings to the court *identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous.*

*If the jury does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death and will therefore be sentenced by the court to life imprisonment without the possibility of parole.*

If the jury unanimously finds at least one aggravating factor, the defendant is *death eligible* and the jury continues the deliberation process in order to arrive at a sentencing recommendation.

### **The Jury's Sentencing Recommendation**

Having found the defendant *eligible* for a sentence of death, the jury must then weigh the following to arrive at the jury's sentencing recommendation:

- Whether sufficient aggravating factors exist.
- Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
- Based upon those considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or death.

If a *unanimous jury* determines that the defendant should be sentenced to *death*, the jury's recommendation shall be a sentence of death. *If less than a unanimous jury determines that the defendant should be sentenced to death, the jury must recommend a sentence of life imprisonment without the possibility of parole.*

### **The Imposition of Sentence**

If the jury recommends a sentence of *life* imprisonment without the possibility of parole, the *court must impose that sentence.* This eliminates the "override" by the judge of the jury's *life* sentencing recommendation.

If the jury recommends a *death* sentence, the court must consider the aggravating factor(s) found unanimously by the jury and all mitigating circumstances. *The court may then impose the death*

*sentence unanimously recommended by the jury, or the court may impose a life sentence of imprisonment without the possibility of parole.* This provision preserves the court's ability to "override" a death recommendation by the jury.

If the court imposes a death sentence in the case, the court must write a sentencing order as is required in current law which provides the basis of the Florida Supreme Court's proportionality review on direct appeal. The court must address in its order the aggravating factors found to exist, the mitigating circumstances reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances.

#### **Other Statutes Amended or Reenacted, Effective Date**

Section 775.082(1)(a), F.S., is amended by the bill to conform that section to the new sentencing procedures created in s. 921.141, F.S. Additionally, ss. 794.011(2)(a), and 893.135(1)(b) through (l), F.S., are reenacted to incorporate amendments made by the bill.

The bill is effective upon becoming a law and the amendments made by the bill only apply to criminal acts that occur on or after the effective date.

#### **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:**

Litigation is expected to result from the *Hurst* decision (discussed herein). It is also likely that the application of the amendments to the death penalty sentencing scheme will be the subject of litigation. No estimates of the potential fiscal impact on the courts, the state attorneys, the Office of the Attorney General, the public defenders, or Capital Collateral Regional Counsel have been submitted as of the writing of this analysis.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.082, 782.04, 794.011, 893.135, 921.141 and 921.142.

**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.



936370

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/09/2016	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

**Senate Amendment**

Delete lines 149 - 186

and insert:

b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

(c) If a unanimous jury determines that the defendant



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11 should be sentenced to death, the jury's recommendation to the  
12 court shall be a sentence of death. If a less than unanimous  
13 jury determines that the defendant should be sentenced to death,  
14 the jury's recommendation to the court shall be a sentence of  
15 life imprisonment without the possibility of parole.

16 (3) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.-

17 (a) If the jury has recommended a sentence of:

18 1. Life imprisonment without the possibility of parole, the  
19 court shall impose the recommended sentence.

20 2. Death, the court, after considering each aggravating  
21 factor found by the jury and all mitigating circumstances, may  
22 impose a sentence of life imprisonment without the possibility  
23 of parole or a sentence of death. The court may consider only an  
24 aggravating factor that was unanimously found to exist by the  
25 jury.

26 (b) If the defendant waived his or her right to a  
27 sentencing proceeding by a jury, the court, after considering  
28 all aggravating factors and mitigating circumstances, may impose  
29 a sentence of life imprisonment without the possibility of  
30 parole or a sentence of death. The court may impose a sentence  
31 of death only if the court finds that at least one aggravating  
32 factor has been proven to exist beyond a reasonable doubt.

33 (4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.-In  
34 each case in which the court imposes a sentence of death, the  
35 court shall, considering the records of the trial and the  
36 sentencing proceedings, enter a written order addressing the  
37 aggravating factors set forth in subsection (6) found to exist,  
38 the mitigating circumstances in subsection (7) reasonably  
39 established by the evidence, whether there are sufficient



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40 aggravating factors to warrant the death penalty, and whether  
41 the aggravating factors outweigh the mitigating circumstances  
42 reasonably established by the evidence. If the court does not  
43

44 Delete lines 380 - 417

45 and insert:

46 b. Whether aggravating factors exist which outweigh the  
47 mitigating circumstances found to exist.

48 c. Based on the considerations in sub-subparagraphs a. and  
49 b., whether the defendant should be sentenced to life  
50 imprisonment without the possibility of parole or to death.

51 (c) If a unanimous jury determines that the defendant  
52 should be sentenced to death, the jury's recommendation to the  
53 court shall be a sentence of death. If less than a unanimous  
54 jury determines that the defendant should be sentenced to death,  
55 the jury's recommendation to the court shall be a sentence of  
56 life imprisonment without the possibility of parole.

57 (4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.-

58 (a) If the jury has recommended a sentence of:

59 1. Life imprisonment without the possibility of parole, the  
60 court shall impose the recommended sentence.

61 2. Death, the court, after considering each aggravating  
62 factor found by the jury and all mitigating circumstances, may  
63 impose a sentence of life imprisonment without the possibility  
64 of parole or a sentence of death. The court may consider only an  
65 aggravating factor that was unanimously found to exist by the  
66 jury.

67 (b) If the defendant waived his or her right to a  
68 sentencing proceeding by a jury, the court, after considering



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69 all aggravating factors and mitigating circumstances, may impose  
70 a sentence of life imprisonment without the possibility of  
71 parole or a sentence of death. The court may impose a sentence  
72 of death only if the court finds at least one aggravating factor  
73 has been proven to exist beyond a reasonable doubt.

74 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—In  
75 each case in which the court imposes a death sentence, the court  
76 shall, considering the records of the trial and the sentencing  
77 proceedings, enter a written order addressing the aggravating  
78 factors set forth in subsection (7) found to exist, the  
79 mitigating circumstances in subsection (8) reasonably  
80 established by the evidence, whether there are sufficient  
81 aggravating factors to warrant the death penalty, and whether  
82 the aggravating factors outweigh the mitigating circumstances  
83 reasonably established by the evidence. If the court does not

FOR CONSIDERATION By the Committee on Criminal Justice

591-02990-16

20167068pb

A bill to be entitled

An act relating to sentencing for capital felonies; amending s. 775.082, F.S.; conforming a provision to changes made by the act; amending s. 782.04, F.S.; requiring the prosecutor to give notice to the defendant and to file the notice with the court within a certain timeframe if the prosecutor intends to seek the death penalty; amending ss. 921.141 and 921.142, F.S.; requiring juries to determine the existence of aggravating factors, if any, in the penalty phase of capital cases; specifying a standard of proof for such factors; requiring unanimity for such findings; requiring a jury to make a recommendation to the court whether the defendant shall be sentenced to life imprisonment or death; specifying considerations for such a recommendation; requiring unanimity to support a recommendation of a sentence of death; requiring a sentence of life imprisonment without the possibility of parole in certain circumstances; requiring the court to enter an order meeting specified requirements in each case in which it imposes a death sentence; deleting provisions relating to advisory sentencing by juries and findings by the court in support of sentences of death; reenacting s. 794.011(2)(a), F.S., relating to sexual battery, to incorporate the amendment made to s. 921.141, F.S., in a reference thereto; reenacting s. 893.135(1)(b) through (l), F.S., relating to trafficking in controlled substances, to incorporate the amendment made to s. 921.142, F.S., in references thereto; providing applicability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 775.082, Florida Statutes, is amended to read:  
775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1) (a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in a determination findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

Section 2. Subsection (1) of section 782.04, Florida Statutes, is amended 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,

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62 h. Aggravated child abuse,  
 63 i. Aggravated abuse of an elderly person or disabled adult,  
 64 j. Aircraft piracy,  
 65 k. Unlawful throwing, placing, or discharging of a  
 66 destructive device or bomb,  
 67 l. Carjacking,  
 68 m. Home-invasion robbery,  
 69 n. Aggravated stalking,  
 70 o. Murder of another human being,  
 71 p. Resisting an officer with violence to his or her person,  
 72 q. Aggravated fleeing or eluding with serious bodily injury  
 73 or death,  
 74 r. Felony that is an act of terrorism or is in furtherance  
 75 of an act of terrorism; or  
 76 3. Which resulted from the unlawful distribution of any  
 77 substance controlled under s. 893.03(1), cocaine as described in  
 78 s. 893.03(2)(a)4., opium or any synthetic or natural salt,  
 79 compound, derivative, or preparation of opium, or methadone by a  
 80 person 18 years of age or older, when such drug is proven to be  
 81 the proximate cause of the death of the user,  
 82  
 83 is murder in the first degree and constitutes a capital felony,  
 84 punishable as provided in s. 775.082.  
 85 (b) In all cases under this section, the procedure set  
 86 forth in s. 921.141 shall be followed in order to determine  
 87 sentence of death or life imprisonment. If the prosecutor  
 88 intends to seek the death penalty, the prosecutor must give  
 89 notice to the defendant and file the notice with the court  
 90 within 45 days after arraignment. The notice must contain a list

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91 of the aggravating factors the state intends to prove and has  
 92 reason to believe it can prove beyond a reasonable doubt. The  
 93 court may allow the prosecutor to amend the notice upon a  
 94 showing of good cause.  
 95 Section 3. Section 921.141, Florida Statutes, is amended to  
 96 read:  
 97 921.141 Sentence of death or life imprisonment for capital  
 98 felonies; further proceedings to determine sentence.—  
 99 (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon  
 100 conviction or adjudication of guilt of a defendant of a capital  
 101 felony, the court shall conduct a separate sentencing proceeding  
 102 to determine whether the defendant should be sentenced to death  
 103 or life imprisonment as authorized by s. 775.082. The proceeding  
 104 shall be conducted by the trial judge before the trial jury as  
 105 soon as practicable. If, through impossibility or inability, the  
 106 trial jury is unable to reconvene for a hearing on the issue of  
 107 penalty, having determined the guilt of the accused, the trial  
 108 judge may summon a special juror or jurors as provided in  
 109 chapter 913 to determine the issue of the imposition of the  
 110 penalty. If the trial jury has been waived, or if the defendant  
 111 pleaded guilty, the sentencing proceeding shall be conducted  
 112 before a jury impaneled for that purpose, unless waived by the  
 113 defendant. In the proceeding, evidence may be presented as to  
 114 any matter that the court deems relevant to the nature of the  
 115 crime and the character of the defendant and shall include  
 116 matters relating to any of the aggravating factors enumerated in  
 117 subsection (6) and for which notice has been provided pursuant  
 118 to s. 782.04(1)(b) or mitigating circumstances enumerated in  
 119 subsection (7) ~~subsections (5) and (6).~~ Any such evidence that

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120 ~~which~~ the court deems to have probative value may be received,  
 121 regardless of its admissibility under the exclusionary rules of  
 122 evidence, provided the defendant is accorded a fair opportunity  
 123 to rebut any hearsay statements. However, this subsection shall  
 124 not be construed to authorize the introduction of any evidence  
 125 secured in violation of the Constitution of the United States or  
 126 the Constitution of the State of Florida. The state and the  
 127 defendant or the defendant's counsel shall be permitted to  
 128 present argument for or against sentence of death.

129 (2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This  
 130 subsection applies only if the defendant has not waived his or  
 131 her right to a sentencing proceeding by a jury.

132 (a) After hearing all of the evidence presented regarding  
 133 aggravating factors and mitigating circumstances, the jury shall  
 134 deliberate and determine if the state has proven, beyond a  
 135 reasonable doubt, the existence of at least one aggravating  
 136 factor set forth in subsection (6).

137 (b) The jury shall return findings identifying each  
 138 aggravating factor found to exist. A finding that an aggravating  
 139 factor exists must be unanimous. If the jury:

140 1. Does not unanimously find at least one aggravating  
 141 factor, the defendant is ineligible for a sentence of death.

142 2. Unanimously finds at least one aggravating factor, the  
 143 defendant is eligible for a sentence of death and the jury shall  
 144 make a recommendation to the court as to whether the defendant  
 145 shall be sentenced to life imprisonment without the possibility  
 146 of parole or to death. The recommendation shall be based on a  
 147 weighing of all of the following:

148 a. Whether sufficient aggravating factors exist.

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149 b. Whether sufficient mitigating circumstances exist which  
 150 outweigh the aggravating factors found to exist.

151 c. Based on the considerations in sub-subparagraphs a. and  
 152 b., whether the defendant should be sentenced to life  
 153 imprisonment without the possibility of parole or to death.

154 (c) If a unanimous jury determines that the defendant  
 155 should be sentenced to death, the jury's recommendation to the  
 156 court shall be a sentence of death. If a less than unanimous  
 157 jury determines that the defendant should be sentenced to death,  
 158 the jury's recommendation to the court shall be a sentence of  
 159 life imprisonment without the possibility of parole.

160 (3) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

161 (a) If the jury has recommended a sentence of:

162 1. Life imprisonment without the possibility of parole, the  
 163 court shall impose the recommended sentence.

164 2. Death, the court, after considering each aggravating  
 165 factor found by the jury and all mitigating circumstances, may  
 166 impose a sentence of life imprisonment without the possibility  
 167 of parole or a sentence of death. The court may consider only an  
 168 aggravating factor that was unanimously found to exist by the  
 169 jury.

170 (b) If the defendant waived his or her right to a  
 171 sentencing proceeding by a jury, the court, after considering  
 172 all aggravating factors and mitigating circumstances, may impose  
 173 a sentence of life imprisonment without the possibility of  
 174 parole or a sentence of death. The court may impose a sentence  
 175 of death only if the court finds that at least one aggravating  
 176 factor has been proven to exist beyond a reasonable doubt.

177 (4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—In

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178 each case in which the court imposes a sentence of death, the  
 179 court shall, considering the records of the trial and the  
 180 sentencing proceedings, enter a written order addressing the  
 181 aggravating factors set forth in subsection (6) found to exist,  
 182 the mitigating circumstances in subsection (7) reasonably  
 183 established by the evidence, whether there are sufficient  
 184 aggravating factors to warrant the death penalty, and whether  
 185 the mitigating circumstances reasonably established by the  
 186 evidence outweigh the aggravating factors. If the court does not  
 187 issue its order requiring the death sentence within 30 days  
 188 after the rendition of the judgment and sentence, the court  
 189 shall impose a sentence of life imprisonment without the  
 190 possibility of parole in accordance with s. 775.082.

191 ~~(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the~~  
 192 ~~evidence, the jury shall deliberate and render an advisory~~  
 193 ~~sentence to the court, based upon the following matters:~~

194 ~~(a) Whether sufficient aggravating circumstances exist as~~  
 195 ~~enumerated in subsection (5);~~

196 ~~(b) Whether sufficient mitigating circumstances exist which~~  
 197 ~~outweigh the aggravating circumstances found to exist; and~~

198 ~~(c) Based on these considerations, whether the defendant~~  
 199 ~~should be sentenced to life imprisonment or death.~~

200 ~~(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—~~

201 ~~Notwithstanding the recommendation of a majority of the jury,~~  
 202 ~~the court, after weighing the aggravating and mitigating~~  
 203 ~~circumstances, shall enter a sentence of life imprisonment or~~  
 204 ~~death, but if the court imposes a sentence of death, it shall~~  
 205 ~~set forth in writing its findings upon which the sentence of~~  
 206 ~~death is based as to the facts:~~

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207 ~~(a) That sufficient aggravating circumstances exist as~~  
 208 ~~enumerated in subsection (5), and~~

209 ~~(b) That there are insufficient mitigating circumstances to~~  
 210 ~~outweigh the aggravating circumstances.~~

211  
 212 ~~In each case in which the court imposes the death sentence, the~~  
 213 ~~determination of the court shall be supported by specific~~  
 214 ~~written findings of fact based upon the circumstances in~~  
 215 ~~subsections (5) and (6) and upon the records of the trial and~~  
 216 ~~the sentencing proceedings. If the court does not make the~~  
 217 ~~findings requiring the death sentence within 30 days after the~~  
 218 ~~rendition of the judgment and sentence, the court shall impose~~  
 219 ~~sentence of life imprisonment in accordance with s. 775.082.~~

220 (5)(4) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of  
 221 conviction and sentence of death shall be subject to automatic  
 222 review by the Supreme Court of Florida and disposition rendered  
 223 within 2 years after the filing of a notice of appeal. Such  
 224 review by the Supreme Court shall have priority over all other  
 225 cases and shall be heard in accordance with rules adopted  
 226 promulgated by the Supreme Court.

227 (6)(5) AGGRAVATING FACTORS CIRCUMSTANCES.—Aggravating  
 228 factors ~~circumstances~~ shall be limited to the following:

229 (a) The capital felony was committed by a person previously  
 230 convicted of a felony and under sentence of imprisonment or  
 231 placed on community control or on felony probation.

232 (b) The defendant was previously convicted of another  
 233 capital felony or of a felony involving the use or threat of  
 234 violence to the person.

235 (c) The defendant knowingly created a great risk of death

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236 to many persons.

237 (d) The capital felony was committed while the defendant  
 238 was engaged, or was an accomplice, in the commission of, or an  
 239 attempt to commit, or flight after committing or attempting to  
 240 commit, any: robbery; sexual battery; aggravated child abuse;  
 241 abuse of an elderly person or disabled adult resulting in great  
 242 bodily harm, permanent disability, or permanent disfigurement;  
 243 arson; burglary; kidnapping; aircraft piracy; or unlawful  
 244 throwing, placing, or discharging of a destructive device or  
 245 bomb.

246 (e) The capital felony was committed for the purpose of  
 247 avoiding or preventing a lawful arrest or effecting an escape  
 248 from custody.

249 (f) The capital felony was committed for pecuniary gain.

250 (g) The capital felony was committed to disrupt or hinder  
 251 the lawful exercise of any governmental function or the  
 252 enforcement of laws.

253 (h) The capital felony was especially heinous, atrocious,  
 254 or cruel.

255 (i) The capital felony was a homicide and was committed in  
 256 a cold, calculated, and premeditated manner without any pretense  
 257 of moral or legal justification.

258 (j) The victim of the capital felony was a law enforcement  
 259 officer engaged in the performance of his or her official  
 260 duties.

261 (k) The victim of the capital felony was an elected or  
 262 appointed public official engaged in the performance of his or  
 263 her official duties if the motive for the capital felony was  
 264 related, in whole or in part, to the victim's official capacity.

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265 (l) The victim of the capital felony was a person less than  
 266 12 years of age.

267 (m) The victim of the capital felony was particularly  
 268 vulnerable due to advanced age or disability, or because the  
 269 defendant stood in a position of familial or custodial authority  
 270 over the victim.

271 (n) The capital felony was committed by a criminal gang  
 272 member, as defined in s. 874.03.

273 (o) The capital felony was committed by a person designated  
 274 as a sexual predator pursuant to s. 775.21 or a person  
 275 previously designated as a sexual predator who had the sexual  
 276 predator designation removed.

277 (p) The capital felony was committed by a person subject to  
 278 an injunction issued pursuant to s. 741.30 or s. 784.046, or a  
 279 foreign protection order accorded full faith and credit pursuant  
 280 to s. 741.315, and was committed against the petitioner who  
 281 obtained the injunction or protection order or any spouse,  
 282 child, sibling, or parent of the petitioner.

283 (7) (6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances  
 284 shall be the following:

285 (a) The defendant has no significant history of prior  
 286 criminal activity.

287 (b) The capital felony was committed while the defendant  
 288 was under the influence of extreme mental or emotional  
 289 disturbance.

290 (c) The victim was a participant in the defendant's conduct  
 291 or consented to the act.

292 (d) The defendant was an accomplice in the capital felony  
 293 committed by another person and his or her participation was

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294 relatively minor.

295 (e) The defendant acted under extreme duress or under the  
296 substantial domination of another person.

297 (f) The capacity of the defendant to appreciate the  
298 criminality of his or her conduct or to conform his or her  
299 conduct to the requirements of law was substantially impaired.

300 (g) The age of the defendant at the time of the crime.

301 (h) The existence of any other factors in the defendant's  
302 background that would mitigate against imposition of the death  
303 penalty.

304 ~~(8)(7)~~ VICTIM IMPACT EVIDENCE.—Once the prosecution has  
305 provided evidence of the existence of one or more aggravating  
306 factors ~~circumstances~~ as described in subsection (6) ~~(5)~~, the  
307 prosecution may introduce, and subsequently argue, victim impact  
308 evidence to the jury. Such evidence shall be designed to  
309 demonstrate the victim's uniqueness as an individual human being  
310 and the resultant loss to the community's members by the  
311 victim's death. Characterizations and opinions about the crime,  
312 the defendant, and the appropriate sentence shall not be  
313 permitted as a part of victim impact evidence.

314 ~~(9)(8)~~ APPLICABILITY.—This section does not apply to a  
315 person convicted or adjudicated guilty of a capital drug  
316 trafficking felony under s. 893.135.

317 Section 4. Section 921.142, Florida Statutes, is amended to  
318 read:

319 921.142 Sentence of death or life imprisonment for capital  
320 drug trafficking felonies; further proceedings to determine  
321 sentence.—

322 (1) FINDINGS.—The Legislature finds that trafficking in

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323 cocaine or opiates carries a grave risk of death or danger to  
324 the public; that a reckless disregard for human life is implicit  
325 in knowingly trafficking in cocaine or opiates; and that persons  
326 who traffic in cocaine or opiates may be determined by the trier  
327 of fact to have a culpable mental state of reckless indifference  
328 or disregard for human life.

329 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon  
330 conviction or adjudication of guilt of a defendant of a capital  
331 felony under s. 893.135, the court shall conduct a separate  
332 sentencing proceeding to determine whether the defendant should  
333 be sentenced to death or life imprisonment as authorized by s.  
334 775.082. The proceeding shall be conducted by the trial judge  
335 before the trial jury as soon as practicable. If, through  
336 impossibility or inability, the trial jury is unable to  
337 reconvene for a hearing on the issue of penalty, having  
338 determined the guilt of the accused, the trial judge may summon  
339 a special juror or jurors as provided in chapter 913 to  
340 determine the issue of the imposition of the penalty. If the  
341 trial jury has been waived, or if the defendant pleaded guilty,  
342 the sentencing proceeding shall be conducted before a jury  
343 impaneled for that purpose, unless waived by the defendant. In  
344 the proceeding, evidence may be presented as to any matter that  
345 the court deems relevant to the nature of the crime and the  
346 character of the defendant and shall include matters relating to  
347 any of the aggravating factors enumerated in subsection (7) and  
348 for which notice has been provided pursuant to s. 782.04(1)(b)  
349 or mitigating circumstances enumerated in subsection (8)  
350 ~~subsections (6) and (7)~~. Any such evidence that ~~which~~ the court  
351 deems to have probative value may be received, regardless of its

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352 admissibility under the exclusionary rules of evidence, provided  
 353 the defendant is accorded a fair opportunity to rebut any  
 354 hearsay statements. However, this subsection shall not be  
 355 construed to authorize the introduction of any evidence secured  
 356 in violation of the Constitution of the United States or the  
 357 Constitution of the State of Florida. The state and the  
 358 defendant or the defendant's counsel shall be permitted to  
 359 present argument for or against sentence of death.

360 (3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This  
 361 subsection applies only if the defendant has not waived his or  
 362 her right to a sentencing proceeding by a jury.

363 (a) After hearing all of the evidence presented regarding  
 364 aggravating factors and mitigating circumstances, the jury shall  
 365 deliberate and determine if the state has proven, beyond a  
 366 reasonable doubt, the existence of at least one aggravating  
 367 factor set forth in subsection (7).

368 (b) The jury shall return findings identifying each  
 369 aggravating factor found to exist. A finding that an aggravating  
 370 factor exists must be unanimous. If the jury:

371 1. Does not unanimously find at least one aggravating  
 372 factor, the defendant is ineligible for a sentence of death.

373 2. Unanimously finds at least one aggravating factor, the  
 374 defendant is eligible for a sentence of death and the jury shall  
 375 make a recommendation to the court as to whether the defendant  
 376 shall be sentenced to life imprisonment without the possibility  
 377 of parole or to death. The recommendation shall be based on a  
 378 weighing of all of the following:

379 a. Whether sufficient aggravating factors exist.

380 b. Whether sufficient mitigating circumstances exist which

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381 outweigh the aggravating factors found to exist.

382 c. Based on the considerations in sub-subparagraphs a. and  
 383 b., whether the defendant should be sentenced to life  
 384 imprisonment without the possibility of parole or to death.

385 (c) If a unanimous jury determines that the defendant  
 386 should be sentenced to death, the jury's recommendation to the  
 387 court shall be a sentence of death. If less than a unanimous  
 388 jury determines that the defendant should be sentenced to death,  
 389 the jury's recommendation to the court shall be a sentence of  
 390 life imprisonment without the possibility of parole.

391 (4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

392 (a) If the jury has recommended a sentence of:

393 1. Life imprisonment without the possibility of parole, the  
 394 court shall impose the recommended sentence.

395 2. Death, the court, after considering each aggravating  
 396 factor found by the jury and all mitigating circumstances, may  
 397 impose a sentence of life imprisonment without the possibility  
 398 of parole or a sentence of death. The court may consider only an  
 399 aggravating factor that was unanimously found to exist by the  
 400 jury.

401 (b) If the defendant waived his or her right to a  
 402 sentencing proceeding by a jury, the court, after considering  
 403 all aggravating factors and mitigating circumstances, may impose  
 404 a sentence of life imprisonment without the possibility of  
 405 parole or a sentence of death. The court may impose a sentence  
 406 of death only if the court finds at least one aggravating factor  
 407 has been proven to exist beyond a reasonable doubt.

408 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—In  
 409 each case in which the court imposes a death sentence, the court

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410 shall, considering the records of the trial and the sentencing  
 411 proceedings, enter a written order addressing the aggravating  
 412 factors set forth in subsection (7) found to exist, the  
 413 mitigating circumstances in subsection (8) reasonably  
 414 established by the evidence, whether there are sufficient  
 415 aggravating factors to warrant the death penalty, and whether  
 416 the mitigating circumstances reasonably established by the  
 417 evidence outweigh the aggravating factors. If the court does not  
 418 issue its order requiring the death sentence within 30 days  
 419 after the rendition of the judgment and sentence, the court  
 420 shall impose a sentence of life imprisonment without the  
 421 possibility of parole in accordance with s. 775.082.

422 ~~(3) ADVISORY SENTENCE BY THE JURY. After hearing all the~~  
 423 ~~evidence, the jury shall deliberate and render an advisory~~  
 424 ~~sentence to the court, based upon the following matters:~~

425 ~~(a) Whether sufficient aggravating circumstances exist as~~  
 426 ~~enumerated in subsection (6);~~

427 ~~(b) Whether sufficient mitigating circumstances exist which~~  
 428 ~~outweigh the aggravating circumstances found to exist; and~~

429 ~~(c) Based on these considerations, whether the defendant~~  
 430 ~~should be sentenced to life imprisonment or death.~~

431 ~~(4) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—~~  
 432 ~~Notwithstanding the recommendation of a majority of the jury,~~  
 433 ~~the court, after weighing the aggravating and mitigating~~  
 434 ~~circumstances, shall enter a sentence of life imprisonment or~~  
 435 ~~death, but if the court imposes a sentence of death, it shall~~  
 436 ~~set forth in writing its findings upon which the sentence of~~  
 437 ~~death is based as to the facts:~~

438 ~~(a) That sufficient aggravating circumstances exist as~~

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439 ~~enumerated in subsection (6), and~~

440 ~~(b) That there are insufficient mitigating circumstances to~~  
 441 ~~outweigh the aggravating circumstances.~~

442  
 443 ~~In each case in which the court imposes the death sentence, the~~  
 444 ~~determination of the court shall be supported by specific~~  
 445 ~~written findings of fact based upon the circumstances in~~  
 446 ~~subsections (6) and (7) and upon the records of the trial and~~  
 447 ~~the sentencing proceedings. If the court does not make the~~  
 448 ~~findings requiring the death sentence within 30 days after the~~  
 449 ~~rendition of the judgment and sentence, the court shall impose~~  
 450 ~~sentence of life imprisonment in accordance with s. 775.082, and~~  
 451 ~~that person shall be ineligible for parole.~~

452 ~~(6)(5) REVIEW OF JUDGMENT AND SENTENCE.—~~The judgment of  
 453 conviction and sentence of death shall be subject to automatic  
 454 review and disposition rendered by the Supreme Court of Florida  
 455 within 2 years after the filing of a notice of appeal. Such  
 456 review by the Supreme Court shall have priority over all other  
 457 cases and shall be heard in accordance with rules promulgated by  
 458 the Supreme Court.

459 ~~(7)(6) AGGRAVATING FACTORS CIRCUMSTANCES.—~~Aggravating  
 460 ~~factors circumstances~~ shall be limited to the following:

461 (a) The capital felony was committed by a person under a  
 462 sentence of imprisonment.

463 (b) The defendant was previously convicted of another  
 464 capital felony or of a state or federal offense involving the  
 465 distribution of a controlled substance which ~~that~~ is punishable  
 466 by a sentence of at least 1 year of imprisonment.

467 (c) The defendant knowingly created grave risk of death to

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468 one or more persons such that participation in the offense  
469 constituted reckless indifference or disregard for human life.

470 (d) The defendant used a firearm or knowingly directed,  
471 advised, authorized, or assisted another to use a firearm to  
472 threaten, intimidate, assault, or injure a person in committing  
473 the offense or in furtherance of the offense.

474 (e) The offense involved the distribution of controlled  
475 substances to persons under the age of 18 years, the  
476 distribution of controlled substances within school zones, or  
477 the use or employment of persons under the age of 18 years in  
478 aid of distribution of controlled substances.

479 (f) The offense involved distribution of controlled  
480 substances known to contain a potentially lethal adulterant.

481 (g) The defendant:

482 1. Intentionally killed the victim;

483 2. Intentionally inflicted serious bodily injury that ~~which~~  
484 resulted in the death of the victim; or

485 3. Intentionally engaged in conduct intending that the  
486 victim be killed or that lethal force be employed against the  
487 victim, which resulted in the death of the victim.

488 (h) The defendant committed the offense as consideration  
489 for the receipt, or in the expectation of the receipt, of  
490 anything of pecuniary value.

491 (i) The defendant committed the offense after planning and  
492 premeditation.

493 (j) The defendant committed the offense in a heinous,  
494 cruel, or depraved manner in that the offense involved torture  
495 or serious physical abuse to the victim.

496 (8) ~~(7)~~ MITIGATING CIRCUMSTANCES.—Mitigating circumstances

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497 shall include the following:

498 (a) The defendant has no significant history of prior  
499 criminal activity.

500 (b) The capital felony was committed while the defendant  
501 was under the influence of extreme mental or emotional  
502 disturbance.

503 (c) The defendant was an accomplice in the capital felony  
504 committed by another person, and the defendant's participation  
505 was relatively minor.

506 (d) The defendant was under extreme duress or under the  
507 substantial domination of another person.

508 (e) The capacity of the defendant to appreciate the  
509 criminality of her or his conduct or to conform her or his  
510 conduct to the requirements of law was substantially impaired.

511 (f) The age of the defendant at the time of the offense.

512 (g) The defendant could not have reasonably foreseen that  
513 her or his conduct in the course of the commission of the  
514 offense would cause or would create a grave risk of death to one  
515 or more persons.

516 (h) The existence of any other factors in the defendant's  
517 background that would mitigate against imposition of the death  
518 penalty.

519 (9) ~~(8)~~ VICTIM IMPACT EVIDENCE.—Once the prosecution has  
520 provided evidence of the existence of one or more aggravating  
521 factors ~~circumstances~~ as described in subsection (7) ~~(6)~~, the  
522 prosecution may introduce, and subsequently argue, victim impact  
523 evidence. Such evidence shall be designed to demonstrate the  
524 victim's uniqueness as an individual human being and the  
525 resultant loss to the community's members by the victim's death.

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526 Characterizations and opinions about the crime, the defendant,  
527 and the appropriate sentence shall not be permitted as a part of  
528 victim impact evidence.

529 Section 5. For the purpose of incorporating the amendment  
530 made by this act to section 921.141, Florida Statutes, in a  
531 reference thereto, paragraph (a) of subsection (2) of section  
532 794.011, Florida Statutes, is reenacted to read:

533 794.011 Sexual battery.—

534 (2) (a) A person 18 years of age or older who commits sexual  
535 battery upon, or in an attempt to commit sexual battery injures  
536 the sexual organs of, a person less than 12 years of age commits  
537 a capital felony, punishable as provided in ss. 775.082 and  
538 921.141.

539 Section 6. For the purpose of incorporating the amendment  
540 made by this act to section 921.142, Florida Statutes, in  
541 references thereto, paragraphs (b) through (l) of subsection (1)  
542 of section 893.135, Florida Statutes, are reenacted to read:

543 893.135 Trafficking; mandatory sentences; suspension or  
544 reduction of sentences; conspiracy to engage in trafficking.—

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

547 (b)1. Any person who knowingly sells, purchases,  
548 manufactures, delivers, or brings into this state, or who is  
549 knowingly in actual or constructive possession of, 28 grams or  
550 more of cocaine, as described in s. 893.03(2)(a)4., or of any  
551 mixture containing cocaine, but less than 150 kilograms of  
552 cocaine or any such mixture, commits a felony of the first  
553 degree, which felony shall be known as "trafficking in cocaine,"  
554 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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555 If the quantity involved:

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

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

564 c. Is 400 grams or more, but less than 150 kilograms, such  
565 person shall be sentenced to a mandatory minimum term of  
566 imprisonment of 15 calendar years and pay a fine of \$250,000.

567 2. Any person who knowingly sells, purchases, manufactures,  
568 delivers, or brings into this state, or who is knowingly in  
569 actual or constructive possession of, 150 kilograms or more of  
570 cocaine, as described in s. 893.03(2)(a)4., commits the first  
571 degree felony of trafficking in cocaine. A person who has been  
572 convicted of the first degree felony of trafficking in cocaine  
573 under this subparagraph shall be punished by life imprisonment  
574 and is ineligible for any form of discretionary early release  
575 except pardon or executive clemency or conditional medical  
576 release under s. 947.149. However, if the court determines that,  
577 in addition to committing any act specified in this paragraph:

578 a. The person intentionally killed an individual or  
579 counseled, commanded, induced, procured, or caused the  
580 intentional killing of an individual and such killing was the  
581 result; or

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

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584  
585 such person commits the capital felony of trafficking in  
586 cocaine, punishable as provided in ss. 775.082 and 921.142. Any  
587 person sentenced for a capital felony under this paragraph shall  
588 also be sentenced to pay the maximum fine provided under  
589 subparagraph 1.

590 3. Any person who knowingly brings into this state 300  
591 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,  
592 and who knows that the probable result of such importation would  
593 be the death of any person, commits capital importation of  
594 cocaine, a capital felony punishable as provided in ss. 775.082  
595 and 921.142. Any person sentenced for a capital felony under  
596 this paragraph shall also be sentenced to pay the maximum fine  
597 provided under subparagraph 1.

598 (c)1. A person who knowingly sells, purchases,  
599 manufactures, delivers, or brings into this state, or who is  
600 knowingly in actual or constructive possession of, 4 grams or  
601 more of any morphine, opium, hydromorphone, or any salt,  
602 derivative, isomer, or salt of an isomer thereof, including  
603 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or  
604 (3)(c)4., or 4 grams or more of any mixture containing any such  
605 substance, but less than 30 kilograms of such substance or  
606 mixture, commits a felony of the first degree, which felony  
607 shall be known as "trafficking in illegal drugs," punishable as  
608 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
609 quantity involved:

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

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

616 c. Is 28 grams or more, but less than 30 kilograms, such  
617 person shall be sentenced to a mandatory minimum term of  
618 imprisonment of 25 years and shall be ordered to pay a fine of  
619 \$500,000.

620 2. A person who knowingly sells, purchases, manufactures,  
621 delivers, or brings into this state, or who is knowingly in  
622 actual or constructive possession of, 14 grams or more of  
623 hydrocodone, or any salt, derivative, isomer, or salt of an  
624 isomer thereof, or 14 grams or more of any mixture containing  
625 any such substance, commits a felony of the first degree, which  
626 felony shall be known as "trafficking in hydrocodone,"  
627 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
628 If the quantity involved:

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

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

635 c. Is 50 grams or more, but less than 200 grams, such  
636 person shall be sentenced to a mandatory minimum term of  
637 imprisonment of 15 years and shall be ordered to pay a fine of  
638 \$500,000.

639 d. Is 200 grams or more, but less than 30 kilograms, such  
640 person shall be sentenced to a mandatory minimum term of  
641 imprisonment of 25 years and shall be ordered to pay a fine of

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642 \$750,000.

643 3. A person who knowingly sells, purchases, manufactures,  
 644 delivers, or brings into this state, or who is knowingly in  
 645 actual or constructive possession of, 7 grams or more of  
 646 oxycodone, or any salt, derivative, isomer, or salt of an isomer  
 647 thereof, or 7 grams or more of any mixture containing any such  
 648 substance, commits a felony of the first degree, which felony  
 649 shall be known as "trafficking in oxycodone," punishable as  
 650 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
 651 quantity involved:

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

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

658 c. Is 25 grams or more, but less than 100 grams, such  
 659 person shall be sentenced to a mandatory minimum term of  
 660 imprisonment of 15 years and shall be ordered to pay a fine of  
 661 \$500,000.

662 d. Is 100 grams or more, but less than 30 kilograms, such  
 663 person shall be sentenced to a mandatory minimum term of  
 664 imprisonment of 25 years and shall be ordered to pay a fine of  
 665 \$750,000.

666 4. A person who knowingly sells, purchases, manufactures,  
 667 delivers, or brings into this state, or who is knowingly in  
 668 actual or constructive possession of, 30 kilograms or more of  
 669 any morphine, opium, oxycodone, hydrocodone, hydromorphone, or  
 670 any salt, derivative, isomer, or salt of an isomer thereof,

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671 including heroin, as described in s. 893.03(1)(b), (2)(a),  
 672 (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture  
 673 containing any such substance, commits the first degree felony  
 674 of trafficking in illegal drugs. A person who has been convicted  
 675 of the first degree felony of trafficking in illegal drugs under  
 676 this subparagraph shall be punished by life imprisonment and is  
 677 ineligible for any form of discretionary early release except  
 678 pardon or executive clemency or conditional medical release  
 679 under s. 947.149. However, if the court determines that, in  
 680 addition to committing any act specified in this paragraph:

681 a. The person intentionally killed an individual or  
 682 counseled, commanded, induced, procured, or caused the  
 683 intentional killing of an individual and such killing was the  
 684 result; or

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

687 such person commits the capital felony of trafficking in illegal  
 688 drugs, punishable as provided in ss. 775.082 and 921.142. A  
 689 person sentenced for a capital felony under this paragraph shall  
 690 also be sentenced to pay the maximum fine provided under  
 691 subparagraph 1.  
 692

693 5. A person who knowingly brings into this state 60  
 694 kilograms or more of any morphine, opium, oxycodone,  
 695 hydrocodone, hydromorphone, or any salt, derivative, isomer, or  
 696 salt of an isomer thereof, including heroin, as described in s.  
 697 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or  
 698 more of any mixture containing any such substance, and who knows  
 699 that the probable result of such importation would be the death

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700 of a person, commits capital importation of illegal drugs, a  
 701 capital felony punishable as provided in ss. 775.082 and  
 702 921.142. A person sentenced for a capital felony under this  
 703 paragraph shall also be sentenced to pay the maximum fine  
 704 provided under subparagraph 1.

705 (d)1. Any person who knowingly sells, purchases,  
 706 manufactures, delivers, or brings into this state, or who is  
 707 knowingly in actual or constructive possession of, 28 grams or  
 708 more of phencyclidine or of any mixture containing  
 709 phencyclidine, as described in s. 893.03(2)(b), commits a felony  
 710 of the first degree, which felony shall be known as "trafficking  
 711 in phencyclidine," punishable as provided in s. 775.082, s.  
 712 775.083, or s. 775.084. If the quantity involved:

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

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

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

724 2. Any person who knowingly brings into this state 800  
 725 grams or more of phencyclidine or of any mixture containing  
 726 phencyclidine, as described in s. 893.03(2)(b), and who knows  
 727 that the probable result of such importation would be the death  
 728 of any person commits capital importation of phencyclidine, a

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729 capital felony punishable as provided in ss. 775.082 and  
 730 921.142. Any person sentenced for a capital felony under this  
 731 paragraph shall also be sentenced to pay the maximum fine  
 732 provided under subparagraph 1.

733 (e)1. Any person who knowingly sells, purchases,  
 734 manufactures, delivers, or brings into this state, or who is  
 735 knowingly in actual or constructive possession of, 200 grams or  
 736 more of methaqualone or of any mixture containing methaqualone,  
 737 as described in s. 893.03(1)(d), commits a felony of the first  
 738 degree, which felony shall be known as "trafficking in  
 739 methaqualone," punishable as provided in s. 775.082, s. 775.083,  
 740 or s. 775.084. If the quantity involved:

741 a. Is 200 grams or more, but less than 5 kilograms, such  
 742 person shall be sentenced to a mandatory minimum term of  
 743 imprisonment of 3 years, and the defendant shall be ordered to  
 744 pay a fine of \$50,000.

745 b. Is 5 kilograms or more, but less than 25 kilograms, such  
 746 person shall be sentenced to a mandatory minimum term of  
 747 imprisonment of 7 years, and the defendant shall be ordered to  
 748 pay a fine of \$100,000.

749 c. Is 25 kilograms or more, such person shall be sentenced  
 750 to a mandatory minimum term of imprisonment of 15 calendar years  
 751 and pay a fine of \$250,000.

752 2. Any person who knowingly brings into this state 50  
 753 kilograms or more of methaqualone or of any mixture containing  
 754 methaqualone, as described in s. 893.03(1)(d), and who knows  
 755 that the probable result of such importation would be the death  
 756 of any person commits capital importation of methaqualone, a  
 757 capital felony punishable as provided in ss. 775.082 and

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758 921.142. Any person sentenced for a capital felony under this  
 759 paragraph shall also be sentenced to pay the maximum fine  
 760 provided under subparagraph 1.

761 (f)1. Any person who knowingly sells, purchases,  
 762 manufactures, delivers, or brings into this state, or who is  
 763 knowingly in actual or constructive possession of, 14 grams or  
 764 more of amphetamine, as described in s. 893.03(2)(c)2., or  
 765 methamphetamine, as described in s. 893.03(2)(c)4., or of any  
 766 mixture containing amphetamine or methamphetamine, or  
 767 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine  
 768 in conjunction with other chemicals and equipment utilized in  
 769 the manufacture of amphetamine or methamphetamine, commits a  
 770 felony of the first degree, which felony shall be known as  
 771 "trafficking in amphetamine," punishable as provided in s.  
 772 775.082, s. 775.083, or s. 775.084. If the quantity involved:

773 a. Is 14 grams or more, but less than 28 grams, such person  
 774 shall be sentenced to a mandatory minimum term of imprisonment  
 775 of 3 years, and the defendant shall be ordered to pay a fine of  
 776 \$50,000.

777 b. Is 28 grams or more, but less than 200 grams, such  
 778 person shall be sentenced to a mandatory minimum term of  
 779 imprisonment of 7 years, and the defendant shall be ordered to  
 780 pay a fine of \$100,000.

781 c. Is 200 grams or more, such person shall be sentenced to  
 782 a mandatory minimum term of imprisonment of 15 calendar years  
 783 and pay a fine of \$250,000.

784 2. Any person who knowingly manufactures or brings into  
 785 this state 400 grams or more of amphetamine, as described in s.  
 786 893.03(2)(c)2., or methamphetamine, as described in s.

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787 893.03(2)(c)4., or of any mixture containing amphetamine or  
 788 methamphetamine, or phenylacetone, phenylacetic acid,  
 789 pseudoephedrine, or ephedrine in conjunction with other  
 790 chemicals and equipment used in the manufacture of amphetamine  
 791 or methamphetamine, and who knows that the probable result of  
 792 such manufacture or importation would be the death of any person  
 793 commits capital manufacture or importation of amphetamine, a  
 794 capital felony punishable as provided in ss. 775.082 and  
 795 921.142. Any person sentenced for a capital felony under this  
 796 paragraph shall also be sentenced to pay the maximum fine  
 797 provided under subparagraph 1.

798 (g)1. Any person who knowingly sells, purchases,  
 799 manufactures, delivers, or brings into this state, or who is  
 800 knowingly in actual or constructive possession of, 4 grams or  
 801 more of flunitrazepam or any mixture containing flunitrazepam as  
 802 described in s. 893.03(1)(a) commits a felony of the first  
 803 degree, which felony shall be known as "trafficking in  
 804 flunitrazepam," punishable as provided in s. 775.082, s.  
 805 775.083, or s. 775.084. If the quantity involved:

806 a. Is 4 grams or more but less than 14 grams, such person  
 807 shall be sentenced to a mandatory minimum term of imprisonment  
 808 of 3 years, and the defendant shall be ordered to pay a fine of  
 809 \$50,000.

810 b. Is 14 grams or more but less than 28 grams, such person  
 811 shall be sentenced to a mandatory minimum term of imprisonment  
 812 of 7 years, and the defendant shall be ordered to pay a fine of  
 813 \$100,000.

814 c. Is 28 grams or more but less than 30 kilograms, such  
 815 person shall be sentenced to a mandatory minimum term of

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816 imprisonment of 25 calendar years and pay a fine of \$500,000.  
 817 2. Any person who knowingly sells, purchases, manufactures,  
 818 delivers, or brings into this state or who is knowingly in  
 819 actual or constructive possession of 30 kilograms or more of  
 820 flunitrazepam or any mixture containing flunitrazepam as  
 821 described in s. 893.03(1)(a) commits the first degree felony of  
 822 trafficking in flunitrazepam. A person who has been convicted of  
 823 the first degree felony of trafficking in flunitrazepam under  
 824 this subparagraph shall be punished by life imprisonment and is  
 825 ineligible for any form of discretionary early release except  
 826 pardon or executive clemency or conditional medical release  
 827 under s. 947.149. However, if the court determines that, in  
 828 addition to committing any act specified in this paragraph:  
 829 a. The person intentionally killed an individual or  
 830 counseled, commanded, induced, procured, or caused the  
 831 intentional killing of an individual and such killing was the  
 832 result; or  
 833 b. The person's conduct in committing that act led to a  
 834 natural, though not inevitable, lethal result,  
 835  
 836 such person commits the capital felony of trafficking in  
 837 flunitrazepam, punishable as provided in ss. 775.082 and  
 838 921.142. Any person sentenced for a capital felony under this  
 839 paragraph shall also be sentenced to pay the maximum fine  
 840 provided under subparagraph 1.  
 841 (h)1. Any person who knowingly sells, purchases,  
 842 manufactures, delivers, or brings into this state, or who is  
 843 knowingly in actual or constructive possession of, 1 kilogram or  
 844 more of gamma-hydroxybutyric acid (GHB), as described in s.

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845 893.03(1)(d), or any mixture containing gamma-hydroxybutyric  
 846 acid (GHB), commits a felony of the first degree, which felony  
 847 shall be known as "trafficking in gamma-hydroxybutyric acid  
 848 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.  
 849 775.084. If the quantity involved:  
 850 a. Is 1 kilogram or more but less than 5 kilograms, such  
 851 person shall be sentenced to a mandatory minimum term of  
 852 imprisonment of 3 years, and the defendant shall be ordered to  
 853 pay a fine of \$50,000.  
 854 b. Is 5 kilograms or more but less than 10 kilograms, such  
 855 person shall be sentenced to a mandatory minimum term of  
 856 imprisonment of 7 years, and the defendant shall be ordered to  
 857 pay a fine of \$100,000.  
 858 c. Is 10 kilograms or more, such person shall be sentenced  
 859 to a mandatory minimum term of imprisonment of 15 calendar years  
 860 and pay a fine of \$250,000.  
 861 2. Any person who knowingly manufactures or brings into  
 862 this state 150 kilograms or more of gamma-hydroxybutyric acid  
 863 (GHB), as described in s. 893.03(1)(d), or any mixture  
 864 containing gamma-hydroxybutyric acid (GHB), and who knows that  
 865 the probable result of such manufacture or importation would be  
 866 the death of any person commits capital manufacture or  
 867 importation of gamma-hydroxybutyric acid (GHB), a capital felony  
 868 punishable as provided in ss. 775.082 and 921.142. Any person  
 869 sentenced for a capital felony under this paragraph shall also  
 870 be sentenced to pay the maximum fine provided under subparagraph  
 871 1.  
 872 (i)1. Any person who knowingly sells, purchases,  
 873 manufactures, delivers, or brings into this state, or who is

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874 knowingly in actual or constructive possession of, 1 kilogram or  
 875 more of gamma-butyrolactone (GBL), as described in s.  
 876 893.03(1)(d), or any mixture containing gamma-butyrolactone  
 877 (GBL), commits a felony of the first degree, which felony shall  
 878 be known as "trafficking in gamma-butyrolactone (GBL)," and  
 879 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 880 If the quantity involved:

881 a. Is 1 kilogram or more but less than 5 kilograms, such  
 882 person shall be sentenced to a mandatory minimum term of  
 883 imprisonment of 3 years, and the defendant shall be ordered to  
 884 pay a fine of \$50,000.

885 b. Is 5 kilograms or more but less than 10 kilograms, such  
 886 person shall be sentenced to a mandatory minimum term of  
 887 imprisonment of 7 years, and the defendant shall be ordered to  
 888 pay a fine of \$100,000.

889 c. Is 10 kilograms or more, such person shall be sentenced  
 890 to a mandatory minimum term of imprisonment of 15 calendar years  
 891 and pay a fine of \$250,000.

892 2. Any person who knowingly manufactures or brings into the  
 893 state 150 kilograms or more of gamma-butyrolactone (GBL), as  
 894 described in s. 893.03(1)(d), or any mixture containing gamma-  
 895 butyrolactone (GBL), and who knows that the probable result of  
 896 such manufacture or importation would be the death of any person  
 897 commits capital manufacture or importation of gamma-  
 898 butyrolactone (GBL), a capital felony punishable as provided in  
 899 ss. 775.082 and 921.142. Any person sentenced for a capital  
 900 felony under this paragraph shall also be sentenced to pay the  
 901 maximum fine provided under subparagraph 1.

902 (j)1. Any person who knowingly sells, purchases,

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903 manufactures, delivers, or brings into this state, or who is  
 904 knowingly in actual or constructive possession of, 1 kilogram or  
 905 more of 1,4-Butanediol as described in s. 893.03(1)(d), or of  
 906 any mixture containing 1,4-Butanediol, commits a felony of the  
 907 first degree, which felony shall be known as "trafficking in  
 908 1,4-Butanediol," punishable as provided in s. 775.082, s.  
 909 775.083, or s. 775.084. If the quantity involved:

910 a. Is 1 kilogram or more, but less than 5 kilograms, such  
 911 person shall be sentenced to a mandatory minimum term of  
 912 imprisonment of 3 years, and the defendant shall be ordered to  
 913 pay a fine of \$50,000.

914 b. Is 5 kilograms or more, but less than 10 kilograms, such  
 915 person shall be sentenced to a mandatory minimum term of  
 916 imprisonment of 7 years, and the defendant shall be ordered to  
 917 pay a fine of \$100,000.

918 c. Is 10 kilograms or more, such person shall be sentenced  
 919 to a mandatory minimum term of imprisonment of 15 calendar years  
 920 and pay a fine of \$500,000.

921 2. Any person who knowingly manufactures or brings into  
 922 this state 150 kilograms or more of 1,4-Butanediol as described  
 923 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,  
 924 and who knows that the probable result of such manufacture or  
 925 importation would be the death of any person commits capital  
 926 manufacture or importation of 1,4-Butanediol, a capital felony  
 927 punishable as provided in ss. 775.082 and 921.142. Any person  
 928 sentenced for a capital felony under this paragraph shall also  
 929 be sentenced to pay the maximum fine provided under subparagraph  
 930 1.

931 (k)1. A person who knowingly sells, purchases,

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932 manufactures, delivers, or brings into this state, or who is  
 933 knowingly in actual or constructive possession of, 10 grams or  
 934 more of any of the following substances described in s.  
 935 893.03(1)(c):  
 936 a. 3,4-Methylenedioxyamphetamine (MDMA);  
 937 b. 4-Bromo-2,5-dimethoxyamphetamine;  
 938 c. 4-Bromo-2,5-dimethoxyphenethylamine;  
 939 d. 2,5-Dimethoxyamphetamine;  
 940 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);  
 941 f. N-ethylamphetamine;  
 942 g. N-Hydroxy-3,4-methylenedioxyamphetamine;  
 943 h. 5-Methoxy-3,4-methylenedioxyamphetamine;  
 944 i. 4-methoxyamphetamine;  
 945 j. 4-methoxymethamphetamine;  
 946 k. 4-Methyl-2,5-dimethoxyamphetamine;  
 947 l. 3,4-Methylenedioxy-N-ethylamphetamine;  
 948 m. 3,4-Methylenedioxyamphetamine;  
 949 n. N,N-dimethylamphetamine;  
 950 o. 3,4,5-Trimethoxyamphetamine;  
 951 p. 3,4-Methylenedioxyamphetaminone;  
 952 q. 3,4-Methylenedioxypropylamphetamine (MDPV); or  
 953 r. Methylmethcathinone,  
 954  
 955 individually or analogs thereto or isomers thereto or in any  
 956 combination of or any mixture containing any substance listed in  
 957 sub-subparagraphs a.-r., commits a felony of the first degree,  
 958 which felony shall be known as "trafficking in Phenethylamines,"  
 959 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 960 2. If the quantity involved:

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961 a. Is 10 grams or more, but less than 200 grams, such  
 962 person shall be sentenced to a mandatory minimum term of  
 963 imprisonment of 3 years and shall be ordered to pay a fine of  
 964 \$50,000.  
 965 b. Is 200 grams or more, but less than 400 grams, such  
 966 person shall be sentenced to a mandatory minimum term of  
 967 imprisonment of 7 years and shall be ordered to pay a fine of  
 968 \$100,000.  
 969 c. Is 400 grams or more, such person shall be sentenced to  
 970 a mandatory minimum term of imprisonment of 15 years and shall  
 971 be ordered to pay a fine of \$250,000.  
 972 3. A person who knowingly manufactures or brings into this  
 973 state 30 kilograms or more of any of the following substances  
 974 described in s. 893.03(1)(c):  
 975 a. 3,4-Methylenedioxyamphetamine (MDMA);  
 976 b. 4-Bromo-2,5-dimethoxyamphetamine;  
 977 c. 4-Bromo-2,5-dimethoxyphenethylamine;  
 978 d. 2,5-Dimethoxyamphetamine;  
 979 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);  
 980 f. N-ethylamphetamine;  
 981 g. N-Hydroxy-3,4-methylenedioxyamphetamine;  
 982 h. 5-Methoxy-3,4-methylenedioxyamphetamine;  
 983 i. 4-methoxyamphetamine;  
 984 j. 4-methoxymethamphetamine;  
 985 k. 4-Methyl-2,5-dimethoxyamphetamine;  
 986 l. 3,4-Methylenedioxy-N-ethylamphetamine;  
 987 m. 3,4-Methylenedioxyamphetamine;  
 988 n. N,N-dimethylamphetamine;  
 989 o. 3,4,5-Trimethoxyamphetamine;

591-02990-16

20167068pb

990 p. 3,4-Methylenedioxy methcathinone;  
 991 q. 3,4-Methylenedioxy pyrovalerone (MDPV); or  
 992 r. Methylmethcathinone,  
 993  
 994 individually or analogs thereto or isomers thereto or in any  
 995 combination of or any mixture containing any substance listed in  
 996 sub-subparagraphs a.-r., and who knows that the probable result  
 997 of such manufacture or importation would be the death of any  
 998 person commits capital manufacture or importation of  
 999 Phenethylamines, a capital felony punishable as provided in ss.  
 1000 775.082 and 921.142. A person sentenced for a capital felony  
 1001 under this paragraph shall also be sentenced to pay the maximum  
 1002 fine provided under subparagraph 1.  
 1003 (1)1. Any person who knowingly sells, purchases,  
 1004 manufactures, delivers, or brings into this state, or who is  
 1005 knowingly in actual or constructive possession of, 1 gram or  
 1006 more of lysergic acid diethylamide (LSD) as described in s.  
 1007 893.03(1)(c), or of any mixture containing lysergic acid  
 1008 diethylamide (LSD), commits a felony of the first degree, which  
 1009 felony shall be known as "trafficking in lysergic acid  
 1010 diethylamide (LSD)," punishable as provided in s. 775.082, s.  
 1011 775.083, or s. 775.084. If the quantity involved:  
 1012 a. Is 1 gram or more, but less than 5 grams, such person  
 1013 shall be sentenced to a mandatory minimum term of imprisonment  
 1014 of 3 years, and the defendant shall be ordered to pay a fine of  
 1015 \$50,000.  
 1016 b. Is 5 grams or more, but less than 7 grams, such person  
 1017 shall be sentenced to a mandatory minimum term of imprisonment  
 1018 of 7 years, and the defendant shall be ordered to pay a fine of

Page 35 of 36

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

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20167068pb

1019 \$100,000.  
 1020 c. Is 7 grams or more, such person shall be sentenced to a  
 1021 mandatory minimum term of imprisonment of 15 calendar years and  
 1022 pay a fine of \$500,000.  
 1023 2. Any person who knowingly manufactures or brings into  
 1024 this state 7 grams or more of lysergic acid diethylamide (LSD)  
 1025 as described in s. 893.03(1)(c), or any mixture containing  
 1026 lysergic acid diethylamide (LSD), and who knows that the  
 1027 probable result of such manufacture or importation would be the  
 1028 death of any person commits capital manufacture or importation  
 1029 of lysergic acid diethylamide (LSD), a capital felony punishable  
 1030 as provided in ss. 775.082 and 921.142. Any person sentenced for  
 1031 a capital felony under this paragraph shall also be sentenced to  
 1032 pay the maximum fine provided under subparagraph 1.  
 1033 Section 7. The amendments made by this act to ss. 775.082,  
 1034 782.04, 921.141, and 921.142, Florida Statutes, shall apply only  
 1035 to criminal acts that occur on or after the effective date of  
 1036 this act.  
 1037 Section 8. This act shall take effect upon becoming a law.

Page 36 of 36

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16

Meeting Date

7068

Bill Number (if applicable)

Topic Capital Felonies

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park

Phone \_\_\_\_\_

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 Florida Conference of Catholic Bishops

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

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

February 8, 2016

*Meeting Date*

SPB 7068

*Bill Number (if applicable)*

Topic Sentencing for Capital Felonies

*Amendment Barcode (if applicable)*

Name Mark Schlakman

Job Title senior program director

Address 426 W Jefferson St.

*Street*

Phone (850) 644-4614

Tallahassee

FL

32301

Email mschlakman@fsu.edu

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida State University Center for the Advancement of Human Rights

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)

2/8/2016

*Meeting Date*

7068

*Bill Number (if applicable)*

Topic Sentencing for Capital Felonies

*Amendment Barcode (if applicable)*

Name Rex Dimmig

Job Title Public Defender, 10th Circuit

Address 255 North Boradway

Phone 863.534.4200

*Street*

Bartow

Florida

33830

Email dimmi\_r@pd10.state.fl.us

*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)

2/8/16

Meeting Date

7068

Bill Number (if applicable)

936370

Amendment Barcode (if applicable)

Topic SENTENCING FOR CAPITAL FELONIES

Name Rex Dimmig

Job Title PUBLIC DEFENDER, 10th CIRCUIT

Address 255 N. BROADWAY

Street

Phone 863-534-4200

BARTOW

City

FL

State

33830

Zip

Email rdimmig@pd10.org

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16  
Meeting Date

7068  
Bill Number (if applicable)  
936370  
Amendment Barcode (if applicable)

Topic Capital Felonies

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av  
Street

Phone \_\_\_\_\_

Tallahassee FL  
City State 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

*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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16  
Meeting Date

7068  
Bill Number (if applicable)

Topic Death Sentencing

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title Legislative Consultant

Address 104 South Monroe Street

Phone 850/425-1344

Street

Tallahassee FL 32301

Email TcgLobby@aol.com

City

State

Zip

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16

Meeting Date

7068

Bill Number (if applicable)

Topic Death Penalty

Amendment Barcode (if applicable)

Name Brad King

Job Title State Attorney, 5<sup>th</sup> Circuit

Address 110 NW 1<sup>st</sup> Ave, Suite 5000

Phone 352-671-5914

Ocala  
City

FL  
State

34475  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Prosecuting Attorney's

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16  
Meeting Date

7068  
Bill Number (if applicable)

Topic Capital Felonies

Amendment Barcode (if applicable)

Name Juan Melendez

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

Address 4205 Rancho Grande Pl  
Street

Phone \_\_\_\_\_

Albuquerque NM 87120  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Self

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.**

1940

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

I, Ken Detzner, Secretary of State,  
do hereby certify that

*Alan L. Garey*

is duly appointed a member of the  
**Board of Directors,  
Prison Rehabilitative Industries and Diversified  
Enterprises, Inc.**

for a term beginning on the  
Thirtieth day of October, A.D., 2015,  
until the Thirtieth day of September, A.D., 2019  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Seventh day of December, A.D., 2015.*



*Ken Detzner*

Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document



**RICK SCOTT**  
GOVERNOR

RECEIVED  
DEPARTMENT OF STATE  
2015 NOV -9 AM 10:28  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

November 4, 2015

Secretary Kenneth W. Detzner  
Department of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 946.504, Florida Statutes:

Mr. Alan Garey

as a member of the Prison Rehabilitative Industries and Diversified Enterprises, Inc., Board of Directors, subject to confirmation by the Senate. This appointment is effective October 30, 2015, for a term ending September 30, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/cw

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED  
DEPARTMENT OF STATE  
2015 NOV 24 AM 9:48  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

STATE OF FLORIDA

County of Broward

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Director - PRIDE Board of Directors  
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Alan L. Garey  
Signature

Sworn to and subscribed before me this 20<sup>th</sup> day of November, 2015.

Monica Devi  
Signature of Officer Administering Oath or of Notary Public



Alan L. Garey  
Print Name of Notary Public  
My Commission FF 028382  
Expires  11/2017  12/2017  
Personally Known  OR Produced Identification

Type of Identification Produced

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

2640 N. Powerline Road  
Street or Post Office Box

Pompano Beach, Florida 33069  
City, State, Zip Code

Alan L. Garey  
Print name as you desire commission issued

Alan L. Garey  
Signature

# QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate.

Please type or print in blue or black ink.

11/17/15

Date Completed

1. Name: Mr. Garey Alan Lee  
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: 2640 North Powerline Road Pompano Beach  
Street Office # City  
Florida 33069 954-975-7992  
Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address:

Post Office Box

Specify the preferred mailing address: Business  Residence  Fax # \_\_\_\_\_ (optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
		2001	Present

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
N/A			

5. Date of Birth: 03/20/1963 Place of Birth: Ft. Lauderdale, Florida

6. Social Security Number: \_\_\_\_\_

7. Driver License Number: \_\_\_\_\_ Issuing State: Florida

8. Have you ever used or been known by any other legal name? Yes  No  If "Yes" Explain

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RECEIVED  
DEPARTMENT OF STATE  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL  
2015 NOV 21 AM 9:48

9. Are you a United States citizen? Yes  No  If "No" explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you are a naturalized citizen, date of naturalization: \_\_\_\_\_

10. Since what year have you been a continuous resident of Florida? 1963

11. Are you a registered Florida voter? Yes  No  If "Yes" list:

A. County of Registration: Broward B. Current Party Affiliation: Republican

12. Education

A. High School: St. Thomas Aquinas Ft. Lauderdale, Florida Year Graduated: 1981  
(Name and Location)

B. List all postsecondary educational institutions attended:

<u>Name &amp; Location</u>	<u>Dates Attended</u>	<u>Certificates/Degrees Received</u>
<u>Florida Southern College - Lakeland, FL</u>	<u>1981-1985</u>	<u>BS in Accounting</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes  No  If "Yes" list:

A. Dates of Service: \_\_\_\_\_

B. Branch or Component: \_\_\_\_\_

C. Date & type of discharge: \_\_\_\_\_

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes  No  If "Yes" give details:

<u>Date</u>	<u>Place</u>	<u>Nature</u>	<u>Disposition</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

<u>Employer's Name &amp; Address</u>	<u>Type of Business</u>	<u>Occupation/Job Title</u>	<u>Period of Employment</u>
<u>Decimal Engineering, Inc.</u>	<u>Manufacturing</u>	<u>CEO/President</u>	<u>1980 - Present</u>

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes  No   
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

<u>Position</u>	<u>Employing Agency</u>	<u>Period of Employment</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

I have worked in the manufacturing industry over 30 years. Currently I am CEO/President of  
Decimal Engineering, Inc., a manufacturer of sheet metal, machining and stamped components for  
several diverse industries. For the past 20 years I have extensive experience in leading employees,  
suppliers and customers to resolve many different business issues. This together with my  
accounting background should serve very useful in being a Director on Pride Enterprises Board.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes  No  If "Yes", list:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes  No  If "Yes", list:

2008 - SFMA Manufacturer of the Year Winner  
2009 - MAF Manufacturer of the Year Finalist  
2009 - Movers & Shakers - South Florida Business Leader Magazine  
2011 & 2012 - Fab 40 - Rank # 32 in the US - Fabricator Magazine

D. Identify all association memberships and association offices held by you that relate to this appointment:

SFMA - South Florida Manufacturers Association - Past Chairman and Current Director  
MAF - Manufacturers Association of Florida - Current Director  
Greater Ft. Lauderdale Chamber of Commerce 2012 & 2013 Director  
Vistage Florida - Current Member  
PRIDE - 2014 & Current Director

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes  No  If "Yes", list:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. A. Have you ever been elected or appointed to any public office in this state? Yes  No  If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

<u>Office Title</u>	<u>Date of Election or Appointment</u>	<u>Term of Office</u>	<u>Level of Government</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: Monthly

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>
<u>100</u>	<u>8</u>	<u>Family</u>

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes  No  If "Yes", give details:

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes  No  If "Yes", list:

A. Title of office: \_\_\_\_\_ C. Reason for suspension: \_\_\_\_\_

B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated  Removed  Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes  No  If "Yes", list:

A. Title of Office: \_\_\_\_\_

B. Term of Appointment: \_\_\_\_\_

C. Confirmation results: \_\_\_\_\_

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes  No  If "Yes", explain:

\_\_\_\_\_

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes  No  If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

<u>License/Certificate Title &amp; Number</u>	<u>Original Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

<u>Name of Business</u>	<u>Family Member's Relationship to You</u>	<u>Family Member's Relationship to Business</u>	<u>Business' Relationship to Agency</u>

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes  No

A. Did you receive any compensation other than reimbursement for expenses? Yes  No

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>Agency Lobbied</u>	<u>Principal Represented</u>

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>Name</u>	<u>Mailing Address</u>	<u>Zip Code</u>	<u>Area Code/Phone Number</u>
Jeff Strohecker			
Vinnie Morris			
June Wolfe			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>Name</u>	<u>Mailing Address</u>	<u>Office(s) Held &amp; Term</u>	<u>Date(s) of Membership</u>
Lambda Chi Alpha			1985 - Present
SFMA		Chairman/Current Director	
MAF		Current Director	
March of Dimes		Past Director	
PRIDE		Current Director	

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes  No  If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes  No

## MEMORANDUM

**AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.**

Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) \_\_\_\_\_

**IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.**

The Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0150

114255

### CERTIFICATION

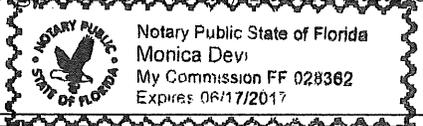
STATE OF FLORIDA  
COUNTY OF Broward

Before me, the undersigned Notary Public of Florida, personally appeared Alan L. Garey, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Alan L. Garey  
Signature of Applicant-Affiant

Sworn to and subscribed before me this 30<sup>th</sup> day of November, 2015.

Monica Dev  
Signature of Notary Public, State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 06/17/2017

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

RECEIVED  
DEPARTMENT OF STATE  
2015 DEC -7 AM 9:57  
OFFICE OF ELECTORAL SERVICES

(seal)

1940 5

A black and white copy of this document is not official

1940

STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections

I, Ken Detzner, Secretary of State,  
do hereby certify that

*James Upchurch*

is duly appointed a member of the

Board of Directors,  
Prison Rehabilitative Industries and Diversified  
Enterprises, Inc.

for a term beginning on the  
Thirtieth day of October, A.D., 2015,  
until the Thirtieth day of September, A.D., 2017  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Tenth day of December, A.D., 2015



*Ken Detzner*  
Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document

The original document has a reflective line mark in paper. Hold at an angle to view when checking.



**RICK SCOTT**  
GOVERNOR

RECEIVED  
DEPARTMENT OF STA  
2015 NOV -9 AM 10: 2.  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

November 4, 2015

Secretary Kenneth W. Detzner  
Department of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following appointment under the provisions of Section 946.504, Florida Statutes:

Mr. James Upchurch

as a member of the Prison Rehabilitative Industries and Diversified Enterprises, Inc., Board of Directors, succeeding Richard Hanas, subject to confirmation by the Senate. This appointment is effective October 30, 2015, for a term ending September 30, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/cw

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Leon

2015 DEC 10 AM 9:31

RECORDED  
NOTATION  
2015 DEC 10 A 9:53

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Board of Directors PRIDE  
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]  
Signature

Sworn to and subscribed before me this 14 day of NOV. 2015.

[Signature]  
Signature of Officer Administering Oath or of Notary Public

Sonya Summers  
Print, Type, or Stamp Commissioned Name of Notary Public



Personally Known  OR Produced Identification

Type of Identification Produced JLDC

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

James R. Vachurch  
Print name as you desire commission issued

[Signature]  
Signature

114303

# QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire **MUST BE COMPLETED IN FULL**. Answer "none" or "not applicable" where appropriate. Please type or print in blue or black ink.

11/25/15  
Date Completed

1. Name: Mr. Vpchurch James R  
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: Same as residence  
Street Office # City

Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: \_\_\_\_\_  
\_\_\_\_\_

Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business  Residence  Fax # \_\_\_\_\_ (optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
<u>Same as above</u>			

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
<u>POB</u>	<u>Parchman, Mississippi</u>	<u>1975</u>	<u>1982</u>
<u>Linda Lane</u>	<u>Chandler, Arizona</u>	<u>1992</u>	<u>1996</u>
<u>Unknown</u>	<u>Glendale Arizona</u>	<u>1982</u>	<u>1985</u>
<u>Unknown</u>	<u>Tucson, Arizona</u>	<u>1985</u>	<u>1986</u>
<u>POB</u>	<u>Florence, Arizona</u>	<u>1986</u>	<u>1992</u>

5. Date of Birth: 4/12/48 Place of Birth: Macon, Mississippi

6. Social Security Number: \_\_\_\_\_

7. Driver License Number: \_\_\_\_\_ Issuing State: Florida

8. Have you ever used or been known by any other legal name? Yes  No  If "Yes" Explain

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RECEIVED  
DEPARTMENT OF STATE  
2015 DEC 10 AM 9:38  
DIVISION OF ELECTIONS

9. Are you a United States citizen? Yes  No  If "No" explain:

If you are a naturalized citizen, date of naturalization: \_\_\_\_\_

10. Since what year have you been a continuous resident of Florida? 1996

11. Are you a registered Florida voter? Yes  No  If "Yes" list:

A. County of Registration: Leon

B. Current Party Affiliation: NPA

12. Education

A. High School: Stelby High School Stelby, Mississippi Year Graduated: 1967  
(Name and Location)

B. List all postsecondary educational institutions attended:

Name & Location	Dates Attended	Certificates/Degrees Received
<u>University of Ms., Oxford Ms.</u>	<u>1967-1969</u>	<u>NONE</u>
<u>Delta State University, Cleveland, Ms</u>	<u>1972-1975</u>	<u>BS, MS</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes  No  If "Yes" list:

A. Dates of Service: 1969-1972

B. Branch or Component: Army

C. Date & type of discharge: Jan 28, 1972 Honorable

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes  No  If "Yes" give details:

Date	Place	Nature	Disposition

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

Employer's Name & Address	Type of Business	Occupation/Job Title	Period of Employment
<u>Florida Department of Corrections 501 S. Calhoun St Tallahassee, FL 32399</u>	<u>Government/Corrections</u>	<u>Bureau Chief, Warders, Division Director, Assistant Secretary for Institutions</u>	<u>1996 - 2015 (retired March 31, 2015)</u>

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes  No   
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

Position	Employing Agency	Period of Employment
<u>see Above response #15</u>		

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

I have 43 years of prison/corrections experience including frequent interactions with and knowledge of prison industries programs

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes  No  If "Yes", list:

Executive Management Certifications From Arizona State University and University of Southern California.

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes  No  If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

American Correctional Association  
Southern States Correctional Association

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes  No  If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes  No  If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

Office Title	Date of Election or Appointment	Term of Office	Level of Government
--------------	---------------------------------	----------------	---------------------

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: \_\_\_\_\_

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes  No  If "Yes", give details:

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes  No  If "Yes", list:

A. Title of office: \_\_\_\_\_ C. Reason for suspension: \_\_\_\_\_  
B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated  Removed  Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes  No  If "Yes", list:

A. Title of Office: \_\_\_\_\_  
B. Term of Appointment: \_\_\_\_\_  
C. Confirmation results: \_\_\_\_\_

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes  No  If "Yes", explain:

\_\_\_\_\_

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes  No  If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

<u>License/Certificate Title &amp; Number</u>	<u>Original Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

<u>Name of Business</u>	<u>Family Member's Relationship to You</u>	<u>Family Member's Relationship to Business</u>	<u>Business' Relationship to Agency</u>

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes  No

A. Did you receive any compensation other than reimbursement for expenses? Yes  No

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>Agency Lobbied</u>	<u>Principal Represented</u>

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>Name</u>	<u>Mailing Address</u>	<u>Zip Code</u>	<u>Area Code/Phone Number</u>
William D. Bales	Professor		
Berinda P. Watson			

Secretary Julie Jones

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>Name</u>	<u>Mailing Address</u>	<u>Office(s) Held &amp; Term</u>	<u>Date(s) of Membership</u>
American Correctional Association	206 W. Washington St. Alexandria, Va		22314-1978
Southern States Correctional Association	P.O. Box 928 Crestwood Ky		40114 present

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes  No  If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes  No

## MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) Identity Theft Crimes - limited to  
SSN, DL number, etc.

**IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.**

The Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0150

CERTIFICATION

STATE OF FLORIDA  
COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared JAMES RAY UPCHURCH, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

[Signature]  
Signature of Applicant-Affiant

Sworn to and subscribed before me this 25 day of NOV, 2015.

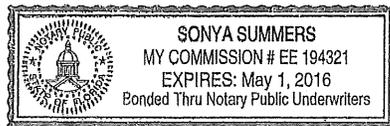
[Signature]  
Signature of Notary Public-State of Florida

SONYA SUMMERS  
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 5/1/2016

Personally Known  OR Produced Identification

Type of Identification Produced FLDL



(seal)

1940

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

I, Ken Detzner, Secretary of State,  
do hereby certify that

***Don Hunter***

is duly appointed a member of the  
**Board of Directors,  
Prison Rehabilitative Industries and Diversified  
Enterprises, Inc.**

for a term beginning on the  
Twelfth day of June, A.D., 2015,  
until the Thirtieth day of September, A.D., 2017  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Tenth day of July, A.D., 2015.*



*Ken Detzner*  
Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED  
DEPARTMENT OF  
CORRECTIONS

2015 JUL -9 AM 9:53

DEPARTMENT OF  
CORRECTIONS

STATE OF FLORIDA

County of COLLIER

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Member Prison Rehabilitative Industries and Diversified Enterprises, Inc. Board of Directors

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]  
Signature

Sworn to and subscribed before me this 2<sup>nd</sup> day of July, 2015.

[Signature]  
Signature of Officer Administering Oath or of Notary Public



Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

\_\_\_\_\_  
Street or Post Office Box

\_\_\_\_\_  
City, State, Zip Code

DON HUNTER

Print name as you desire commission issued

[Signature]  
Signature



**RICK SCOTT**  
GOVERNOR

RECEIVED  
DEPARTMENT OF STATE  
2015 JUN 17 AM 11:54  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

June 15, 2015

Secretary Kenneth W. Detzner  
Department of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 946.504, Florida Statutes:

Mr. Don C. Hunter

as a member of the Prison Rehabilitative Industries and Diversified Enterprises, Inc., Board of Directors, subject to confirmation by the Senate. This appointment is effective June 12, 2015, for a term ending September 30, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/cw

112857

# QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire **MUST BE COMPLETED IN FULL**. Answer "none" or "not applicable" where appropriate. Please type or print in blue or black ink.

March 30, 2015

Date Completed

1. Name: Mr. Hunter Donald Curtis  
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: N/A  
Street Office # City

Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: \_\_\_\_\_  
Street City

Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business  Residence  Fax # \_\_\_\_\_ (optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
			sent

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
NONE			

5. Date of Birth: 10/09/1951 Place of Birth: Tallahassee, Florida

6. Social Security Number: \_\_\_\_\_

7. Driver License Number: \_\_\_\_\_ ing State: Florida

8. Have you ever used or been known by any other legal name? Yes  No  If "Yes" Explain

Nickname of "Don Hunter"  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RECEIVED  
DEPARTMENT OF STATE  
DIVISION OF ELECTIONS  
2015 JUL -9 AM 9:53

9. Are you a United States citizen? Yes  No  If "No" explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you are a naturalized citizen, date of naturalization: \_\_\_\_\_

10. Since what year have you been a continuous resident of Florida? 1951

11. Are you a registered Florida voter? Yes  No  If "Yes" list:

A. County of Registration: Collier B. Current Party Affiliation: Republican

12. Education

A. High School: Naples Senior High, Naples, Florida Year Graduated: 1969  
(Name and Location)

B. List all postsecondary educational institutions attended:

<u>Name &amp; Location</u>	<u>Dates Attended</u>	<u>Certificates/Degrees Received</u>
<u>Florida State University</u>	<u>August, 1972-June, 1974</u>	<u>B.S.</u>
<u>Florida State University</u>	<u>August 1976-June, 1976</u>	
<u>University of South Florida</u>	<u>January, 1983</u>	<u>M.S.</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes  No  If "Yes" list:

A. Dates of Service: \_\_\_\_\_

B. Branch or Component: \_\_\_\_\_

C. Date & type of discharge: \_\_\_\_\_

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes  No  If "Yes" give details:

<u>Date</u>	<u>Place</u>	<u>Nature</u>	<u>Disposition</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

<u>Employer's Name &amp; Address</u>	<u>Type of Business</u>	<u>Occupation/Job Title</u>	<u>Period of Employment</u>
<u>PLEASE SEE NEXT PAGE ATTACHED</u>			

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes  No   
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

<u>Position</u>	<u>Employing Agency</u>	<u>Period of Employment</u>
<u>Sheriff</u>	<u>Collier County Sheriff's Office</u>	<u>12/1988 - 1/2009</u>
<u>Deputy Sheriff/Major</u>	<u>Collier County Sheriff's Office</u>	<u>10/1979 - 12/1988</u>
<u>Regional Administrator</u>	<u>Southwest Fl. Reg. Planning Council</u>	<u>10/1976 - 10/1979</u>

ADDENDUM ITEM 15: "... current employer and for all of your employment during the last five years, ..."

Self employed Security/personal protection consulting Principal of Company 6/2014 - present (Investigative Security Specialists International, LLC)

Marco Island, Fl. 50 Bald Eagle Drive Marco Island, Fl. 34145 Law Enforcement as Chief of Police 8/2011 - 6/2014

National Center for Missing & Exploited Children 699 Prince St. Alexandria, Va. 22314  
National Center is a national child protection federal, state and local collaboration served as Contractor/Consultant and Law Enforcement Liaison 1/2009 - 2/1011

Technology Investors, Inc. 4530 Conference Way Boca Raton, Fl. 33431 Software development company designed to find predators of children on the worldwide web served as company contractor/associate for law enforcement liaison and consultation

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Served as Chief Administrator and then Sheriff of Collier County Sheriff's Office 1981-2009; held responsibility for jails and prisoner care; created juvenile offender rehabilitation facility in Collier County, judged as exemplary in study conducted by University of Maryland; created an in-jail habilitation inmate pod for educational attainment of H.S. diploma and addiction treatment.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes  No  If "Yes", list:

B.S. and M.S. (non-terminal) in Criminology, FSU/USF  
Received national and state accreditation for jail systems under my administration as Sheriff of Collier County

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes  No  If "Yes", list:

As noted in "B." above, State and National Jail/Corrections Accreditation certifications

D. Identify all association memberships and association offices held by you that relate to this appointment:

International Association of Chiefs of Police (lifetime member)  
National Sheriff's Association (member)  
Commissioner Commission on Accreditation for Law Enforcement Agencies  
Commissioner Florida Accreditation Commission (also its Chair)  
Florida Sheriff's Association (member and board of directors)

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes  No  If "Yes", list:

---

---

---

---

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19. A. Have you ever been elected or appointed to any public office in this state? Yes  No  If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

<u>Office Title</u>	<u>Date of Election or Appointment</u>	<u>Term of Office</u>	<u>Level of Government</u>
Sheriff	11/1988 - 11/2004	12/1988 - 1/2009	County
Florida Parole Commission Nomination Board	(dates in state record)		State
Chief of Police	8/2011 - 6/2014		Municipal
Intelligence Chair Florida Domestic Security Oversight Council	2007-2008		State

PLEASE SEE NEXT PAGE ATTACHED

ADDENDUM PAGE 4 ITEM 19. "... elected or appointed to any public office..."

Regional Co-Chairman Florida Domestic Security Oversight Council (approximately 2004 appointment) Term 2004 - 2008 State level of government

FBI Domestic Security Task Force Co-Chairman (approximately 2004 appointed) Term from 2004 - 2008 State and Federal level of government

Florida Criminal and Juvenile Justice Information Systems Council (approximate date of appointment 2005) term of 3 years State level of government

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: Periodic as needed (Quarterly typical)

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>
		<u>Matter of State Record Fl. Parole Comm. Nomination Board - none recalled</u>
		<u>Matter of State Record Fl. Dom. Sec. Oversight Council - none recalled</u>
		<u>Matter of State Record Fl. Criminal &amp; Juv. Just. Info. Sys. Council - none recalled</u>

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes  No  If "Yes", give details:

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes  No  If "Yes", list:

A. Title of office: \_\_\_\_\_ C. Reason for suspension: \_\_\_\_\_  
 B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated  Removed  Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes  No  If "Yes", list:

A. Title of Office: \_\_\_\_\_  
 B. Term of Appointment: \_\_\_\_\_  
 C. Confirmation results: \_\_\_\_\_

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes  No  If "Yes", explain:

\_\_\_\_\_

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes  No  If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

<u>License/Certificate Title &amp; Number</u>	<u>Original Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>
<u>City of Marco Island, Fl.</u>	<u>Chief of Police (Contractor)</u>	<u>Marco Police Dept.</u>

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

<u>Name of Business</u>	<u>Family Member's Relationship to You</u>	<u>Family Member's Relationship to Business</u>	<u>Business' Relationship to Agency</u>
Collier County Public Schools	Spouse	Employee of District	none

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes  No

A. Did you receive any compensation other than reimbursement for expenses? Yes  No

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>Agency Lobbied</u>	<u>Principal Represented</u>

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>Name</u>	<u>Mailing Address</u>	<u>Zip Code</u>	<u>Area Code/Phone Number</u>
Kevin Rambosk			
Jim Williams			
Ed Morton			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>Name</u>	<u>Mailing Address</u>	<u>Office(s) Held &amp; Term</u>	<u>Date(s) of Membership</u>
SEE NEXT PAGE			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes  No  If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes  No

ADDENDUM QUESTIONNAIRE ITEM 28. "... business, professional, occupational, civic, or fraternal organizations ..."

Florida Sheriff's Association 2617 Mahan Dr. Tallahassee, Fl. 32317 Member/Board Member since approximately 1988-present

National Sheriff's Association 1450 Duke St. Alexandria, Va. 22314 - Member 1988 - present

FBI National Academy Associates FBI National Academy Quantico, Va. 22135 - Graduate Member 1994 - present

International Association of Chiefs of Police 44 Canal Center Plaza, Suite 200 Alexandria, Va. 22314 Member (Lifetime) 1994 (approximately) - present

American Society of Industrial Security 1625 Prince St. Alexandria, Va. 22314 Member 2010 - present

Association of Former Intelligence Officers 7700 Leesburg Pike suite 324 Falls Church, Va. Member/Associate approximately 2005 - present

## MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

- Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) Applicant is retired law enforcement

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0150

CERTIFICATION

STATE OF FLORIDA  
COUNTY OF COLLER

Before me, the undersigned Notary Public of Florida, personally appeared

Don Hunter

who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

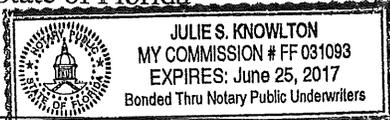
[Handwritten Signature]

Signature of Applicant-Affiant

Sworn to and subscribed before me this 2<sup>nd</sup> day of July, 2015.

[Handwritten Signature]

Signature of Notary Public-State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 6/25/17

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

(seal)

# CourtSmart Tag Report

Room: LL 37  
Caption: 066Senate Criminal Justice Committee

Case No.:

Type:  
Judge:

Started: 2/8/2016 4:06:19 PM  
Ends: 2/8/2016 5:59:46 PM Length: 01:53:28

4:06:47 PM Meeting called to order - Roll call  
4:08:53 PM Tab 11 SPB 7006 by Criminal Justice - Corrections  
4:09:01 PM Tracey Sumner explains the bill.  
4:10:23 PM Senator Bradley asks a question - 85% of sentence.  
4:11:02 PM Senator Evers responds to question.  
4:12:14 PM Senator Gibson explains Amendment Barcode 976882.  
4:14:14 PM Amendment adopted  
4:14:42 PM Amendment Barcode 328176, Senator Brandes  
4:14:51 PM Amendments 976882 and 328176 withdrawn  
4:15:09 PM Senator Gibson explains Amendment Barcode 570664  
4:15:58 PM Amendment Barcode 570664 withdrawn  
4:17:30 PM Roll call for SPB 7006  
4:18:18 PM Tab 12 SPB 7066 by Criminal Justice - Criminal Justice  
4:18:31 PM Mike Erickson explains the bill.  
4:21:03 PM Senator Clemens asks question to Mike.  
4:21:27 PM Mike responds to question.  
4:23:22 PM Senator Brandes asks question about violence.  
4:23:36 PM Mike responds to question.  
4:25:14 PM Senator Evers makes a statement about this bill.  
4:26:04 PM Matt Dunagan, Deputy Director, Florida Sheriffs Association  
4:28:20 PM Senator Gibson asks Matt Dunagan a question  
4:28:38 PM Mr. Dunagan responds  
4:30:09 PM Senator Clemens asked if there is anything in the bill that Mr. Dunagan liked.  
4:30:35 PM Mr. Dunagan responds.  
4:33:00 PM Senator Gibson asks about incarcerating someone over a certain period of time.  
4:33:34 PM Mr. Dunagan responds.  
4:40:25 PM Ed Brodsky, State Attorneys of Florida  
4:42:35 PM Senator Gibson asks Mr. Brodsky a question.  
4:42:51 PM Mr. Brodsky responds  
4:47:24 PM Senator Evers speaks on having mental health for incarcerated persons.  
4:52:02 PM Senator Clemens asks about a non-violent offender sentencing.  
4:52:37 PM Mr. Brodsky responds  
4:54:16 PM Senator Brandes speaks on the 85% rule.  
4:56:56 PM Senator Clemens makes comments on non-violent offenders.  
4:57:38 PM Senator Gibson makes comments on SB 7066.. non-violent offenders  
4:59:51 PM Senator Evers comments about raises for law enforcement and safety.  
5:02:53 PM Roll call for SPB 7066  
5:03:23 PM Tab 13 SPB 7068 by Criminal Justice - Sentencing for Capital Felonies  
5:03:30 PM Connie Cellon explains SPB 7068.  
5:06:50 PM Amendment Barcode 936370, Senator Brandes  
5:06:57 PM Senator Brandes explains the amendment.  
5:09:01 PM Amendment 936370 adopted.  
5:09:25 PM Rex Dimmig, Public Defender, 19th Circuit, Florida Public Defender Assn Inc.  
5:12:21 PM Mark Schlakman, FSU Center for the Advancement of Human Rights  
5:21:24 PM Senator Evers makes comments on SPB 7068  
5:25:04 PM Brad King, State Attorney, 5th Circuit, Florida Prosecuting Attorneys  
5:46:52 PM Senator Bradley asks several questions about sentencing.  
5:54:18 PM Juan Melendez, self, Albuquerque, NM  
5:58:34 PM Roll call for SPB 7068  
5:58:55 PM Meeting adjourned