

By Senator Crist

20-1146-98

See HB 3333

1 A bill to be entitled
2 An act relating to stalking offenses; amending
3 s. 784.048, F.S.; providing for court
4 revocation for a specified period of the
5 driver's license of a person who has used a
6 motor vehicle in the course of committing
7 stalking or aggravated stalking; providing for
8 forfeiture as contraband of such motor vehicle;
9 providing for booting or immobilization of the
10 vehicle for a specified period; providing for
11 forfeiture of personal property used in the
12 course of committing the stalking or aggravated
13 stalking; amending s. 932.701, F.S., relating
14 to definitions with respect to the Florida
15 Contraband Forfeiture Act; redefining the term
16 "contraband article," to conform to changes
17 made by the act; reenacting s. 932.703, F.S.,
18 relating to forfeiture of contraband articles,
19 to incorporate the amendment to s. 932.701,
20 F.S., in references; providing an effective
21 date.

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

25 Section 1. Section 784.048, Florida Statutes, is
26 amended to read:

27 784.048 Stalking; definitions; penalties.--

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

29 (a) "Harass" means to engage in a course of conduct
30 directed at a specific person that causes substantial

31

1 emotional distress in such person and serves no legitimate
2 purpose.

3 (b) "Course of conduct" means a pattern of conduct
4 composed of a series of acts over a period of time, however
5 short, evidencing a continuity of purpose. Constitutionally
6 protected activity is not included within the meaning of
7 "course of conduct." Such constitutionally protected activity
8 includes picketing or other organized protests.

9 (c) "Credible threat" means a threat made with the
10 intent to cause the person who is the target of the threat to
11 reasonably fear for his or her safety. The threat must be
12 against the life of, or a threat to cause bodily injury to, a
13 person.

14 (2) Any person who willfully, maliciously, and
15 repeatedly follows or harasses another person commits the
16 offense of stalking, a misdemeanor of the first degree,
17 punishable as provided in s. 775.082 or s. 775.083.

18 (3) Any person who willfully, maliciously, and
19 repeatedly follows or harasses another person, and makes a
20 credible threat with the intent to place that person in
21 reasonable fear of death or bodily injury, commits the offense
22 of aggravated stalking, a felony of the third degree,
23 punishable as provided in s. 775.082, s. 775.083, or s.
24 775.084.

25 (4) Any person who, after an injunction for protection
26 against repeat violence pursuant to s. 784.046, or an
27 injunction for protection against domestic violence pursuant
28 to s. 741.30, or after any other court-imposed prohibition of
29 conduct toward the subject person or that person's property,
30 knowingly, willfully, maliciously, and repeatedly follows or
31 harasses another person commits the offense of aggravated

1 stalking, a felony of the third degree, punishable as provided
2 in s. 775.082, s. 775.083, or s. 775.084.

3 (5) Any person who willfully, maliciously, and
4 repeatedly follows or harasses a minor under 16 years of age
5 commits the offense of aggravated stalking, a felony of the
6 third degree, punishable as provided in s. 775.082, s.
7 775.083, or s. 775.084.

8 (6) If during the course of committing an offense in
9 violation of this section a person is found by the court or a
10 jury to have used a motor vehicle, the court shall revoke the
11 offender's driver's license for 1 year. Upon a finding by the
12 court that the defendant committed an offense in violation of
13 this section and used any personal property, including, but
14 not limited to, any vessel, aircraft, item, object, tool,
15 substance, device, weapon, machine, vehicle of any kind,
16 money, securities, books, records, research, negotiable
17 instruments, or currency, during the course of the violation,
18 such property may be forfeited pursuant to ss.
19 932.701-932.707. In lieu of forfeiture, the court may order
20 that the motor vehicle be booted or immobilized for a 30-day
21 period.

22 ~~(7)(6)~~ Any law enforcement officer may arrest, without
23 a warrant, any person he or she has probable cause to believe
24 has violated the provisions of this section.

25 Section 2. Paragraph (a) of subsection (2) of section
26 932.701, Florida Statutes, is amended to read:

27 932.701 Short title; definitions.--

28 (2) As used in the Florida Contraband Forfeiture Act:

29 (a) "Contraband article" means:

30 1. Any controlled substance as defined in chapter 893
31 or any substance, device, paraphernalia, or currency or other

1 means of exchange that was used, was attempted to be used, or
2 was intended to be used in violation of any provision of
3 chapter 893, if the totality of the facts presented by the
4 state is clearly sufficient to meet the state's burden of
5 establishing probable cause to believe that a nexus exists
6 between the article seized and the narcotics activity, whether
7 or not the use of the contraband article can be traced to a
8 specific narcotics transaction.

9 2. Any gambling paraphernalia, lottery tickets, money,
10 currency, or other means of exchange which was used, was
11 attempted, or intended to be used in violation of the gambling
12 laws of the state.

13 3. Any equipment, liquid or solid, which was being
14 used, is being used, was attempted to be used, or intended to
15 be used in violation of the beverage or tobacco laws of the
16 state.

17 4. Any motor fuel upon which the motor fuel tax has
18 not been paid as required by law.

19 5. Any personal property, including, but not limited
20 to, any vessel, aircraft, item, object, tool, substance,
21 device, weapon, machine, vehicle of any kind, money,
22 securities, books, records, research, negotiable instruments,
23 or currency, which was used or was attempted to be used as an
24 instrumentality in the commission of, or in aiding or abetting
25 in the commission of, any felony, whether or not comprising an
26 element of the felony, or which is acquired by proceeds
27 obtained as a result of a violation of the Florida Contraband
28 Forfeiture Act.

29 6. Any real property, including any right, title,
30 leasehold, or other interest in the whole of any lot or tract
31 of land, which was used, is being used, or was attempted to be

1 used as an instrumentality in the commission of, or in aiding
2 or abetting in the commission of, any felony, or which is
3 acquired by proceeds obtained as a result of a violation of
4 the Florida Contraband Forfeiture Act.

5 7. Any personal property, including, but not limited
6 to, equipment, money, securities, books, records, research,
7 negotiable instruments, currency, or any vessel, aircraft,
8 item, object, tool, substance, device, weapon, machine, or
9 vehicle of any kind in the possession of or belonging to any
10 person who takes aquaculture products in violation of s.
11 812.014(2)(c).

12 8. Any personal property, including, but not limited
13 to, any vessel, aircraft, item, object, tool, substance,
14 device, weapon, machine, vehicle of any kind, money,
15 securities, books, records, research, negotiable instruments,
16 or currency, used during the course of committing an offense
17 in violation of s. 784.048.

18 Section 3. For the purpose of incorporating the
19 amendment to s. 932.701, Florida Statutes, in references
20 thereto, section 932.703, Florida Statutes, is reenacted to
21 read:

22 932.703 Forfeiture of contraband article;
23 exceptions.--

24 (1)(a) Any contraband article, vessel, motor vehicle,
25 aircraft, other personal property, or real property used in
26 violation of any provision of the Florida Contraband
27 Forfeiture Act, or in, upon, or by means of which any
28 violation of the Florida Contraband Forfeiture Act has taken
29 or is taking place, may be seized and shall be forfeited
30 subject to the provisions of the Florida Contraband Forfeiture
31 Act.

1 (b) Notwithstanding any other provision of the Florida
2 Contraband Forfeiture Act, except the provisions of paragraph
3 (a), contraband articles set forth in s. 932.701(2)(a)7. used
4 in violation of any provision of the Florida Contraband
5 Forfeiture Act, or in, upon, or by means of which any
6 violation of the Florida Contraband Forfeiture Act has taken
7 or is taking place, shall be seized and shall be forfeited
8 subject to the provisions of the Florida Contraband Forfeiture
9 Act.

10 (c) All rights to, interest in, and title to
11 contraband articles used in violation of s. 932.702 shall
12 immediately vest in the seizing law enforcement agency upon
13 seizure.

14 (d) The seizing agency may not use the seized property
15 for any purpose until the rights to, interest in, and title to
16 the seized property are perfected in accordance with the
17 Florida Contraband Forfeiture Act. This section does not
18 prohibit use or operation necessary for reasonable maintenance
19 of seized property. Reasonable efforts shall be made to
20 maintain seized property in such a manner as to minimize loss
21 of value.

22 (2)(a) Personal property may be seized at the time of
23 the violation or subsequent to the violation, if the person
24 entitled to notice is notified at the time of the seizure or
25 by certified mail, return receipt requested, that there is a
26 right to an adversarial preliminary hearing after the seizure
27 to determine whether probable cause exists to believe that
28 such property has been or is being used in violation of the
29 Florida Contraband Forfeiture Act. Seizing agencies shall make
30 a diligent effort to notify the person entitled to notice of
31 the seizure. Notice provided by certified mail must be mailed

1 within 5 working days after the seizure and must state that a
2 person entitled to notice may request an adversarial
3 preliminary hearing within 15 days after receiving such
4 notice. When a postseizure, adversarial preliminary hearing
5 as provided in this section is desired, a request must be made
6 in writing by certified mail, return receipt requested, to the
7 seizing agency. The seizing agency shall set and notice the
8 hearing, which must be held within 10 days after the request
9 is received or as soon as practicable thereafter.

10 (b) Real property may not be seized or restrained,
11 other than by lis pendens, subsequent to a violation of the
12 Florida Contraband Forfeiture Act until the persons entitled
13 to notice are afforded the opportunity to attend the
14 pre seizure adversarial preliminary hearing. A lis pendens may
15 be obtained by any method authorized by law. Notice of the
16 adversarial preliminary hearing shall be by certified mail,
17 return receipt requested. The purpose of the adversarial
18 preliminary hearing is to determine whether probable cause
19 exists to believe that such property has been used in
20 violation of the Florida Contraband Forfeiture Act. The
21 seizing agency shall make a diligent effort to notify any
22 person entitled to notice of the seizure. The pre seizure
23 adversarial preliminary hearing provided herein shall be held
24 within 10 days of the filing of the lis pendens or as soon as
25 practicable.

26 (c) When an adversarial preliminary hearing is held,
27 the court shall review the verified affidavit and any other
28 supporting documents and take any testimony to determine
29 whether there is probable cause to believe that the property
30 was used, is being used, was attempted to be used, or was
31 intended to be used in violation of the Florida Contraband

1 Forfeiture Act. If probable cause is established, the court
2 shall authorize the seizure or continued seizure of the
3 subject contraband. A copy of the findings of the court shall
4 be provided to any person entitled to notice.

5 (d) If the court determines that probable cause exists
6 to believe that such property was used in violation of the
7 Florida Contraband Forfeiture Act, the court shall order the
8 property restrained by the least restrictive means to protect
9 against disposal, waste, or continued illegal use of such
10 property pending disposition of the forfeiture proceeding.
11 The court may order the claimant to post a bond or other
12 adequate security equivalent to the value of the property.

13 (3) Neither replevin nor any other action to recover
14 any interest in such property shall be maintained in any
15 court, except as provided in this act; however, such action
16 may be maintained if forfeiture proceedings are not initiated
17 within 45 days after the date of seizure. However, if good
18 cause is shown, the court may extend the aforementioned
19 prohibition to 60 days.

20 (4) In any incident in which possession of any
21 contraband article defined in s. 932.701(2)(a) constitutes a
22 felony, the vessel, motor vehicle, aircraft, other personal
23 property, or real property in or on which such contraband
24 article is located at the time of seizure shall be contraband
25 subject to forfeiture. It shall be presumed in the manner
26 provided in s. 90.302(2) that the vessel, motor vehicle,
27 aircraft, other personal property, or real property in which
28 or on which such contraband article is located at the time of
29 seizure is being used or was attempted or intended to be used
30 in a manner to facilitate the transportation, carriage,
31 conveyance, concealment, receipt, possession, purchase, sale,

1 barter, exchange, or giving away of a contraband article
2 defined in s. 932.701(2).

3 (5) The court shall order the forfeiture of any other
4 property of a claimant, excluding lienholders, up to the value
5 of any property subject to forfeiture under this section if
6 any of the property described in this section:

7 (a) Cannot be located;

8 (b) Has been transferred to, sold to, or deposited
9 with, a third party;

10 (c) Has been placed beyond the jurisdiction of the
11 court;

12 (d) Has been substantially diminished in value by any
13 act or omission of the person in possession of the property;
14 or

15 (e) Has been commingled with any property which cannot
16 be divided without difficulty.

17 (6)(a) Property may not be forfeited under the Florida
18 Contraband Forfeiture Act unless the seizing agency
19 establishes by a preponderance of the evidence that the owner
20 either knew, or should have known after a reasonable inquiry,
21 that the property was being employed or was likely to be
22 employed in criminal activity.

23 (b) A bona fide lienholder's interest that has been
24 perfected in the manner prescribed by law prior to the seizure
25 may not be forfeited under the Florida Contraband Forfeiture
26 Act unless the seizing agency establishes by a preponderance
27 of the evidence that the lienholder had actual knowledge, at
28 the time the lien was made, that the property was being
29 employed or was likely to be employed in criminal activity.
30 If a lienholder's interest is not subject to forfeiture under
31 the requirements of this section, such interest shall be

1 preserved by the court by ordering the lienholder's interest
2 to be paid as provided in s. 932.7055.

3 (c) Property titled or registered between husband and
4 wife jointly by the use of the conjunctives "and," "and/or,"
5 or "or," in the manner prescribed by law prior to the seizure,
6 may not be forfeited under the Florida Contraband Forfeiture
7 Act unless the seizing agency establishes by a preponderance
8 of the evidence that the coowner either knew or had reason to
9 know, after reasonable inquiry, that such property was
10 employed or was likely to be employed in criminal activity.

11 (d) A vehicle that is rented or leased from a company
12 engaged in the business of renting or leasing vehicles, which
13 vehicle was rented or leased in the manner prescribed by law
14 prior to the seizure, may not be forfeited under the Florida
15 Contraband Forfeiture Act unless the seizing agency
16 establishes by preponderance of the evidence that the renter
17 or lessor had actual knowledge, at the time the vehicle was
18 rented or leased, that the vehicle was being employed or was
19 likely to be employed in criminal activity. When a vehicle
20 that is rented or leased from a company engaged in the
21 business of renting or leasing vehicles is seized under the
22 Florida Contraband Forfeiture Act, upon learning the address
23 or phone number of the company, the seizing law enforcement
24 agency shall, as soon as practicable, inform the company that
25 the vehicle has been seized and is available for the company
26 to take possession.

27 (7) Any interest in, title to, or right to property
28 titled or registered jointly by the use of the conjunctives
29 "and," "and/or," or "or" held by a coowner, other than
30 property held jointly between husband and wife, may not be
31 forfeited unless the seizing agency establishes by a

1 preponderance of the evidence that the coowner either knew, or
2 had reason to know, after reasonable inquiry, that the
3 property was employed or was likely to be employed in criminal
4 activity. When the interests of each culpable coowner are
5 forfeited, any remaining coowners shall be afforded the
6 opportunity to purchase the forfeited interest in, title to,
7 or right to the property from the seizing law enforcement
8 agency. If any remaining coowner does not purchase such
9 interest, the seizing agency may hold the property in
10 coownership, sell its interest in the property, liquidate its
11 interest in the property, or dispose of its interest in the
12 property in any other reasonable manner.

13 (8) It is an affirmative defense to a forfeiture
14 proceeding that the nexus between the property sought to be
15 forfeited and the commission of any underlying violation was
16 incidental or entirely accidental. The value of the property
17 sought to be forfeited in proportion to any other factors must
18 not be considered in any determination as to this affirmative
19 defense.

20 Section 4. This act shall take effect October 1 of the
21 year in which enacted.

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24 HOUSE SUMMARY

25
26 Provides for court revocation for a specified period of
27 the driver's license of a person who has used a motor
28 vehicle in the course of committing stalking or
29 aggravated stalking. Provides for forfeiture as
30 contraband of such motor vehicle. Provides for booting or
31 immobilization of the vehicle for a specified period.
Provides for forfeiture of personal property used in the
course of the violation. Redefines the term "contraband
article" with respect to the Florida Contraband
Forfeiture Act to conform to changes made by the act.