

By Representative Crow

1 A bill to be entitled
2 An act relating to criminal offenses involving
3 health care practitioners or controlled
4 substances; creating s. 456.075, F.S.;
5 authorizing a representative of the Department
6 of Health to appear in a criminal proceeding
7 against a health care professional to furnish
8 information, make recommendations, or provide
9 other assistance; providing that the court may
10 order the representative to appear in a
11 criminal proceeding that relates to the
12 qualifications, functions, or duties of a
13 health care professional; amending s. 893.13,
14 F.S.; increasing the penalty imposed for
15 withholding information from a practitioner
16 concerning a controlled substance; prohibiting
17 a practitioner from prescribing a controlled
18 substance that is excessive or inappropriate,
19 knowingly assisting a person in obtaining a
20 controlled substance through fraud or scheme,
21 knowingly prescribing a controlled substance
22 for a fictitious person, or prescribing a
23 controlled substance for purposes of monetary
24 benefit; providing penalties; amending s.
25 921.0022, F.S., relating to the offense
26 severity ranking chart of the Criminal
27 Punishment Code; conforming provisions to
28 changes made by the act; amending s. 921.187,
29 F.S.; correcting cross references; providing an
30 effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Section 456.075, Florida Statutes, is
4 created to read:

5 456.075 In any criminal proceeding against a person
6 licensed by the department to practice a health care
7 profession in this state, a representative of the department
8 may voluntarily appear and furnish pertinent information, make
9 recommendations regarding specific conditions of probation, or
10 provide any other assistance necessary to promote justice or
11 protect the public. The court may order a representative of
12 the department to appear in any criminal proceeding if the
13 crime charged is substantially related to the qualifications,
14 functions, or duties of a health care professional licensed by
15 the department.

16 Section 2. Subsection (7) of section 893.13, Florida
17 Statutes, is amended, present subsections (8), (9), and (10)
18 of said section are amended and renumbered as subsections (9),
19 (10), and (11), respectively, and a new subsection (8) is
20 added to said section, to read:

21 893.13 Prohibited acts; penalties.--

22 (7)(a) It is unlawful for any person:

23 1. To distribute or dispense a controlled substance in
24 violation of this chapter.

25 2. To refuse or fail to make, keep, or furnish any
26 record, notification, order form, statement, invoice, or
27 information required under this chapter.

28 3. To refuse an entry into any premises for any
29 inspection or to refuse to allow any inspection authorized by
30 this chapter.

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1 4. To distribute a controlled substance named or
2 described in s. 893.03(1) or (2) except pursuant to an order
3 form as required by s. 893.06.

4 5. To keep or maintain any store, shop, warehouse,
5 dwelling, building, vehicle, boat, aircraft, or other
6 structure or place which is resorted to by persons using
7 controlled substances in violation of this chapter for the
8 purpose of using these substances, or which is used for
9 keeping or selling them in violation of this chapter.

10 6. To use to his or her own personal advantage, or to
11 reveal, any information obtained in enforcement of this
12 chapter except in a prosecution or administrative hearing for
13 a violation of this chapter.

14 ~~7. To withhold information from a practitioner from
15 whom the person seeks to obtain a controlled substance or a
16 prescription for a controlled substance that the person has
17 received a controlled substance or a prescription for a
18 controlled substance of like therapeutic use from another
19 practitioner within the last 30 days.~~

20 ~~7.8.~~ To possess a prescription form which has not been
21 completed and signed by the practitioner whose name appears
22 printed thereon, unless the person is that practitioner, is an
23 agent or employee of that practitioner, is a pharmacist, or is
24 a supplier of prescription forms who is authorized by that
25 practitioner to possess those forms.

26 8. To withhold information from a practitioner from
27 whom the person seeks to obtain a controlled substance or a
28 prescription for a controlled substance that the person making
29 the request has received a controlled substance or a
30 prescription for a controlled substance of like therapeutic
31 use from another practitioner within the previous 30 days.

1 9. To acquire or obtain, or attempt to acquire or
2 obtain, possession of a controlled substance by
3 misrepresentation, fraud, forgery, deception, or subterfuge.

4 10. To affix any false or forged label to a package or
5 receptacle containing a controlled substance.

6 11. To furnish false or fraudulent material
7 information in, or omit any material information from, any
8 report or other document required to be kept or filed under
9 this chapter or any record required to be kept by this
10 chapter.

11 (b) Any person who violates the provisions of
12 subparagraphs (a)1.-7. ~~(a)1.-8.~~ commits a misdemeanor of the
13 first degree, punishable as provided in s. 775.082 or s.
14 775.083; except that, upon a second or subsequent violation,
15 the person commits a felony of the third degree, punishable as
16 provided in s. 775.082, s. 775.083, or s. 775.084.

17 (c) Any person who violates the provisions of
18 subparagraphs (a)8.-11. ~~(a)9.-11.~~ commits a felony of the
19 third degree, punishable as provided in s. 775.082, s.
20 775.083, or s. 775.084.

21 (8)(a) Notwithstanding subsection (9), a prescribing
22 practitioner may not:

23 1. Write a prescription or multiple prescriptions for
24 a controlled substance for a patient or other person for whom,
25 or an animal for which, the prescribing practitioner knew, or
26 should have known, was excessive or inappropriate to treat the
27 patient, other person, or animal because of the quantity or
28 quantities prescribed or the number of prescriptions written;

29 2. Knowingly assist a patient, other person, or the
30 owner of an animal in obtaining a controlled substance through
31 deceptive, untrue, or fraudulent representations in or related

1 to the practice of the prescribing practitioner's professional
2 practice;

3 3. Employ a trick or scheme in the practice of the
4 prescribing practitioner's professional practice to assist a
5 patient, other person, or the owner of an animal in obtaining
6 a controlled substance;

7 4. Knowingly write a prescription for a controlled
8 substance for a fictitious person; or

9 5. Write a prescription for a controlled substance for
10 a patient, other person, or an animal if the sole purpose of
11 writing such prescription is to provide a monetary benefit to,
12 or obtain a monetary benefit for, the prescribing
13 practitioner.

14 (b) A person who violates paragraph (a) commits a
15 felony of the third degree, punishable as provided in s.
16 775.082, s. 775.083, or s. 775.084.

17 (c) Notwithstanding paragraph (b), if a prescribing
18 practitioner has violated paragraph (a) and received \$1,000 or
19 more in payment for writing one or more prescriptions or, in
20 the case of a prescription written for a controlled substance
21 described in s. 893.135, has written one or more prescriptions
22 for a quantity of a controlled substance which, individually
23 or in the aggregate, meets the threshold for the offense of
24 trafficking in a controlled substance under s. 893.15, the
25 violation is reclassified as a felony of the second degree and
26 ranked in level 4 of the Criminal Punishment Code.

27 (9)(8) The provisions of subsections(1)-(8)(1)-(7)
28 are not applicable to the delivery to, or actual or
29 constructive possession for medical or scientific use or
30 purpose only of controlled substances by, persons included in
31 any of the following classes, or the agents or employees of

1 such persons, for use in the usual course of their business or
2 profession or in the performance of their official duties:

3 (a) Pharmacists.

4 (b) Practitioners.

5 (c) Persons who procure controlled substances in good
6 faith and in the course of professional practice only, by or
7 under the supervision of pharmacists or practitioners employed
8 by them, or for the purpose of lawful research, teaching, or
9 testing, and not for resale.

10 (d) Hospitals that procure controlled substances for
11 lawful administration by practitioners, but only for use by or
12 in the particular hospital.

13 (e) Officers or employees of state, federal, or local
14 governments acting in their official capacity only, or
15 informers acting under their jurisdiction.

16 (f) Common carriers.

17 (g) Manufacturers, wholesalers, and distributors.

18 (h) Law enforcement officers for bona fide law
19 enforcement purposes in the course of an active criminal
20 investigation.

21 (10)~~(9)~~ Notwithstanding any provision of the
22 sentencing guidelines or the Criminal Punishment Code to the
23 contrary, on or after October 1, 1993, any defendant who:

24 (a) Violates subparagraph (1)(a)1., subparagraph
25 (1)(c)2., subparagraph (1)(d)2., subparagraph (2)(a)1., or
26 paragraph (5)(a); and

27 (b) Has not previously been convicted, regardless of
28 whether adjudication was withheld, of any felony, other than a
29 violation of subparagraph (1)(a)1., subparagraph (1)(c)2.,
30 subparagraph (1)(d)2., subparagraph (2)(a)1., or paragraph
31 (5)(a),

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2 may be required by the court to successfully complete a term
3 of probation pursuant to the terms and conditions set forth in
4 s. 948.034(1), in lieu of serving a term of imprisonment.

5 (11)~~(10)~~ Notwithstanding any provision of the
6 sentencing guidelines or the Criminal Punishment Code to the
7 contrary, on or after January 1, 1994, any defendant who:

8 (a) Violates subparagraph (1)(a)2., subparagraph
9 (2)(a)2., paragraph (5)(b), or paragraph (6)(a); and

10 (b) Has not previously been convicted, regardless of
11 whether adjudication was withheld, of any felony, other than a
12 violation of subparagraph (1)(a)2., subparagraph (2)(a)2.,
13 paragraph (5)(b), or paragraph (6)(a),
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15 may be required by the court to successfully complete a term
16 of probation pursuant to the terms and conditions set forth in
17 s. 948.034(2), in lieu of serving a term of imprisonment.

18 Section 3. Paragraphs (a) and (c) of subsection (3) of
19 section 921.0022, Florida Statutes, are amended to read:

20 921.0022 Criminal Punishment Code; offense severity
21 ranking chart.--

22 (3) OFFENSE SEVERITY RANKING CHART

23
24 Florida Felony
25 Statute Degree Description
26
27 (a) LEVEL 1
28 24.118(3)(a) 3rd Counterfeit or altered state
29 lottery ticket.
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1	212.054(2)(b)	3rd	Discretionary sales surtax;
2			limitations, administration, and
3			collection.
4	212.15(2)(b)	3rd	Failure to remit sales taxes,
5			amount greater than \$300 but less
6			than \$20,000.
7	319.30(5)	3rd	Sell, exchange, give away
8			certificate of title or
9			identification number plate.
10	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an
11			odometer.
12	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell
13			registration license plates or
14			validation stickers.
15	322.212(1)	3rd	Possession of forged, stolen,
16			counterfeit, or unlawfully issued
17			driver's license; possession of
18			simulated identification.
19	322.212(4)	3rd	Supply or aid in supplying
20			unauthorized driver's license or
21			identification card.
22	322.212(5)(a)	3rd	False application for driver's
23			license or identification card.
24	370.13(3)(a)	3rd	Molest any stone crab trap, line,
25			or buoy which is property of
26			licenseholder.
27	370.135(1)	3rd	Molest any blue crab trap, line,
28			or buoy which is property of
29			licenseholder.
30	372.663(1)	3rd	Poach any alligator or
31			crocodilia.

1	414.39(2)	3rd	Unauthorized use, possession,
2			forgery, or alteration of food
3			stamps, Medicaid ID, value
4			greater than \$200.
5	414.39(3)(a)	3rd	Fraudulent misappropriation of
6			public assistance funds by
7			employee/official, value more
8			than \$200.
9	443.071(1)	3rd	False statement or representation
10			to obtain or increase
11			unemployment compensation
12			benefits.
13	509.151(1)	3rd	Defraud an innkeeper, food or
14			lodging value greater than \$300.
15	517.302(1)	3rd	Violation of the Florida
16			Securities and Investor
17			Protection Act.
18	562.27(1)	3rd	Possess still or still apparatus.
19	713.69	3rd	Tenant removes property upon
20			which lien has accrued, value
21			more than \$50.
22	812.014(3)(c)	3rd	Petit theft (3rd conviction);
23			theft of any property not
24			specified in subsection (2).
25	812.081(2)	3rd	Unlawfully makes or causes to be
26			made a reproduction of a trade
27			secret.
28	815.04(4)(a)	3rd	Offense against intellectual
29			property (i.e., computer
30			programs, data).
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1	817.52(2)	3rd	Hiring with intent to defraud,
2			motor vehicle services.
3	826.01	3rd	Bigamy.
4	828.122(3)	3rd	Fighting or baiting animals.
5	831.04(1)	3rd	Any erasure, alteration, etc., of
6			any replacement deed, map, plat,
7			or other document listed in s.
8			92.28.
9	831.31(1)(a)	3rd	Sell, deliver, or possess
10			counterfeit controlled
11			substances, all but s. 893.03(5)
12			drugs.
13	832.041(1)	3rd	Stopping payment with intent to
14			defraud \$150 or more.
15	832.05		
16	(2)(b)&(4)(c)	3rd	Knowing, making, issuing
17			worthless checks \$150 or more or
18			obtaining property in return for
19			worthless check \$150 or more.
20	838.015(3)	3rd	Bribery.
21	838.016(1)	3rd	Public servant receiving unlawful
22			compensation.
23	838.15(2)	3rd	Commercial bribe receiving.
24	838.16	3rd	Commercial bribery.
25	843.18	3rd	Fleeing by boat to elude a law
26			enforcement officer.
27	847.011(1)(a)	3rd	Sell, distribute, etc., obscene,
28			lewd, etc., material (2nd
29			conviction).
30	849.01	3rd	Keeping gambling house.
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1	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc.,
2			or assist therein, conduct or
3			advertise drawing for prizes, or
4			dispose of property or money by
5			means of lottery.
6	849.23	3rd	Gambling-related machines;
7			"common offender" as to property
8			rights.
9	849.25(2)	3rd	Engaging in bookmaking.
10	860.08	3rd	Interfere with a railroad signal.
11	860.13(1)(a)	3rd	Operate aircraft while under the
12			influence.
13	893.13(2)(a)2.	3rd	Purchase of cannabis.
14	893.13(6)(a)	3rd	Possession of cannabis (more than
15			20 grams).
16	893.13(7)(a)10.	3rd	Affix false or forged label to
17			package of controlled substance.
18	934.03(1)(a)	3rd	Intercepts, or procures any other
19			person to intercept, any wire or
20			oral communication.
21			(c) LEVEL 3
22	316.1935(2)	3rd	Fleeing or attempting to elude
23			law enforcement officer in marked
24			patrol vehicle with siren and
25			lights activated.
26	319.30(4)	3rd	Possession by junkyard of motor
27			vehicle with identification
28			number plate removed.
29	319.33(1)(a)	3rd	Alter or forge any certificate of
30			title to a motor vehicle or
31			mobile home.

1	319.33(1)(c)	3rd	Procure or pass title on stolen
2			vehicle.
3	319.33(4)	3rd	With intent to defraud, possess,
4			sell, etc., a blank, forged, or
5			unlawfully obtained title or
6			registration.
7	328.05(2)	3rd	Possess, sell, or counterfeit
8			fictitious, stolen, or fraudulent
9			titles or bills of sale of
10			vessels.
11	328.07(4)	3rd	Manufacture, exchange, or possess
12			vessel with counterfeit or wrong
13			ID number.
14	376.302(5)	3rd	Fraud related to reimbursement
15			for cleanup expenses under the
16			Inland Protection Trust Fund.
17	501.001(2)(b)	2nd	Tampers with a consumer product
18			or the container using materially
19			false/misleading information.
20	697.08	3rd	Equity skimming.
21	790.15(3)	3rd	Person directs another to
22			discharge firearm from a vehicle.
23	796.05(1)	3rd	Live on earnings of a prostitute.
24	806.10(1)	3rd	Maliciously injure, destroy, or
25			interfere with vehicles or
26			equipment used in firefighting.
27	806.10(2)	3rd	Interferes with or assaults
28			firefighter in performance of
29			duty.
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1	810.09(2)(c)	3rd	Trespass on property other than
2			structure or conveyance armed
3			with firearm or dangerous weapon.
4	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but
5			less than \$10,000.
6	815.04(4)(b)	2nd	Computer offense devised to
7			defraud or obtain property.
8	817.034(4)(a)3.	3rd	Engages in scheme to defraud
9			(Florida Communications Fraud
10			Act), property valued at less
11			than \$20,000.
12	817.233	3rd	Burning to defraud insurer.
13	817.234(8)&(9)	3rd	Unlawful solicitation of persons
14			involved in motor vehicle
15			accidents.
16	817.234(11)(a)	3rd	Insurance fraud; property value
17			less than \$20,000.
18	817.505(4)	3rd	Patient brokering.
19	828.12(2)	3rd	Tortures any animal with intent
20			to inflict intense pain, serious
21			physical injury, or death.
22	831.28(2)(a)	3rd	Counterfeiting a payment
23			instrument with intent to defraud
24			or possessing a counterfeit
25			payment instrument.
26	831.29	2nd	Possession of instruments for
27			counterfeiting drivers' licenses
28			or identification cards.
29	838.021(3)(b)	3rd	Threatens unlawful harm to public
30			servant.
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1	843.19	3rd	Injure, disable, or kill police
2			dog or horse.
3	870.01(2)	3rd	Riot; inciting or encouraging.
4	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver
5			cannabis (or other s.
6			893.03(1)(c), (2)(c)1., (2)(c)2.,
7			(2)(c)3., (2)(c)5., (2)(c)6.,
8			(2)(c)7., (2)(c)8., (2)(c)9.,
9			(3), or (4) drugs).
10	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s.
11			893.03(1)(c), (2)(c)1., (2)(c)2.,
12			(2)(c)3., (2)(c)5., (2)(c)6.,
13			(2)(c)7., (2)(c)8., (2)(c)9.,
14			(3), or (4) drugs within 200 feet
15			of university or public park.
16	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s.
17			893.03(1)(c), (2)(c)1., (2)(c)2.,
18			(2)(c)3., (2)(c)5., (2)(c)6.,
19			(2)(c)7., (2)(c)8., (2)(c)9.,
20			(3), or (4) drugs within 200 feet
21			of public housing facility.
22	893.13(6)(a)	3rd	Possession of any controlled
23			substance other than felony
24			possession of cannabis.
25	<u>893.13(7)(a)8.</u>	<u>3rd</u>	<u>Withhold information from</u>
26			<u>practitioner regarding previous</u>
27			<u>receipt of or prescription for a</u>
28			<u>controlled substance.</u>
29	893.13(7)(a)9.	3rd	Obtain or attempt to obtain
30			controlled substance by fraud,
31			forgery, misrepresentation, etc.

1	<u>893.13(7)(a)10.</u>	<u>3rd</u>	<u>Affix false or forged label to</u>
2			<u>package of controlled substance.</u>
3	893.13(7)(a)11.	3rd	Furnish false or fraudulent
4			material information on any
5			document or record required by
6			chapter 893.
7	<u>893.13(8)(a)1.</u>	<u>3rd</u>	<u>Write a prescription for a</u>
8			<u>controlled substance for a</u>
9			<u>patient or other person for whom,</u>
10			<u>or an animal for which, the</u>
11			<u>practitioner knew or should have</u>
12			<u>known was excessive or</u>
13			<u>inappropriate to treat the</u>
14			<u>patient, other person, or animal.</u>
15	<u>893.13(8)(a)2.</u>	<u>3rd</u>	<u>Knowingly assist a patient, other</u>
16			<u>person, or owner of an animal in</u>
17			<u>obtaining a controlled substance</u>
18			<u>through deceptive, untrue, or</u>
19			<u>fraudulent representations in or</u>
20			<u>related to the practitioner's</u>
21			<u>practice.</u>
22	<u>893.13(8)(a)3.</u>	<u>3rd</u>	<u>Employ a trick or scheme in the</u>
23			<u>practitioner's practice to assist</u>
24			<u>a patient, other person, or owner</u>
25			<u>of an animal in obtaining a</u>
26			<u>controlled substance.</u>
27	<u>893.13(8)(a)4.</u>	<u>3rd</u>	<u>Knowingly write a prescription</u>
28			<u>for a controlled substance for a</u>
29			<u>fictitious person.</u>
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1	<u>893.13(8)(a)5.</u>	<u>3rd</u>	<u>Write a prescription for a</u>
2			<u>controlled substance for a</u>
3			<u>patient, other person, or an</u>
4			<u>animal if the sole purpose of</u>
5			<u>writing the prescription is a</u>
6			<u>monetary benefit for the</u>
7			<u>practitioner.</u>
8	918.13(1)(a)	3rd	Alter, destroy, or conceal
9			investigation evidence.
10	944.47		
11	(1)(a)1.-2.	3rd	Introduce contraband to
12			correctional facility.
13	944.47(1)(c)	2nd	Possess contraband while upon the
14			grounds of a correctional
15			institution.
16	985.3141	3rd	Escapes from a juvenile facility
17			(secure detention or residential
18			commitment facility).
19	Section 4. Paragraph (b) of subsection (1) of section		
20	921.187, Florida Statutes, is amended to read:		
21	921.187 Disposition and sentencing; alternatives;		
22	restitution.--		
23	(1) The alternatives provided in this section for the		
24	disposition of criminal cases shall be used in a manner that		
25	will best serve the needs of society, punish criminal		
26	offenders, and provide the opportunity for rehabilitation.		
27	(b)1. Notwithstanding any provision of former s.		
28	921.001 or s. 921.002 to the contrary, on or after October 1,		
29	1993, the court may require any defendant who violates s.		
30	893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), and		
31	meets the criteria described in s. 893.13(10)(9), to		

1 successfully complete a term of probation pursuant to the
2 terms and conditions set forth in s. 948.034(1), in lieu of
3 serving a term of imprisonment.

4 2. Notwithstanding any provision of former s. 921.001
5 or s. 921.002 to the contrary, on or after October 1, 1993,
6 the court may require any defendant who violates s.
7 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), and meets the
8 criteria described in s. 893.13(11)(~~10~~), to successfully
9 complete a term of probation pursuant to the terms and
10 conditions set forth in s. 948.034(2), in lieu of serving a
11 term of imprisonment.

12 Section 5. This act shall take effect July 1, 2002.

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15 LEGISLATIVE SUMMARY

16 Provides that a representative of the Department of
17 Health may appear in a criminal proceeding against a
18 health care professional licensed by the department in
19 order to furnish information, make recommendations, or
20 provide assistance. Authorizes the court to require that
21 a representative of the department appear if the criminal
22 proceeding relates to the qualifications, functions, or
23 duties of the health care professional. Increases the
24 penalty imposed for withholding information from a
25 practitioner concerning a controlled substance from a
26 first-degree misdemeanor to a third-degree felony.
27 Provides that it is a third-degree felony for a health
28 care practitioner to prescribe a controlled substance
29 that is excessive or inappropriate, assist a person in
30 obtaining a controlled substance through fraud or scheme,
31 prescribe a controlled substance for a fictitious person,
or prescribe a controlled substance for purposes of
monetary benefit. Provides that any such offense is a
second-degree felony if the practitioner received \$1,000
or more in payment or if the quantity of the controlled
substance prescribed meets the threshold for the offense
of trafficking. See bill for details.