

By the Committees on Criminal and Civil Justice Appropriations;
and Criminal Justice; and Senator Joyner

604-05102-09

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1 A bill to be entitled
2 An act relating to theft; amending s. 812.014, F.S.;
3 increasing the minimum amount of value attributed to
4 certain emergency medical equipment and law
5 enforcement equipment for the theft to reach the
6 threshold for a second-degree felony; increasing the
7 minimum value attributed to certain property for the
8 theft to reach the threshold for a third-degree
9 felony; authorizing a law enforcement officer who has
10 probable cause to believe that a defendant has
11 committed retail theft to issue a notice to appear in
12 lieu of arresting the defendant under certain
13 circumstances; authorizing a state attorney to
14 establish a retail-theft diversion program for the
15 purpose of diverting defendants from criminal
16 prosecution if the defendant meets certain criteria;
17 providing eligibility criteria for participating in a
18 retail-theft diversion program; requiring the state
19 attorney to mail a notice to appear to a defendant
20 upon referral to a diversion program; setting forth
21 the conditions that each participant in the retail-
22 theft diversion program must complete; providing that
23 a defendant may be prosecuted for the retail theft if
24 all conditions in the diversion program are not
25 fulfilled; authorizing a state attorney to collect a
26 fee from each participant in the program; setting a
27 limit on the fee for each defendant; amending s.
28 812.015, F.S.; increasing the value attributed to
29 property taken during the commission of retail theft

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30 to reach the threshold amount for a third-degree
31 felony offense; amending s. 921.0022, F.S., relating
32 to the offense severity ranking chart of the Criminal
33 Punishment Code; conforming provisions to changes made
34 by the act; providing an effective date.

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

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38 Section 1. Subsection (2) of section 812.014, Florida
39 Statutes, is amended, and paragraphs (e) and (f) are added to
40 subsection (3) of that section, to read:

41 812.014 Theft.—

42 (2) (a) 1. If the property stolen is valued at \$100,000 or
43 more or is a semitrailer that was deployed by a law enforcement
44 officer; or

45 2. If the property stolen is cargo valued at \$50,000 or
46 more that has entered the stream of interstate or intrastate
47 commerce from the shipper's loading platform to the consignee's
48 receiving dock; or

49 3. If the offender commits any grand theft and:

50 a. In the course of committing the offense the offender
51 uses a motor vehicle as an instrumentality, other than merely as
52 a getaway vehicle, to assist in committing the offense and
53 thereby damages the real property of another; or

54 b. In the course of committing the offense the offender
55 causes damage to the real or personal property of another in
56 excess of \$1,000,

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58 the offender commits grand theft in the first degree, punishable

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59 as a felony of the first degree, as provided in s. 775.082, s.
60 775.083, or s. 775.084.

61 (b)1. If the property stolen is valued at \$20,000 or more,
62 but less than \$100,000;

63 2. The property stolen is cargo valued at less than \$50,000
64 that has entered the stream of interstate or intrastate commerce
65 from the shipper's loading platform to the consignee's receiving
66 dock;

67 3. The property stolen is emergency medical equipment,
68 valued at \$600 ~~\$300~~ or more, that is taken from a facility
69 licensed under chapter 395 or from an aircraft or vehicle
70 permitted under chapter 401; or

71 4. The property stolen is law enforcement equipment, valued
72 at \$600 ~~\$300~~ or more, that is taken from an authorized emergency
73 vehicle, as defined in s. 316.003,

74
75 the offender commits grand theft in the second degree,
76 punishable as a felony of the second degree, as provided in s.
77 775.082, s. 775.083, or s. 775.084. Emergency medical equipment
78 means mechanical or electronic apparatus used to provide
79 emergency services and care as defined in s. 395.002(9) or to
80 treat medical emergencies. Law enforcement equipment means any
81 property, device, or apparatus used by any law enforcement
82 officer as defined in s. 943.10 in the officer's official
83 business. However, if the property is stolen within a county
84 that is subject to a state of emergency declared by the Governor
85 under chapter 252, the theft is committed after the declaration
86 of emergency is made, and the perpetration of the theft is
87 facilitated by conditions arising from the emergency, the theft

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88 is a felony of the first degree, punishable as provided in s.
89 775.082, s. 775.083, or s. 775.084. As used in this paragraph,
90 the term "conditions arising from the emergency" means civil
91 unrest, power outages, curfews, voluntary or mandatory
92 evacuations, or a reduction in the presence of or response time
93 for first responders or homeland security personnel. For
94 purposes of sentencing under chapter 921, a felony offense that
95 is reclassified under this paragraph is ranked one level above
96 the ranking under s. 921.0022 or s. 921.0023 of the offense
97 committed.

98 (c) It is grand theft of the third degree and a felony of
99 the third degree, punishable as provided in s. 775.082, s.
100 775.083, or s. 775.084, if the property stolen is:

- 101 1. Valued at \$600 ~~\$300~~ or more, but less than \$5,000.
- 102 2. Valued at \$5,000 or more, but less than \$10,000.
- 103 3. Valued at \$10,000 or more, but less than \$20,000.
- 104 4. A will, codicil, or other testamentary instrument.
- 105 5. A firearm.
- 106 6. A motor vehicle, except as provided in paragraph (a).
- 107 7. Any commercially farmed animal, including any animal of
108 the equine, bovine, or swine class, or other grazing animal, and
109 including aquaculture species raised at a certified aquaculture
110 facility. If the property stolen is aquaculture species raised
111 at a certified aquaculture facility, then a \$10,000 fine shall
112 be imposed.
- 113 8. Any fire extinguisher.
- 114 9. Any amount of citrus fruit consisting of 2,000 or more
115 individual pieces of fruit.
- 116 10. Taken from a designated construction site identified by

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117 the posting of a sign as provided for in s. 810.09(2)(d).

118 11. Any stop sign.

119 12. Anhydrous ammonia.

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121 However, if the property is stolen within a county that is
122 subject to a state of emergency declared by the Governor under
123 chapter 252, the property is stolen after the declaration of
124 emergency is made, and the perpetration of the theft is
125 facilitated by conditions arising from the emergency, the
126 offender commits a felony of the second degree, punishable as
127 provided in s. 775.082, s. 775.083, or s. 775.084, if the
128 property is valued at \$5,000 or more, but less than \$10,000, as
129 provided under subparagraph 2., or if the property is valued at
130 \$10,000 or more, but less than \$20,000, as provided under
131 subparagraph 3. As used in this paragraph, the term "conditions
132 arising from the emergency" means civil unrest, power outages,
133 curfews, voluntary or mandatory evacuations, or a reduction in
134 the presence of or the response time for first responders or
135 homeland security personnel. For purposes of sentencing under
136 chapter 921, a felony offense that is reclassified under this
137 paragraph is ranked one level above the ranking under s.
138 921.0022 or s. 921.0023 of the offense committed.

139 (d) It is grand theft of the third degree and a felony of
140 the third degree, punishable as provided in s. 775.082, s.
141 775.083, or s. 775.084, if the property stolen is valued at \$300
142 ~~\$100~~ or more, but less than \$600 ~~\$300~~, and is taken from a
143 dwelling as defined in s. 810.011(2) or from the unenclosed
144 curtilage of a dwelling pursuant to s. 810.09(1).

145 (e) Except as provided in paragraph (d), if the property

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146 stolen is valued at \$100 or more, but less than \$600 ~~\$300~~, the
147 offender commits petit theft of the first degree, punishable as
148 a misdemeanor of the first degree, as provided in s. 775.082 or
149 s. 775.083.

150 (3)

151 (e) If a law enforcement officer has probable cause to
152 believe that a defendant has committed retail theft as defined
153 in s. 812.015(1), the officer may issue a notice to appear in
154 lieu of arresting the defendant if the aggregate value of the
155 merchandise stolen is less than \$600 and the defendant has no
156 previous criminal convictions or juvenile adjudications. The
157 officer may, under his or her lawful authority, detain the
158 defendant until such time as the defendant's identity and
159 criminal or juvenile history have been provided to the officer
160 for purposes of making an informed decision regarding issuing
161 the notice to appear in lieu of arrest.

162 (f) A state attorney may establish a retail-theft diversion
163 program in the state attorney's office or by using an
164 independent contractor for the purpose of diverting from
165 prosecution defendants who meet the criteria set forth in
166 paragraph (e). However, establishing and operating a diversion
167 program does not affect the authority of the state attorney to
168 prosecute any defendant for committing retail theft.

169 1. Upon receipt of a complaint or notice to appear alleging
170 the crime of retail theft, a state attorney who operates a
171 retail-theft diversion program shall determine whether the
172 defendant is appropriate for referral to the retail-theft
173 diversion program. In making such determination, the state
174 attorney shall consider:

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- 175 a. The value of the merchandise stolen in the retail theft;
176 b. The existence of other pending complaints or criminal
177 charges against the defendant;
178 c. The strength of the evidence of the retail theft; and
179 d. Victim input.
- 180 2. Upon referral of the defendant to the retail-theft
181 diversion program, the state attorney shall mail a copy of the
182 notice to appear to the defendant. The notice must contain all
183 of the following:
- 184 a. The date and location of the alleged retail-theft
185 offense.
- 186 b. The date before which the defendant must contact the
187 retail-theft diversion program office concerning the notice to
188 appear.
- 189 c. A statement of the maximum penalty for the retail-theft
190 offense.
- 191 3. If the state attorney permits the defendant to enter the
192 retail-theft diversion program, the state attorney shall enter
193 into a written agreement with the defendant to divert him or her
194 from prosecution for retail theft. The diversion agreement must
195 include all of the following conditions, which must be accepted
196 by the defendant:
- 197 a. Attendance and proof of completion of a program designed
198 to assist, educate, and prevent future unlawful conduct by the
199 defendant;
- 200 b. Full restitution, if any is established, of the value of
201 the retail theft;
- 202 c. Full payment of fees due under subparagraph 5.; and
203 d. A knowing and intelligent waiver of the defendant's

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204 right to a speedy trial for the period of his or her diversion.

205 4. Any defendant who does not fulfill all conditions in the
206 diversion program may be prosecuted for the crime of retail
207 theft.

208 5. To fund the retail-theft diversion program, the state
209 attorney may collect a fee from each participating defendant.

210 The fee for each defendant may not exceed \$250.

211 Section 2. Subsection (8) of section 812.015, Florida
212 Statutes is amended to read:

213 812.015 Retail and farm theft; transit fare evasion;
214 mandatory fine; alternative punishment; detention and arrest;
215 exemption from liability for false arrest; resisting arrest;
216 penalties.—

217 (8) Except as provided in subsection (9), a person who
218 commits retail theft commits a felony of the third degree,
219 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
220 if the property stolen is valued at \$600 ~~\$300~~ or more, and the
221 person:

222 (a) Individually, or in concert with one or more other
223 persons, coordinates the activities of one or more individuals
224 in committing the offense, in which case the amount of each
225 individual theft is aggregated to determine the value of the
226 property stolen;

227 (b) Commits theft from more than one location within a 48-
228 hour period, in which case the amount of each individual theft
229 is aggregated to determine the value of the property stolen;

230 (c) Acts in concert with one or more other individuals
231 within one or more establishments to distract the merchant,
232 merchant's employee, or law enforcement officer in order to

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233 carry out the offense, or acts in other ways to coordinate
 234 efforts to carry out the offense; or

235 (d) Commits the offense through the purchase of merchandise
 236 in a package or box that contains merchandise other than, or in
 237 addition to, the merchandise purported to be contained in the
 238 package or box.

239 Section 3. Paragraphs (b) and (e) of subsection (3) of
 240 section 921.0022, Florida Statutes, are amended to read:

241 921.0022 Criminal Punishment Code; offense severity ranking
 242 chart.—

243 (3) OFFENSE SEVERITY RANKING CHART

244 (b) LEVEL 2

Florida	Felony	
Statute	Degree	Description

245 379.2431(1)(e)3. 3rd Possession of 11 or fewer marine turtle
 eggs in violation of the Marine Turtle
 Protection Act.

246 379.2431(1)(e)4. 3rd Possession of more than 11 marine turtle
 eggs in violation of the Marine Turtle
 Protection Act.

247 403.413(5)(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.

248 517.07 3rd Registration of securities and

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furnishing of prospectus required.

590.28(1)

3rd

Willful, malicious, or intentional burning.

250

784.05(3)

3rd

Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.

251

787.04(1)

3rd

In violation of court order, take, entice, etc., minor beyond state limits.

252

806.13(1)(b)3.

3rd

Criminal mischief; damage \$1,000 or more to public communication or any other public service.

253

810.061(2)

3rd

Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.

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810.09(2)(e)

3rd

Trespassing on posted commercial horticulture property.

255

812.014(2)(c)1.

3rd

Grand theft, 3rd degree; \$600 ~~\$300~~ or more but less than \$5,000.

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812.014(2)(d)

3rd

Grand theft, 3rd degree; \$300 ~~\$100~~ or more but less than \$600 ~~\$300~~, taken from unenclosed curtilage of dwelling.

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812.015 (7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234 (1) (a) 2.	3rd	False statement in support of insurance claim.
817.481 (3) (a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
817.52 (3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60 (5)	3rd	Dealing in credit cards of another.
817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01	3rd	Forgery.

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831.02 3rd Uttering forged instrument; utters or publishes alteration with intent to defraud.

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831.07 3rd Forging bank bills, checks, drafts, or promissory notes.

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831.08 3rd Possessing 10 or more forged notes, bills, checks, or drafts.

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831.09 3rd Uttering forged notes, bills, checks, drafts, or promissory notes.

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831.11 3rd Bringing into the state forged bank bills, checks, drafts, or notes.

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832.05(3)(a) 3rd Cashing or depositing item with intent to defraud.

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843.08 3rd Falsely impersonating an officer.

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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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893.147(2) 3rd Manufacture or delivery of drug paraphernalia.

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(e) LEVEL 5			
Florida	Felony		
Statute	Degree	Description	
316.027 (1) (a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.	
316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.	
322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.	
327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.	
381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.	
440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.	
440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.	
440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose	

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of avoiding or reducing workers'
compensation premiums.

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624.401 (4) (b) 2. 2nd Transacting insurance without a
certificate or authority; premium
collected \$20,000 or more but less than
\$100,000.

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626.902 (1) (c) 2nd Representing an unauthorized insurer;
repeat offender.

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790.01 (2) 3rd Carrying a concealed firearm.

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790.162 2nd Threat to throw or discharge destructive
device.

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790.163 (1) 2nd False report of deadly explosive or
weapon of mass destruction.

292

790.221 (1) 2nd Possession of short-barreled shotgun or
machine gun.

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790.23 2nd Felons in possession of firearms,
ammunition, or electronic weapons or
devices.

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800.04 (6) (c) 3rd Lewd or lascivious conduct; offender
less than 18 years.

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- 296 800.04(7)(b) 2nd Lewd or lascivious exhibition; offender
18 years or older.
- 297 806.111(1) 3rd Possess, manufacture, or dispense fire
bomb with intent to damage any structure
or property.
- 298 812.0145(2)(b) 2nd Theft from person 65 years of age or
older; \$10,000 or more but less than
\$50,000.
- 299 812.015(8) 3rd Retail theft; property stolen is valued
at \$600 ~~\$300~~ or more and one or more
specified acts.
- 300 812.019(1) 2nd Stolen property; dealing in or
trafficking in.
- 301 812.131(2)(b) 3rd Robbery by sudden snatching.
- 302 812.16(2) 3rd Owning, operating, or conducting a chop
shop.
- 303 817.034(4)(a)2. 2nd Communications fraud, value \$20,000 to
\$50,000.
- 304 817.234(11)(b) 2nd Insurance fraud; property value \$20,000
or more but less than \$100,000.

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817.2341(1), 3rd Filing false financial statements,
 (2) (a) & making false entries of material fact or
 (3) (a) false statements regarding property
 values relating to the solvency of an
 insuring entity.

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817.568(2) (b) 2nd Fraudulent use of personal
 identification information; value of
 benefit, services received, payment
 avoided, or amount of injury or fraud,
 \$5,000 or more or use of personal
 identification information of 10 or more
 individuals.

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817.625(2) (b) 2nd Second or subsequent fraudulent use of
 scanning device or reencoder.

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825.1025(4) 3rd Lewd or lascivious exhibition in the
 presence of an elderly person or
 disabled adult.

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827.071(4) 2nd Possess with intent to promote any
 photographic material, motion picture,
 etc., which includes sexual conduct by a
 child.

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827.071(5) 3rd Possess any photographic material,
 motion picture, etc., which includes
 sexual conduct by a child.

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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.

843.01 3rd Resist officer with violence to person; resist arrest with violence.

847.0135(5)(b) 2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

847.0137(2) & 3rd Transmission of pornography by (3) electronic device or equipment.

847.0138(2) & 3rd Transmission of material harmful to (3) minors to a minor by electronic device or equipment.

874.05(2) 2nd Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

893.13(1)(a)1. 2nd Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

893.13(1)(c)2. 2nd Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1.,

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(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.

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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.

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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.

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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.

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893.13(4)(b) 2nd Deliver to minor cannabis (or other s.

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893.03(1)(c), (2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or (4) drugs).

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

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Section 4. This act shall take effect October 1, 2009.