

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Health & Human Services
 2 Committee

3 Representative McBurney offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
 7 Section 1. Paragraphs (a), (c) and (d) of subsection (1),
 8 paragraph (a) of subsection (2), and paragraph (e) of subsection
 9 (3) of section 456.44, Florida Statutes, are amended to read:

10 456.44 Controlled substance prescribing.—

11 (1) DEFINITIONS.—

12 (a) "Addiction medicine specialist" means a board-
 13 certified psychiatrist ~~physiatrist~~ with a subspecialty
 14 certification in addiction medicine or who is eligible for such
 15 subspecialty certification in addiction medicine, an addiction
 16 medicine physician certified or eligible for certification by
 17 the American Society of Addiction Medicine, or an osteopathic
 18 physician who holds a certificate of added qualification in
 19 Addiction Medicine through the American Osteopathic Association.

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20 (c) "Board-certified pain management physician" means a
21 physician who possesses board certification in pain medicine by
22 the American Board of Pain Medicine, board certification by the
23 American Board of Interventional Pain Physicians, or board
24 certification or subcertification in pain management by a
25 specialty board recognized by the American Association of
26 Physician Specialists or the American Board of Medical
27 Specialties or an osteopathic physician who holds a certificate
28 in Pain Management by the American Osteopathic Association.

29 (d) "Chronic nonmalignant pain" means pain unrelated to
30 cancer ~~or rheumatoid arthritis~~ which persists beyond the usual
31 course of disease or the injury that is the cause of the pain or
32 more than 90 days after surgery.

33 (2) REGISTRATION.—Effective January 1, 2012, a physician
34 licensed under chapter 458, chapter 459, chapter 461, or chapter
35 466 who prescribes any controlled substance, listed in Schedule
36 II, Schedule III, or Schedule IV as defined in s. 893.03, for
37 the treatment of chronic nonmalignant pain, must:

38 (a) Designate himself or herself as a controlled substance
39 prescribing practitioner on the physician's practitioner
40 profile.

41 (3) STANDARDS OF PRACTICE.—The standards of practice in
42 this section do not supersede the level of care, skill, and
43 treatment recognized in general law related to health care
44 licensure.

45 (e) The physician shall refer the patient as necessary for
46 additional evaluation and treatment in order to achieve
47 treatment objectives. Special attention shall be given to those

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48 patients who are at risk for misusing their medications and
49 those whose living arrangements pose a risk for medication
50 misuse or diversion. The management of pain in patients with a
51 history of substance abuse or with a comorbid psychiatric
52 disorder requires extra care, monitoring, and documentation and
53 requires consultation with or referral to an addictionologist or
54 psychiatrist ~~physiatrist~~.

55
56 This subsection does not apply to a board-certified
57 anesthesiologist, ~~physiatrist~~, rheumatologist, or neurologist,
58 or to a board-certified physician who has surgical privileges at
59 a hospital or ambulatory surgery center and primarily provides
60 surgical services. This subsection does not apply to a board-
61 certified medical specialist who has also completed a fellowship
62 in pain medicine approved by the Accreditation Council for
63 Graduate Medical Education or the American Osteopathic
64 Association, or who is board certified in pain medicine by a
65 board approved by the American Board of Medical Specialties or
66 the American Osteopathic Association and performs interventional
67 pain procedures of the type routinely billed using surgical
68 codes.

69 Section 2. Paragraph (a) of subsection (1) of section
70 458.3265, Florida Statutes, is amended to read:

71 458.3265 Pain-management clinics.—

72 (1) REGISTRATION.—

73 (a)1. As used in this section, the term:

74 a. "Chronic nonmalignant pain" means pain unrelated to
75 cancer ~~or rheumatoid arthritis~~ which persists beyond the usual

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76 course of disease or the injury that is the cause of the pain or
77 more than 90 days after surgery.

78 b. "Pain-management clinic" or "clinic" means any publicly
79 or privately owned facility:

80 (I) That advertises in any medium for any type of pain-
81 management services; or

82 (II) Where in any month a majority of patients are
83 prescribed opioids, benzodiazepines, barbiturates, or
84 carisoprodol for the treatment of chronic nonmalignant pain.

85 2. Each pain-management clinic must register with the
86 department unless:

87 a. That clinic is licensed as a facility pursuant to
88 chapter 395;

89 b. The majority of the physicians who provide services in
90 the clinic primarily provide surgical services;

91 c. The clinic is owned by a publicly held corporation
92 whose shares are traded on a national exchange or on the over-
93 the-counter market and whose total assets at the end of the
94 corporation's most recent fiscal quarter exceeded \$50 million;

95 d. The clinic is affiliated with an accredited medical
96 school at which training is provided for medical students,
97 residents, or fellows;

98 e. The clinic does not prescribe controlled substances for
99 the treatment of pain;

100 f. The clinic is owned by a corporate entity exempt from
101 federal taxation under 26 U.S.C. s. 501(c)(3);

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102 g. The clinic is wholly owned and operated by one or more
103 board-certified anesthesiologists, physiatrists,
104 rheumatologists, or neurologists; or

105 h. The clinic is wholly owned and operated by a physician
106 multi-specialty practice where one or more board-certified
107 medical specialists who have also completed fellowships in pain
108 medicine approved by the Accreditation Council for Graduate
109 Medical Education, or who are also board-certified in pain
110 medicine by a board approved by the American Board of Medical
111 Specialties and perform interventional pain procedures of the
112 type routinely billed using surgical codes.

113 Section 3. Paragraph (a) of subsection (1) of section
114 459.0137, Florida Statutes, is amended to read:

115 459.0137 Pain-management clinics.—

116 (1) REGISTRATION.—

117 (a)1. As used in this section, the term:

118 a. "Chronic nonmalignant pain" means pain unrelated to
119 cancer ~~or rheumatoid arthritis~~ which persists beyond the usual
120 course of disease or the injury that is the cause of the pain or
121 more than 90 days after surgery.

122 b. "Pain-management clinic" or "clinic" means any publicly
123 or privately owned facility:

124 (I) That advertises in any medium for any type of pain-
125 management services; or

126 (II) Where in any month a majority of patients are
127 prescribed opioids, benzodiazepines, barbiturates, or
128 carisoprodol for the treatment of chronic nonmalignant pain.

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129 2. Each pain-management clinic must register with the
130 department unless:

131 a. That clinic is licensed as a facility pursuant to
132 chapter 395;

133 b. The majority of the physicians who provide services in
134 the clinic primarily provide surgical services;

135 c. The clinic is owned by a publicly held corporation
136 whose shares are traded on a national exchange or on the over-
137 the-counter market and whose total assets at the end of the
138 corporation's most recent fiscal quarter exceeded \$50 million;

139 d. The clinic is affiliated with an accredited medical
140 school at which training is provided for medical students,
141 residents, or fellows;

142 e. The clinic does not prescribe controlled substances for
143 the treatment of pain;

144 f. The clinic is owned by a corporate entity exempt from
145 federal taxation under 26 U.S.C. s. 501(c)(3);

146 g. The clinic is wholly owned and operated by one or more
147 board-certified anesthesiologists, physiatrists,
148 rheumatologists, or neurologists; or

149 h. The clinic is wholly owned and operated by a physician
150 multi-specialty practice where one or more board-certified
151 medical specialists who have also completed fellowships in pain
152 medicine approved by the Accreditation Council for Graduate
153 Medical Education or the American Osteopathic Association, or
154 who are also board-certified in pain medicine by a board
155 approved by the American Board of Medical Specialties or the

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156 American Osteopathic Association and perform interventional pain
157 procedures of the type routinely billed using surgical codes.

158 Section 4. Subsection (7) of section 893.13, Florida
159 Statutes, is amended to read:

160 893.13 Prohibited acts; penalties.—

161 (7) (a) A person may not:

162 1. Distribute or dispense a controlled substance in
163 violation of this chapter.

164 2. Refuse or fail to make, keep, or furnish any record,
165 notification, order form, statement, invoice, or information
166 required under this chapter.

167 3. Refuse entry into any premises for any inspection or
168 refuse to allow any inspection authorized by this chapter.

169 4. Distribute a controlled substance named or described in
170 s. 893.03(1) or (2) except pursuant to an order form as required
171 by s. 893.06.

172 5. Keep or maintain any store, shop, warehouse, dwelling,
173 building, vehicle, boat, aircraft, or other structure or place
174 which is resorted to by persons using controlled substances in
175 violation of this chapter for the purpose of using these
176 substances, or which is used for keeping or selling them in
177 violation of this chapter.

178 6. Use to his or her own personal advantage, or reveal,
179 any information obtained in enforcement of this chapter except
180 in a prosecution or administrative hearing for a violation of
181 this chapter.

182 7. Possess a prescription form which has not been
183 completed and signed by the practitioner whose name appears

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184 printed thereon, unless the person is that practitioner, is an
185 agent or employee of that practitioner, is a pharmacist, or is a
186 supplier of prescription forms who is authorized by that
187 practitioner to possess those forms.

188 8. Knowingly use in another manner a Schedule II
189 controlled substance intended by the prescriber to be
190 administered orally.

191 ~~9.8.~~ Withhold information from a practitioner from whom
192 the person seeks to obtain a controlled substance or a
193 prescription for a controlled substance that the person making
194 the request has received a controlled substance or a
195 prescription for a controlled substance of like therapeutic use
196 from another practitioner within the previous 30 days.

197 ~~10.9.~~ Acquire or obtain, or attempt to acquire or obtain,
198 possession of a controlled substance by misrepresentation,
199 fraud, forgery, deception, or subterfuge.

200 ~~11.10.~~ Affix any false or forged label to a package or
201 receptacle containing a controlled substance.

202 ~~12.11.~~ Furnish false or fraudulent material information
203 in, or omit any material information from, any report or other
204 document required to be kept or filed under this chapter or any
205 record required to be kept by this chapter.

206 ~~13.12.~~ Store anhydrous ammonia in a container that is not
207 approved by the United States Department of Transportation to
208 hold anhydrous ammonia or is not constructed in accordance with
209 sound engineering, agricultural, or commercial practices.

210 ~~14.13.~~ With the intent to obtain a controlled substance or
211 combination of controlled substances that are not medically

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212 necessary for the person or an amount of a controlled substance
213 or substances that is not medically necessary for the person,
214 obtain or attempt to obtain from a practitioner a controlled
215 substance or a prescription for a controlled substance by
216 misrepresentation, fraud, forgery, deception, subterfuge, or
217 concealment of a material fact. For purposes of this
218 subparagraph, a material fact includes whether the person has an
219 existing prescription for a controlled substance issued for the
220 same period of time by another practitioner or as described in
221 subparagraph 9. ~~8.~~

222 (b) A health care practitioner, with the intent to provide
223 a controlled substance or combination of controlled substances
224 that are not medically necessary to his or her patient or an
225 amount of controlled substances that is not medically necessary
226 for his or her patient, may not provide a controlled substance
227 or a prescription for a controlled substance by
228 misrepresentation, fraud, forgery, deception, subterfuge, or
229 concealment of a material fact. For purposes of this paragraph,
230 a material fact includes whether the patient has an existing
231 prescription for a controlled substance issued for the same
232 period of time by another practitioner or as described in
233 subparagraph (a)9. ~~(a)8.~~

234 (c) Any person who violates ~~the provisions of~~
235 subparagraphs (a)1.-8. ~~(a)1.-7.~~ commits a misdemeanor of the
236 first degree, punishable as provided in s. 775.082 or s.
237 775.083; except that, upon a second or subsequent violation, the
238 person commits a felony of the third degree, punishable as
239 provided in s. 775.082, s. 775.083, or s. 775.084.

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240 (d) Any person who violates ~~the provisions of~~
241 subparagraphs (a)9.-13. ~~(a)8.-12.~~ commits a felony of the third
242 degree, punishable as provided in s. 775.082, s. 775.083, or s.
243 775.084.

244 (e) A person or health care practitioner who violates ~~the~~
245 ~~provisions of~~ subparagraph (a)14. ~~(a)13.~~ or paragraph (b)
246 commits a felony of the third degree, punishable as provided in
247 s. 775.082, s. 775.083, or s. 775.084, if any controlled
248 substance that is the subject of the offense is listed in
249 Schedule II, Schedule III, or Schedule IV.

250 Section 5. Paragraph (a) of subsection (1), paragraph (b)
251 of subsection (2), and paragraph (f) of subsection (7) of
252 section 893.055, Florida Statutes, are amended to read:

253 893.055 Prescription drug monitoring program.—

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

255 (a) "Patient advisory report" or "advisory report" means
256 information provided by the department in writing, or as
257 determined by the department, to a prescriber, dispenser,
258 pharmacy, or patient concerning the dispensing of controlled
259 substances. All advisory reports are for informational purposes
260 only and impose no obligations of any nature or any legal duty
261 on a prescriber, dispenser, pharmacy, or patient. The patient
262 advisory report shall be provided in accordance with s.

263 893.13(7)(a)9. ~~893.13(7)(a)8.~~ The advisory reports issued by the
264 department are not subject to discovery or introduction into
265 evidence in any civil or administrative action against a
266 prescriber, dispenser, pharmacy, or patient arising out of
267 matters that are the subject of the report; and a person who

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268 participates in preparing, reviewing, issuing, or any other
269 activity related to an advisory report may not be permitted or
270 required to testify in any such civil action as to any findings,
271 recommendations, evaluations, opinions, or other actions taken
272 in connection with preparing, reviewing, or issuing such a
273 report.

274 (2)

275 (b) The department, when the direct support organization
276 receives at least \$20,000 in nonstate moneys or the state
277 receives at least \$20,000 in federal grants for the prescription
278 drug monitoring program, shall adopt rules as necessary
279 concerning the reporting, accessing the database, evaluation,
280 management, development, implementation, operation, security,
281 and storage of information within the system, including rules
282 for when patient advisory reports are provided to pharmacies and
283 prescribers. The patient advisory report shall be provided in
284 accordance with s. 893.13(7)(a)9. ~~893.13(7)(a)8.~~ The department
285 shall work with the professional health care licensure boards,
286 such as the Board of Medicine, the Board of Osteopathic
287 Medicine, and the Board of Pharmacy; other appropriate
288 organizations, such as the Florida Pharmacy Association, the
289 Florida Medical Association, the Florida Retail Federation, and
290 the Florida Osteopathic Medical Association, including those
291 relating to pain management; and the Attorney General, the
292 Department of Law Enforcement, and the Agency for Health Care
293 Administration to develop rules appropriate for the prescription
294 drug monitoring program.

295 (7)

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296 (f) The program manager, upon determining a pattern
 297 consistent with the rules established under paragraph (2)(d) and
 298 having cause to believe a violation of s. 893.13(7)(a)9.
 299 ~~893.13(7)(a)8.~~, (8)(a), or (8)(b) has occurred, may provide
 300 relevant information to the applicable law enforcement agency.

301 Section 6. Subsection (4) of section 893.0551, Florida
 302 Statutes, is amended to read:

303 893.0551 Public records exemption for the prescription
 304 drug monitoring program.—

305 (4) The department shall disclose such confidential and
 306 exempt information to the applicable law enforcement agency in
 307 accordance with s. 893.055(7)(f). The law enforcement agency may
 308 disclose the confidential and exempt information received from
 309 the department to a criminal justice agency as defined in s.
 310 119.011 as part of an active investigation that is specific to a
 311 violation of s. 893.13(7)(a)9. ~~893.13(7)(a)8.~~, s. 893.13(8)(a),
 312 or s. 893.13(8)(b).

313 Section 5. Paragraph (c) of subsection (3) of section
 314 921.0022, Florida Statutes, is amended to read:

315 921.0022 Criminal Punishment Code; offense severity
 316 ranking chart.—

317 (3) OFFENSE SEVERITY RANKING CHART

318 (c) LEVEL 3

319

Florida	Felony	
Statute	Degree	Description

320

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321	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
322	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
323	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
324	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
325	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
326	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
327	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank,

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forged, or unlawfully obtained
title or registration.

328

327.35(2)(b) 3rd Felony BUI.

329

328.05(2) 3rd Possess, sell, or counterfeit
fictitious, stolen, or
fraudulent titles or bills of
sale of vessels.

330

328.07(4) 3rd Manufacture, exchange, or
possess vessel with counterfeit
or wrong ID number.

331

376.302(5) 3rd Fraud related to reimbursement
for cleanup expenses under the
Inland Protection Trust Fund.

332

379.2431 3rd Taking, disturbing, mutilating,
(1)(e)5. destroying, causing to be
destroyed, transferring,
selling, offering to sell,
molesting, or harassing marine
turtles, marine turtle eggs, or
marine turtle nests in
violation of the Marine Turtle
Protection Act.

333

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379.2431 3rd Soliciting to commit or
(1) (e) 6. conspiring to commit a
violation of the Marine Turtle
Protection Act.

334

400.9935 (4) 3rd Operating a clinic without a
license or filing false license
application or other required
information.

335

440.1051 (3) 3rd False report of workers'
compensation fraud or
retaliation for making such a
report.

336

501.001 (2) (b) 2nd Tampers with a consumer product
or the container using
materially false/misleading
information.

337

624.401 (4) (a) 3rd Transacting insurance without a
certificate of authority.

338

624.401 (4) (b) 1. 3rd Transacting insurance without a
certificate of authority;
premium collected less than
\$20,000.

339

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626.902 (1) (a) &
(b)

3rd Representing an unauthorized
insurer.

340

697.08

3rd Equity skimming.

341

790.15 (3)

3rd Person directs another to
discharge firearm from a
vehicle.

342

796.05 (1)

3rd Live on earnings of a
prostitute.

343

806.10 (1)

3rd Maliciously injure, destroy, or
interfere with vehicles or
equipment used in firefighting.

344

806.10 (2)

3rd Interferes with or assaults
firefighter in performance of
duty.

345

810.09 (2) (c)

3rd Trespass on property other than
structure or conveyance armed
with firearm or dangerous
weapon.

346

812.014 (2) (c) 2.

3rd Grand theft; \$5,000 or more but
less than \$10,000.

347

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348	812.0145(2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
349	815.04(4) (b)	2nd	Computer offense devised to defraud or obtain property.
350	817.034(4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
351	817.233	3rd	Burning to defraud insurer.
352	817.234 (8) (b) - (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
353	817.234(11) (a)	3rd	Insurance fraud; property value less than \$20,000.
354	817.236	3rd	Filing a false motor vehicle insurance application.
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle

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insurance card.

355

817.413 (2) 3rd Sale of used goods as new.

356

817.505 (4) 3rd Patient brokering.

357

828.12 (2) 3rd Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

358

831.28 (2) (a) 3rd Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.

359

831.29 2nd Possession of instruments for counterfeiting drivers' licenses or identification cards.

360

838.021 (3) (b) 3rd Threatens unlawful harm to public servant.

361

843.19 3rd Injure, disable, or kill police dog or horse.

362

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860.15(3) 3rd Overcharging for repairs and parts.

363

870.01(2) 3rd Riot; inciting or encouraging.

364

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).

365

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.

366

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.

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893.13(6)(a) 3rd Possession of any controlled
substance other than felony
possession of cannabis.

368

893.13(7)(a)9. 3rd Withhold information from
~~893.13(7)(a)8.~~ practitioner regarding previous
receipt of or prescription for
a controlled substance.

369

893.13(7)(a)10. 3rd Obtain or attempt to obtain
~~893.13(7)(a)9.~~ controlled substance by fraud,
forgery, misrepresentation,
etc.

370

893.13(7)(a)11. 3rd Affix false or forged label to
~~893.13(7)(a)10.~~ package of controlled
substance.

371

893.13(7)(a)12. 3rd Furnish false or fraudulent
~~893.13(7)(a)11.~~ material information on any
document or record required by
chapter 893.

372

893.13(8)(a)1. 3rd Knowingly assist a patient,
other person, or owner of an
animal in obtaining a
controlled substance through

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deceptive, untrue, or
fraudulent representations in
or related to the
practitioner's practice.

373

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.

374

893.13(8)(a)3. 3rd Knowingly write a prescription
for a controlled substance for
a fictitious person.

375

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.

376

918.13(1)(a) 3rd Alter, destroy, or conceal
investigation evidence.

377

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944.47 3rd Introduce contraband to
(1) (a) 1.-2. correctional facility.

378

944.47 (1) (c) 2nd Possess contraband while upon
the grounds of a correctional
institution.

379

985.721 3rd Escapes from a juvenile
facility (secure detention or
residential commitment
facility).

380

Section 6. This act shall take effect October 1, 2012.

381

382

383

384

385

386

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

387

Remove the entire title and insert:

388

A bill to be entitled

389

An act relating to controlled substances; amending s. 456.44,

390

F.S.; removing physiatrist; adding psychiatrist and

391

rheumatologist; amending definition of chronic non-malignant

392

pain; adding the American Board of Medical Specialties to

393

recognized certification entities; amending definition of

394

controlled substances; amending s. 458.3265, F.S.; amending

395

definition of chronic non-malignant pain; permitting a

396

rheumatologist to own pain clinics; adding multi-specialty

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397 practice to permitted ownership forms of pain clinics; amending
398 s. 459.0137, F.S.; amending definition of chronic non-malignant
399 pain; permitting a rheumatologist to own pain clinics; adding
400 multi-specialty practice to permitted ownership forms of pain
401 clinics amending s. 893.13, F.S.; prohibiting the knowing use in
402 another manner of a Schedule II controlled substance intended to
403 be administered orally; providing criminal penalties; amending
404 ss. 893.055, 893.0551, and 921.0022, F.S.; conforming cross-
405 references; providing an effective date.