



874658

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (414724)

Delete lines 254 - 618

and insert:

(2) A person who willfully and maliciously promotes any altered sexual depiction of an identifiable person, without the consent of the identifiable person, and who knows or reasonably should have known that such visual depiction was an altered sexual depiction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.



874658

11 (3) Every act, thing, or transaction prohibited by this
12 section constitutes a separate offense and is punishable as
13 such.

14 (4) The presence of a disclaimer within an altered sexual
15 depiction which notifies a viewer that the person or persons
16 depicted did not consent to or participate in the creation or
17 promotion of the material, or that the person or persons
18 depicted did not actually perform the actions portrayed, is not
19 a defense and does not relieve a person of criminal liability
20 under this section.

21 (5) An aggrieved person may initiate a civil action against
22 a person who violates subsection (2) to obtain appropriate
23 relief in order to prevent or remedy a violation of subsection
24 (2), including all of the following:

25 (a) Injunctive relief.

26 (b) Monetary damages up to and including \$10,000 or actual
27 damages incurred as a result of a violation of subsection (2),
28 whichever is greater.

29 (c) Reasonable attorney fees and costs.

30 (6) The criminal and civil penalties of this section do not
31 apply to:

32 (a) A provider of an interactive computer service as
33 defined in 47 U.S.C. s. 230(f), of an information service as
34 defined in 47 U.S.C. s. 153, or of a communications service as
35 defined in s. 202.11 which provides the transmission, storage,
36 or caching of electronic communications or messages of others;
37 another related telecommunications or commercial mobile radio
38 service; or content provided by another person;

39 (b) A law enforcement officer, as defined in s. 943.10, or



874658

40 any local, state, federal, or military law enforcement agency
41 that promotes an altered sexual depiction in connection with the
42 performance of his or her duties as a law enforcement officer or
43 the duties of the law enforcement agency;

44 (c) A person reporting unlawful activity; or

45 (d) A person participating in a hearing, trial, or other
46 legal proceeding.

47 (7) A violation of this section is committed within this
48 state if any conduct that is an element of the offense, or any
49 harm to the depicted person resulting from the offense, occurs
50 within this state.

51 Section 5. Section 836.14, Florida Statutes, is created to
52 read:

53 836.14 Unlawfully obtaining, possessing, or promoting a
54 sexually explicit image.—

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

56 (a) "Identifiable person" has the same meaning as in s.
57 836.13.

58 (b) "Promote" has the same meaning as in s. 836.13.

59 (c) "Sexually explicit image" means any image depicting
60 nudity as defined in s. 847.001 or a person engaging in sexual
61 conduct as defined in s. 847.001.

62 (2) A person who knowingly and unlawfully obtains a
63 sexually explicit image of an identifiable person with the
64 intent to promote such image commits a felony of the third
65 degree, punishable as provided in s. 775.082, s. 775.083, or s.
66 775.084.

67 (3) A person who willfully possesses with the intent to
68 promote for the purpose of pecuniary or any other type of



874658

69 financial gain a sexually explicit image of an identifiable
70 person without that person's consent commits a felony of the
71 third degree, punishable as provided in s. 775.082, s. 775.083,
72 or s. 775.084.

73 (4) A person who willfully promotes for the purpose of
74 pecuniary or any other financial gain a sexually explicit image
75 of an identifiable person without that person's consent commits
76 a felony of the second degree, punishable as provided in s.
77 775.082, s. 775.083, or s. 775.084.

78 (5) Every act, thing, or transaction prohibited by this
79 section constitutes a separate offense and is punishable as
80 such.

81 (6) An aggrieved person may initiate a civil action against
82 a person who violates this section to obtain all appropriate
83 relief in order to prevent or remedy a violation of this
84 section, including the following:

85 (a) Injunctive relief.

86 (b) Monetary damages to include \$10,000 or actual damages
87 incurred as a result of a violation of this section, whichever
88 is greater.

89 (c) Reasonable attorney fees and costs.

90 (7) The criminal and civil penalties of this section do not
91 apply to:

92 (a) A provider of an interactive computer service as
93 defined in 47 U.S.C. s. 230(f), of an information service as
94 defined in 47 U.S.C. s. 153, or of a communications service as
95 defined in s. 202.11 which provides the transmission, storage,
96 or caching of electronic communications or messages of others;
97 another related telecommunications or commercial mobile radio



874658

98 service; or content provided by another person;

99 (b) A law enforcement officer, as defined in s. 943.10, or
100 any local, state, federal, or military law enforcement agency
101 that disseminates a sexually explicit image in connection with
102 the performance of his or her duties as a law enforcement
103 officer or the duties of the law enforcement agency;

104 (c) A person reporting unlawful activity;

105 (d) A person participating in a hearing, trial, or other
106 legal proceeding; or

107 (e) Sexually explicit images involving voluntary exposure
108 in a public or commercial setting.

109 (8) A violation of this section is committed within this
110 state if any conduct that is an element of the offense, or any
111 harm to the depicted individual resulting from the offense,
112 occurs within this state.

113 Section 6. Present subsections (7) through (11) and (12)
114 through (20) of section 847.001, Florida Statutes, are
115 redesignated as subsections (8) through (12) and (14) through
116 (22), respectively, new subsections (7) and (13) are added to
117 that section, and subsection (3) and present subsections (8),
118 (16), and (19) of that section are amended, to read:

119 847.001 Definitions.—As used in this chapter, the term:

120 (3) "Child sexual abuse material" ~~"Child pornography"~~
121 means:

122 (a) Any image depicting a minor engaged in sexual conduct;
123 or

124 (b) Any image that has been created, altered, adapted, or
125 modified by electronic, mechanical, or other means, to portray
126 an identifiable minor engaged in sexual conduct.



874658

127 (7) "Identifiable minor" means a person:
128 (a) Who was a minor at the time the image was created,
129 adapted, or modified, or whose image as a minor was used in the
130 creating, adapting, or modifying of the image; and
131 (b) Who is recognizable as an actual person by the person's
132 face, likeness, or other distinguishing characteristic, such as
133 a unique birthmark, or other recognizable feature.
134
135 The term may not be construed to require proof of the actual
136 identity of the identifiable minor.
137 (9)~~(8)~~ "Minor" or "child" means any person, whose identity
138 is known or unknown, younger than ~~under the age of~~ 18 years of
139 age.
140 (13) "Promote" means to procure, manufacture, issue, sell,
141 give, provide, lend, mail, deliver, transfer, transmit,
142 transmute, publish, distribute, circulate, disseminate, present,
143 exhibit, send, post, share, or advertise or to offer or agree to
144 do the same.
145 (18)~~(16)~~ "Sexual conduct" means actual or simulated sexual
146 intercourse, deviate sexual intercourse, sexual bestiality,
147 masturbation, or sadomasochistic abuse; actual or simulated lewd
148 exhibition of the genitals; actual physical contact with a
149 person's clothed or unclothed genitals, pubic area, buttocks,
150 or, if such person is a female, breast with the intent to arouse
151 or gratify the sexual desire of either party; or any act or
152 conduct which constitutes sexual battery or simulates that
153 sexual battery is being or will be committed. A mother's
154 breastfeeding of her baby does not under any circumstance
155 constitute "sexual conduct."



874658

156 ~~(21)(19)~~ "Simulated" means the explicit depiction of
157 conduct described in subsection (18) ~~(16)~~ which creates the
158 appearance of such conduct and which exhibits any uncovered
159 portion of the breasts, genitals, or buttocks.

160 Section 7. Subsection (5) of section 847.011, Florida
161 Statutes, is amended to read:

162 847.011 Prohibition of certain acts in connection with
163 obscene, lewd, etc., materials; penalty.—

164 (5) (a) 1. A person may not knowingly sell, lend, give away,
165 distribute, transmit, show, or transmute; offer to sell, lend,
166 give away, distribute, transmit, show, or transmute; have in his
167 or her possession, custody, or control with the intent to sell,
168 lend, give away, distribute, transmit, show, or transmute; or
169 advertise in any manner an obscene, child-like sex doll.

170 2.a. Except as provided in sub-subparagraph b., a person
171 who violates this paragraph commits a felony of the third
172 degree, punishable as provided in s. 775.082, s. 775.083, or s.
173 775.084.

174 b. A person who is convicted of violating this paragraph a
175 second or subsequent time commits a felony of the second degree,
176 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

177 (b) 1. Except as provided in subparagraph 2., a person who
178 knowingly has in his or her possession, custody, or control an
179 obscene, child-like sex doll commits a misdemeanor of the first
180 degree, punishable as provided in s. 775.082 or s. 775.083.

181 2. A person who is convicted of violating this paragraph a
182 second or subsequent time commits a felony of the third degree,
183 punishable as provided in s. 775.082 or s. 775.083.

184 (c) 1. A law enforcement officer may arrest without a



874658

185 warrant any person who he or she has probable cause to believe
186 has violated paragraph (b).

187 2. Upon proper affidavits being made, a search warrant may
188 be issued to further investigate a violation of paragraph (b),
189 including to search a private dwelling.

190 Section 8. Subsections (1) through (4) of section 847.0137,
191 Florida Statutes, are amended to read:

192 847.0137 Transmission of pornography by electronic device
193 or equipment prohibited; penalties.—

194 (1) As used in this section, the term ~~For purposes of this~~
195 ~~section:~~

196 ~~(a) "Minor" means any person less than 18 years of age.~~

197 ~~(b) "transmit" means the act of sending and causing to be~~
198 delivered, including the act of providing access for receiving
199 and causing to be delivered, any image, information, or data
200 ~~from one or more persons or places to one or more other persons~~
201 ~~or places over or through any medium, including the Internet or~~
202 an interconnected network, by use of any electronic equipment or
203 other device.

204 (2) Notwithstanding ss. 847.012 and 847.0133, any person in
205 this state who knew or reasonably should have known that he or
206 she was transmitting child sexual abuse material ~~child~~
207 ~~pornography~~, as defined in s. 847.001, to another person in this
208 state or in another jurisdiction commits a felony of the third
209 degree, punishable as provided in s. 775.082, s. 775.083, or s.
210 775.084.

211 (3) Notwithstanding ss. 847.012 and 847.0133, any person in
212 any jurisdiction other than this state who knew or reasonably
213 should have known that he or she was transmitting child sexual



874658

214 abuse material ~~child pornography~~, as defined in s. 847.001, to
215 any person in this state commits a felony of the third degree,
216 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

217 (4) This section shall not be construed to prohibit
218 prosecution of a person in this state or another jurisdiction
219 for a violation of any law of this state, including a law
220 providing for greater penalties than prescribed in this section,
221 for the transmission of child sexual abuse material ~~child~~
222 pornography, as defined in s. 847.001, to any person in this
223 state.

224
225 The provisions of this section do not apply to subscription-
226 based transmissions such as list servers.

227 Section 9. Paragraphs (c), (d), and (e) of subsection (3)
228 of section 921.0022, Florida Statutes, are amended to read:

229 921.0022 Criminal Punishment Code; offense severity ranking
230 chart.—

231 (3) OFFENSE SEVERITY RANKING CHART

232 (c) LEVEL 3

233

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash

234

235



874658

236			reports.
	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
237			
	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
238			
	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
239			
	319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
240			
	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
241			
	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.



874658

242	327.35 (2) (b)	3rd	Felony BUI.
243	328.05 (2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
244	328.07 (4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
245	376.302 (5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
246	379.2431 (1) (e) 5.	3rd	Taking, disturbing, mutilating, 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



874658

247			Protection Act.
	379.2431	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
	(1) (e) 6.		
248			
	379.2431	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
	(1) (e) 7.		
249			
	400.9935 (4) (a)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
	or (b)		
250			
	400.9935 (4) (e)	3rd	Filing a false license application or other required information or failing to report information.
251			
	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making



874658

252			such a report.
	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
253			
	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
254			
	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
255			
	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.
256			
	697.08	3rd	Equity skimming.
257			
	790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.
258			
	806.10 (1)	3rd	Maliciously injure,



874658

259			destroy, or interfere with vehicles or equipment used in firefighting.
260	806.10 (2)	3rd	Interferes with or assaults firefighter in performance of duty.
261	810.09 (2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
262	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
263	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
264	812.015 (8) (b)	3rd	Retail theft with intent to sell; conspires with others.
265	812.081 (2)	3rd	Theft of a trade secret.



874658

266	815.04 (5) (b)	2nd	Computer offense devised to defraud or obtain property.
267	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
268	817.233	3rd	Burning to defraud insurer.
269	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
270	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
271	817.236	3rd	Filing a false motor vehicle insurance application.
272	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.



874658

273	817.413 (2)	3rd	Sale of used goods of \$1,000 or more as new.
274	817.49 (2) (b) 1.	3rd	Willful making of a false report of a crime causing great bodily harm, permanent disfigurement, or permanent disability.
275	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
276	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
277	<u>836.13 (2)</u>	<u>3rd</u>	<u>Person who promotes an altered sexually explicit depiction of an identifiable person without consent.</u>
	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.



874658

278	843.19	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.
279	860.15(3)	3rd	Overcharging for repairs and parts.
280	870.01(2)	3rd	Riot.
281	870.01(4)	3rd	Inciting a riot.
282	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)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).
283	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)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.



874658

284	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)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
285	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
286	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
287	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
288	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud,



874658

289

893.13(7)(a)10.

3rd

forgery,
misrepresentation, etc.

Affix false or forged
label to package of
controlled substance.

290

893.13(7)(a)11.

3rd

Furnish false or
fraudulent material
information on any
document or record
required by chapter 893.

291

893.13(8)(a)1.

3rd

Knowingly assist a
patient, other person, or
owner of an animal in
obtaining a controlled
substance through
deceptive, untrue, or
fraudulent representations
in or related to the
practitioner's practice.

292

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



293			substance.
	893.13 (8) (a) 3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
294			
	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.
295			
	918.13 (1) (a)	3rd	Alter, destroy, or conceal investigation evidence.
296			
	944.47	3rd	Introduce contraband to correctional facility.
	(1) (a) 1. & 2.		
297			
	944.47 (1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.
298			
	985.721	3rd	Escapes from a juvenile facility (secure detention



874658

or residential commitment
facility).

299

300

301

302 (d) LEVEL 4

303

Florida

Felony

Statute

Degree

Description

304

316.1935 (3) (a)

2nd

Driving at high speed
or with wanton
disregard for safety
while fleeing or
attempting to elude law
enforcement officer who
is in a patrol vehicle
with siren and lights
activated.

305

499.0051 (1)

3rd

Failure to maintain or
deliver transaction
history, transaction
information, or
transaction statements.

306

499.0051 (5)

2nd

Knowing sale or
delivery, or possession
with intent to sell,



307			contraband prescription drugs.
308	517.07 (1)	3rd	Failure to register securities.
309	517.12 (1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
310	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
311	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
312	784.075	3rd	Battery on detention or commitment facility staff.
313	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.



874658

314	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
315	784.081 (3)	3rd	Battery on specified official or employee.
316	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
317	784.083 (3)	3rd	Battery on code inspector.
318	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
319	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.



874658

320	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
321	787.07	3rd	Human smuggling.
322	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
323	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
324	790.115 (2) (c)	3rd	Possessing firearm on school property.
325	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
326	806.135	2nd	Destroying or



874658

327	810.02 (4) (a)	3rd	demolishing a memorial or historic property. Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
328	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
329	810.06	3rd	Burglary; possession of tools.
330	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
331	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
332	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree; specified items.



333	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
334	817.505 (4) (a)	3rd	Patient brokering.
335	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
336	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
337	817.625 (2) (a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
338	817.625 (2) (c)	3rd	Possess, sell, or deliver skimming device.
339	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or



874658

permanent breeding
disability to any
registered horse or
cattle.

340

836.14(2)

3rd

Person who obtains a
sexually explicit image
of an identifiable
person with certain
intent.

341

836.14(3)

3rd

Person who possesses
with intent to promote
for a certain purpose a
sexually explicit image
of an identifiable
person without consent.

342

837.02(1)

3rd

Perjury in official
proceedings.

343

837.021(1)

3rd

Make contradictory
statements in official
proceedings.

344

838.022

3rd

Official misconduct.

345

839.13(2)(a)

3rd

Falsifying records of
an individual in the



346			care and custody of a state agency.
	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Families.
347			
	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
348			
	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
349			
	843.15 (1) (a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
350			
	847.0135 (5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
351			



874658

352	870.01 (3)	2nd	Aggravated rioting.
353	870.01 (5)	2nd	Aggravated inciting a riot.
354	874.05 (1) (a)	3rd	Encouraging or recruiting another to join a criminal gang.
355	893.13 (2) (a) 1.	2nd	Purchase of cocaine (or other s. 893.03 (1) (a), (b), or (d), (2) (a), (2) (b), or (2) (c) 5. drugs).
356	914.14 (2)	3rd	Witnesses accepting bribes.
357	914.22 (1)	3rd	Force, threaten, etc., witness, victim, or informant.
358	914.23 (2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
	916.1085	3rd	Introduction of specified contraband



874658

359	(2) (c) 1.		into certain DCF facilities.
360	918.12	3rd	Tampering with jurors.
361	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
362	944.47 (1) (a) 6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
363	951.22 (1) (h) ,	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.
364	(j) & (k)		