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# **Criminal Justice Subcommittee**

**Wednesday, March 15, 2017**

**9:00 AM – 1:00 PM**

**404 HOB**

**Meeting Packet**

**Committee Meeting Notice**  
**HOUSE OF REPRESENTATIVES**

**Criminal Justice Subcommittee**

**Start Date and Time:** Wednesday, March 15, 2017 09:00 am  
**End Date and Time:** Wednesday, March 15, 2017 01:00 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 4.00 hrs

**Consideration of the following bill(s):**

HB 643 Eyewitness Identification by Harrell  
HB 895 Search Warrants by Killebrew  
HB 939 Use or Operation of a Drone by Certain Offenders by Metz

**Consideration of the following proposed committee substitute(s):**

PCS for HB 83 -- Offenses by Illegal Immigrants  
PCS for HB 361 -- Bail Bonds  
PCS for HB 477 -- Controlled Substances  
PCS for HB 779 -- Weapons and Firearms  
PCS for HB 849 -- Weapons and Firearms  
PCS for HB 857 -- Criminal History Records  
PCS for HB 871 -- Animal Abuser Registration

**NOTICE FINALIZED on 03/13/2017 4:18PM by Gilliam.Ann**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 643 Eyewitness Identification  
**SPONSOR(S):** Harrell  
**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Brummett	WB White TW
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Eyewitness misidentification has been identified as the single greatest cause of wrongful convictions, accounting for 75 percent of convictions that have been later overturned by DNA evidence nationwide. As a result, recent reform efforts have largely focused on eyewitness identification procedures, including the administration of photographic lineups and live lineups.

A photographic lineup is the process of showing photographs to an eyewitness for the purpose of identifying or eliminating a suspect. A live lineup involves the live presentation of individuals, before an eyewitness, for the purpose of identifying or eliminating suspects. Currently, there is no statute in Florida relating to photographic or live lineups.

This bill sets requirements for any lineup conducted in Florida by a state, county, municipal, or other law enforcement agency. The bill requires that a lineup comply with the following requirements:

- The lineup must be administered by an independent administrator, who is a person not participating in the investigation of the criminal offense and who is unaware of which person in the lineup is the suspect;
- If an independent administrator is not used, the lineup must be conducted using an alternative method approved by the Criminal Justice Standards and Training Commission that is designed to achieve neutral administration and prevent the lineup administrator from knowing which photograph is being presented to the eyewitness during the identification procedure;
- The witness must be given a set of instructions before being presented with the lineup; and
- The witness must acknowledge, in writing, having received the instructions or the lineup administrator must document the witness's refusal to do so.

The bill also provides remedies for the failure to comply with its requirements by making consideration of such failure mandatory during a motion to suppress the eyewitness identification and admissible at trial in support of a claim of eyewitness misidentification. The bill requires the jury to be instructed that they may consider evidence of compliance or noncompliance with the requirements to determine the reliability of eyewitness identification if such evidence is introduced at trial.

The bill requires the Criminal Justice Standards and Training Commission to consult with Florida Department of Law Enforcement ("FDLE") to create educational materials and provide training programs on how to conduct lineups in compliance with the bill's requirements.

FDLE estimates a \$7,670 fiscal impact for the cost to revise the training curriculum and related materials. Local governments could have a fiscal impact depending on how they decide to implement the bill. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill provides an effective date of October 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0643.CRJ

DATE: 3/13/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

According to statistics compiled by the Innocence Project of Florida (IPF), eyewitness misidentification accounts for 75 percent of convictions that have been later overturned through DNA evidence nationwide.<sup>1</sup> Research indicates that different factors may lead to eyewitness misidentification, including estimator variables and systematic variables. Estimator variables are factors that may lead to misidentification, but are beyond the control of the criminal justice system and include variables such as where the crime took place, visibility, race of the victim and perpetrator, and whether a weapon was present.<sup>2</sup> Systematic variables are aspects of identification that can be controlled by the criminal justice system including variables such as the way lineups are conducted and how police interact with an identifying witness.<sup>3</sup>

Generally, law enforcement agencies utilize two different kinds of lineup procedures for the purpose of suspect identification: a photographic lineup or a live lineup. A photographic lineup is the process of showing photographs to an eyewitness for the purpose of identifying or eliminating a suspect.<sup>4</sup> A live lineup involves the live presentation of individuals, before an eyewitness, for the purpose of identifying or eliminating suspects.<sup>5</sup> Reforms have generally targeted these procedures as they are systematic variables that can be controlled by the criminal justice system. Suggested reforms relating to lineup procedures have included: the blind administration of lineups,<sup>6</sup> instructing the witness that the perpetrator may not be included in the lineup, and recording lineup identification procedures when possible.<sup>7</sup>

##### *Standards for Florida Law Enforcement in Eyewitness Identification*

In 2011, in an effort to minimize the possibility of erroneous identification, multiple law enforcement agencies<sup>8</sup> within the state collaborated in developing Standards for Florida State and Local Law Enforcement Agencies in Dealing with Photographic or Live Lineups in Eyewitness Identification (“Standards”). These Standards identify the key factors that the individual agencies should consider in developing an eyewitness identification policy with the goal of promoting consistency in how individual agency’s investigators deal with photographic or live lineups. The Standards recommend that each agency develop its own written policies and procedures in conjunction with the local state attorney’s office to conform to the Standards while meeting the needs of the specific agency.<sup>9</sup>

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<sup>1</sup> INNOCENCE PROJECT OF FLORIDA, *Eyewitness Misidentification: The Most Unreliable Form of Evidence*, <http://floridainnocence.org/content/?p=7544> (last visited March 6, 2017).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> FLORIDA DEPARTMENT OF LAW ENFORCEMENT, *Commentary and Instructions, Instructional Suggestions*, <https://www.fdle.state.fl.us/cms/Guidelines/Documents/EyewitnessGuidelinesCommentary.aspx> (last visited March 6, 2017).

<sup>5</sup> Live lineups are sometimes called “physical lineups”. *Id.*

<sup>6</sup> The lineup is administered in such a way that the police officer administering the lineup is not aware which individual is actually the suspect. Research has shown blind administration sharply reduces the risk of misidentification. INNOCENCE PROJECT OF FLORIDA, *Eyewitness ID Reform*, [http://floridainnocence.org/content/?page\\_id=68](http://floridainnocence.org/content/?page_id=68) (last visited March 7, 2017).

<sup>7</sup> *Id.*

<sup>8</sup> The Standards were developed and endorsed by the Florida Department of Law Enforcement, the Florida Sheriffs Association, and the Florida Police Chiefs Association in collaboration with the Florida Prosecuting Attorney’s Association. FLORIDA DEPARTMENT OF LAW ENFORCEMENT, *Standards for Florida State and Local Law Enforcement Agencies in Dealing With Photographic Or Live Lineups In Eyewitness Identification*, <https://www.fdle.state.fl.us/cms/Guidelines/Documents/Standards.aspx> (last visited March 6, 2017).

<sup>9</sup> *Id.*

The Standards recommend that each agency should develop a policy that, at a minimum, addresses the following:

- 1) The creation, composition, and utilization of the photo array or lineup (It is recommended that a photographic lineup should consist of a minimum of six photos, containing one photo of the suspect and five filler photos of individuals reasonably similar in age, height, weight, and general appearance, in accord with the witness's description of the suspect. A live lineup should consist of six persons meeting the same criteria.);
- 2) Standard instructions to be given to the witness prior to a photographic or live lineup (Consideration should be given to having a form available for presentation to the witness which includes the standardized instruction and requires the witness to acknowledge that he or she has read those instructions.);<sup>10</sup>
- 3) Directions to the investigator conducting the lineup to avoid any conduct that might directly or indirectly influence the witness's decision;<sup>11</sup>
- 4) How to discern the level of confidence in identification as expressed by the witness (Any comment made by the witness should be documented word-for-word and any non-verbal communication or action of the witness should be noted.);
- 5) How to document the procedure and outcome of the photographic or live lineup (The Standards do not recommend one method of documentation over another, but encourage each agency to develop its own method that includes documenting the photograph or person selected from the lineup and preserving any photos or forms used in the investigative file.);<sup>12</sup>
- 6) The method of presenting the lineup (An independent administrator may be used, but is not required considering it may impose additional demands on an agency's resources. If an independent administrator is not used, the agency may use a process for random administration of photos using folders.); and
- 7) Required training on the agency policy by any agency personnel who will be administering a photographic or live lineup (Agencies should conduct periodic review and refresher training on the policy with all investigators involved in eyewitness identification efforts and should file a copy of the current policy with the local State Attorney's Office.).

To accompany these Standards, the collaborating law enforcement agencies also published Commentary and Instructions, Instructional Suggestions ("Commentary"), which offers more detailed instructions for complying with the Standards as well as sample instructional scripts and forms for consideration or adaption for agency use.<sup>13</sup> Standards one through five are encompassed by the mandatory standards required for state accreditation by the Florida Commission on Law Enforcement Accreditation, Inc. adopted on February 3, 2011.<sup>14</sup>

#### *The Criminal Justice Standards and Training Commission*

The Criminal Justice Standards and Training Commission ("CJSTC") is an independent policy making body established under ch. 943, F.S. Section 943.12, F.S., describes the powers, duties, and functions of the CJSTC which include the responsibility for creating entry-level criteria and certification testing for Florida law enforcement officers, establishing minimum standards for employment and certification, and

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<sup>10</sup> These should include indications that the person of interest might or might not be in a photo array or lineup, that the witness is not required to make an identification, that it is as important to exclude innocent persons as it is to identify perpetrators, and that the investigation will continue regardless of whether there is an identification. *Id.*

<sup>11</sup> This would include an instruction to avoid comments or actions that suggest the witness did or did not identify the suspect. *Id.*

<sup>12</sup> Including noting the witness's response and exact words. *Id.*

<sup>13</sup> See FLORIDA DEPARTMENT OF LAW ENFORCEMENT, *Commentary and Instructions, Instructional Suggestions*, <https://www.fdle.state.fl.us/cms/Guidelines/Documents/EyewitnessGuidelinesCommentary.aspx> (last visited March 6, 2017).

<sup>14</sup> Additionally, the Florida Commission of Law Enforcement Accreditation Standards require the agency to conduct initial and periodic training on the policy for employees involved in eyewitness identification efforts, as well as file the agency's current eyewitness identification policy with the local State Attorney's Office. COMMISSION FOR FLORIDA LAW ENFORCEMENT ACCREDITATION, INC., *Standard Manual Edition 5.0*, [www.flaccreditation.org/docs/standards/CFA%20Edition%205.0%20February%202016.pdf](http://www.flaccreditation.org/docs/standards/CFA%20Edition%205.0%20February%202016.pdf) (last visited March 7, 2017).

revoking the certifications of officers who fail to comply with minimum standards of conduct.<sup>15</sup> Currently, 157 law enforcement agencies in the state are accredited, requiring in relevant part, that they maintain compliance with the associated standards related to eyewitness identification.<sup>16</sup> Additionally, the current basic recruit training program for law enforcement includes a lesson on photographic arrays and photographic lineups that incorporates the Standards.<sup>17</sup>

#### *Eyewitness Identification in Florida Courts*

Florida statute does not currently address eyewitness identification procedures. If a claim of suggestiveness is made by a criminal defendant in a pretrial motion to suppress, courts employ a two-prong test which questions:

- 1) Whether the police employed an unnecessarily suggestive procedure in obtaining an out-of-court identification; and
- 2) If so, considering all the circumstances, did the suggestive procedure give rise to a substantial likelihood of irreparable misidentification.<sup>18</sup>

Additionally, Florida has a special jury instruction regarding eyewitness identification that is given to jurors if requested in a case in which eyewitness identification is disputed. Jurors are instructed to consider various factors relating to the eyewitness identification including: whether the identification was the product of the witness's own recollection or was the result of influence or suggestiveness; the circumstances under which the defendant was presented to the witness for identification; any inconsistent identifications made by the eyewitness; any instance in which the eyewitness did not make an identification when given the opportunity to do so; and five other factors.<sup>19</sup>

#### **Effect of the Bill**

The bill creates s. 92.70, F.S., to establish the "Eyewitness Identification Reform Act" ("the Act"). The Act provides definitions for relevant terms including: "eyewitness", "independent administrator", "lineup", "lineup administrator", "live lineup", and "photo lineup". The Act applies to any lineup conducted in this state by a state, county, municipal, or other law enforcement agency and sets requirements for eyewitness identification procedures.

The Act requires that any lineup must be conducted by an independent administrator. An independent administrator is defined as "a person who is not participating in the investigation of a criminal offense and is unaware of which person in the lineup is the suspect." The Act provides that if an agency does not use an independent administrator, it must conduct the procedure using an alternative method approved by the CJSTC. Such an alternative method must be structured to achieve neutral administration of the lineup and prevent the lineup administrator from knowing which photograph is being displayed during the procedure and may include:

- An automated computer program that administers the photo lineup directly to the witness and prevents the lineup administrator from seeing which photograph the witness is viewing until after the completion of the procedure.
- A procedure in which photographs are placed into randomly numbered folders, shuffled, and then presented to the witness such that the lineup administrator cannot see or track which photograph is being presented to the witness until after the completion of the procedure.
- Any other procedure that achieves neutral administration and prevents the lineup administrator from knowing which photograph the witness is viewing until after the completion of the procedure.

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<sup>15</sup> FLORIDA DEPARTMENT OF LAW ENFORCEMENT, *Overview of the Professionalism Division*, <http://www.fdle.state.fl.us/cms/CJSTC/Overview.aspx> (last visited March 7, 2017).

<sup>16</sup> Florida Department of Law Enforcement, Agency Bill Analysis for HB 643 (2017) (on file with Criminal Justice Subcommittee).

<sup>17</sup> *Id.*

<sup>18</sup> See *Grant v. State*, 390 So. 2d 341, 343 (Fla. 1980) (quoting *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972)).

<sup>19</sup> See FL Standard Jury Instruction in Crim. Case 3.9(c).

Additionally, the Act requires the administration of mandatory instructions before a witness may view the lineup. The witness must be instructed that:

- The perpetrator might or might not be in the lineup;
- The lineup administrator does not know the suspect's identity;<sup>20</sup>
- The eyewitness should not feel compelled to make an identification;
- It is as important to exclude innocent persons as it is to identify the perpetrator; and
- The investigation will continue with or without an identification.

The Act requires a witness to acknowledge in writing that he or she has received a copy of the lineup instructions. If a witness refuses to make a written acknowledgement, the lineup administrator is required to acknowledge the document himself or herself.

Further, the Act provides remedies and consequences for compliance or noncompliance with any of its requirements. The failure to comply with any part of the Act results in the following:

- Mandatory consideration of such failure by the court adjudicating a motion to suppress eyewitness identification.
- Evidence of such a failure is admissible in support of a claim of eyewitness misidentification, as long as such evidence is otherwise admissible.

If such evidence is admitted at trial, the Act requires the jury to be instructed that they may consider the evidence to determine the reliability of eyewitness identifications.

Finally, the Act requires the CJSTC to consult with the Florida Department of Law Enforcement ("FDLE") to create educational materials and provide training programs on how to conduct lineups in compliance with the requirements of the Act.

The Act encompasses the Standards already established for Florida law enforcement agencies related to the use of an independent administrator or alternative method and instructions to be given to an eyewitness. However, the Act requires these procedures to be adopted and followed, while the Standards simply provide a suggested set of guidelines for agencies to reference in developing their own policies and procedures for eyewitness identifications.

Additionally, the Act requires any alternative method to the use of an independent administrator to be specified and approved by the CJSTC. There is no such specification or approval process for an alternative method of administration under the Standards.

The bill provides an effective date of October 1, 2017.

#### B. SECTION DIRECTORY:

Section 1: Creating s. 92.70, F.S., relating to eyewitness identification.

Section 2: Providing an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to impact state government revenues.

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<sup>20</sup> This instruction does not have to be given when an approved alternative method of neutral administration is used.



2. Expenditures: The FDLE estimates a fiscal impact of \$7,670 for revision of the law enforcement basic recruit training curriculum and online training course and creation of additional training materials for local agencies to train officers.<sup>21</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill does not appear to impact state government revenues.
2. Expenditures: If a local agency elects to use an independent administrator to comply with the bill, there could be additional costs for such administrator. The bill, however, also provides an agency with the ability to use other procedures that achieve neutral administration which may not require additional expense

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS: None.**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: The bill appears to be exempt from the requirements of Art. VII, Section 18 of the Florida Constitution because it is a criminal law.
2. Other: None.

**B. RULE-MAKING AUTHORITY: The law does not appear to require rulemaking or rulemaking authority.**

**C. DRAFTING ISSUES OR OTHER COMMENTS: None.**

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A.

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<sup>21</sup> Florida Department of Law Enforcement, Agency Bill Analysis for HB 643( 2017) (on file with the Criminal Justice Subcommittee).

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A bill to be entitled  
 An act relating to eyewitness identification; creating  
 s. 92.70, F.S.; providing a short title; defining  
 terms; requiring state, county, municipal, or other  
 law enforcement agencies that conduct lineups to  
 follow specified procedures; requiring eyewitnesses to  
 sign an acknowledgment that they have received the  
 instructions about the lineup procedures from the law  
 enforcement agency; requiring lineup administrators to  
 document the refusal of an eyewitness to acknowledge  
 such receipt; specifying remedies for failing to  
 adhere to the eyewitness identification procedures;  
 requiring the Criminal Justice Standards and Training  
 Commission to create educational materials and provide  
 training programs on how to conduct lineups; providing  
 an effective date.

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

Section 1. Section 92.70, Florida Statutes, is created to  
 read:

- 92.70 Eyewitness identification.-
- (1) SHORT TITLE.-This section may be cited as the  
"Eyewitness Identification Reform Act."
- (2) DEFINITIONS.-As used in this section, the term:

26 (a) "Eyewitness" means a person whose identification by  
 27 sight of another person may be relevant in a criminal  
 28 proceeding.

29 (b) "Independent administrator" means a person who is not  
 30 participating in the investigation of a criminal offense and is  
 31 unaware of which person in the lineup is the suspect.

32 (c) "Lineup" means a photo lineup or live lineup.

33 (d) "Lineup administrator" means the person who conducts a  
 34 lineup.

35 (e) "Live lineup" means a procedure in which a group of  
 36 people is displayed to an eyewitness for the purpose of  
 37 determining if the eyewitness can identify the perpetrator of a  
 38 crime.

39 (f) "Photo lineup" means a procedure in which an array of  
 40 photographs is displayed to an eyewitness for the purpose of  
 41 determining if the eyewitness can identify the perpetrator of a  
 42 crime.

43 (3) EYEWITNESS IDENTIFICATION PROCEDURES.—A lineup  
 44 conducted in this state by a state, county, municipal, or other  
 45 law enforcement agency must meet all of the following  
 46 requirements:

47 (a) The lineup must be conducted by an independent  
 48 administrator. In lieu of using an independent administrator, a  
 49 law enforcement agency may conduct a photo lineup eyewitness  
 50 identification procedure using an alternative method specified

51 and approved by the Criminal Justice Standards and Training  
52 Commission. Any alternative method must be carefully structured  
53 to achieve neutral administration and to prevent the lineup  
54 administrator from knowing which photograph is being presented  
55 to the eyewitness during the identification procedure. An  
56 alternative method approved by the Criminal Justice Standards  
57 and Training Commission may include any of the following:

58 1. An automated computer program that can automatically  
59 administer the photo lineup directly to an eyewitness and  
60 prevent the lineup administrator from seeing which photograph  
61 the eyewitness is viewing until after the procedure is  
62 completed.

63 2. A procedure in which photographs are placed in folders,  
64 randomly numbered, and shuffled and then presented to an  
65 eyewitness such that the lineup administrator cannot see or  
66 track which photograph is being presented to the eyewitness  
67 until after the procedure is completed.

68 3. Any other procedure that achieves neutral  
69 administration and prevents the lineup administrator from  
70 knowing which photograph is being presented to the eyewitness  
71 during the identification procedure.

72 (b) Before a lineup, the eyewitness must be instructed  
73 that:

- 74 1. The perpetrator might or might not be in the lineup;  
75 2. The lineup administrator does not know the suspect's

76 identity, except that this instruction need not be given when a  
 77 specified and approved alternative method of neutral  
 78 administration is used;

79 3. The eyewitness should not feel compelled to make an  
 80 identification;

81 4. It is as important to exclude innocent persons as it is  
 82 to identify the perpetrator; and

83 5. The investigation will continue with or without an  
 84 identification.

85  
 86 The eyewitness shall acknowledge, in writing, having received a  
 87 copy of the lineup instructions. If the eyewitness refuses to  
 88 sign a document acknowledging receipt of the instructions, the  
 89 lineup administrator must document the refusal of the eyewitness  
 90 to sign a document acknowledging receipt of the instructions,  
 91 and the lineup administrator must sign the acknowledgment  
 92 document himself or herself.

93 (4) REMEDIES.—All of the following remedies are available  
 94 as consequences of compliance or noncompliance with any  
 95 requirement of this section:

96 (a)1. A failure on the part of a person to comply with any  
 97 requirement of this section shall be considered by the court  
 98 when adjudicating motions to suppress eyewitness identification.

99 2. A failure on the part of a person to comply with any  
 100 requirement of this section is admissible in support of a claim

101 of eyewitness misidentification, as long as such evidence is  
 102 otherwise admissible.

103 (b) If evidence of compliance or noncompliance with any  
 104 requirement of this section is presented at trial, the jury  
 105 shall be instructed that the jury may consider credible evidence  
 106 of compliance or noncompliance to determine the reliability of  
 107 eyewitness identifications.

108 (5) EDUCATION AND TRAINING.—The Criminal Justice Standards  
 109 and Training Commission, in consultation with the Department of  
 110 Law Enforcement, shall create educational materials and provide  
 111 training programs on how to conduct lineups in compliance with  
 112 this section.

113 Section 2. This act shall take effect October 1, 2017.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee

3 Representative Harrell offered the following:

4  
5 **Amendment**

6 Remove lines 48-57 and insert:



7 administrator. However, in lieu of using an independent  
 8 administrator, a law enforcement agency may conduct a photo  
 9 lineup eyewitness identification procedure using an alternative  
 10 method specified in subparagraph 1., subparagraph 2., or  
 11 subparagraph 3. Any alternative method must be carefully  
 12 structured to achieve neutral administration and to prevent the  
 13 lineup administrator from knowing which photograph is being  
 14 presented to the eyewitness during the identification procedure.  
 15 Alternative methods may include any of the following:





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 895 Search Warrants  
**SPONSOR(S):** Killebrew  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 858

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Merlin 	White 
2) Judiciary Committee			

**SUMMARY ANALYSIS**

In Florida, a common impairment crime involves driving under the influence of alcohol or drugs (“DUI”), as described in s. 316.193, F.S. As DUI cases usually involve traffic stops, such cases implicate the Fourth Amendment, and may require a request by a law enforcement officer (“LEO”) to provide a breath, blood, or urine sample. Current Florida law allows a LEO to draw blood:

- Without a warrant when the suspect voluntarily consents to the test;
- With a warrant in felony cases; or
- Pursuant to a subpoena, if a hospital takes the suspect’s blood after an accident and tests it for medical purposes.

Section 933.02, F.S., which governs the grounds for issuance of a search warrant, does not authorize a search warrant to obtain blood evidence in a misdemeanor DUI case; however, this section does provide that a search warrant may be issued:

- When any property has been used as a means to commit a crime; or
- If any property constitutes evidence relevant to proving that a felony has been committed. Florida case law has interpreted this provision to authorize a search warrant to obtain blood evidence in felony DUI cases.

The bill amends s. 933.02, F.S., to expand the grounds for issuance of a search warrant to include blood if the search warrant constitutes evidence relevant to proving that a misdemeanor DUI has been committed. In addition, the bill provides that:

- The issuance of a search warrant for blood for DUI is not precluded by any rights or privileges under s. 316.1932, F.S., and is considered an additional method to secure evidence subsequent to the testing of breath, urine, or blood that may be required under the implied consent law.
- A search warrant for blood for a misdemeanor DUI may be requested only after a refusal to submit to testing under s. 316.1932 has occurred.

The bill may have a fiscal impact on state and local governments. Please see “Fiscal Analysis & Impact Statement,” *infra*.

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### *Impairment and Blood Draw Cases*

In Florida, a common impairment crime occurs when a person is arrested and/or convicted of driving under the influence of alcohol or drugs ("DUI"), as described in s. 316.193, F.S. Section 316.193, F.S.,<sup>1</sup> provides, in pertinent part:

- A person is guilty of the offense of driving under the influence and is subject to punishment if the person is driving or in actual physical control of a vehicle within this state and the person:
  - Is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, F.S., or any substance controlled under chapter 893, when affected to the extent that the person's normal faculties are impaired;
  - Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
  - Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

As DUI cases usually involve traffic stops, it is well-established that such cases implicate the Fourth Amendment, and may involve a request by a law enforcement officer ("LEO") to provide a breath, blood, or urine sample.

Generally, a person who commits a DUI under 316.193, F.S., is guilty of a misdemeanor. However, a DUI can be charged as a felony when the defendant:

- Has been convicted of a third DUI within 10 years;<sup>2</sup>
- Is convicted of a fourth or subsequent DUI;<sup>3</sup>
- Seriously injured someone as a result of DUI;<sup>4</sup> or
- Killed someone while DUI.<sup>5</sup>

In *State v. Geiss*,<sup>6</sup> the Fifth District Court of Appeal held, in pertinent part, that the statute governing search warrants, s. 933.02, F.S., precludes LEOs from securing a blood draw warrant for a misdemeanor DUI.<sup>7</sup> As explained by the court, s. 933.02(2)(a), F.S., establishes the grounds for issuing a search warrant, providing that a search warrant may be issued when "any property" has been "used as a means to commit any crime."<sup>8</sup> Section 933.02(3), F.S., authorizes the State to secure a warrant for "property [that] constitutes evidence relevant to proving that a felony has been committed."<sup>9</sup> The court noted that "blood is not 'used as a means to commit' driving under the influence. Instead, blood is seized for its evidentiary value."<sup>10</sup> Applying the good faith exception to the warrant requirement,

<sup>1</sup> s. 316.193(1)(a)-(c), F.S.

<sup>2</sup> s. 316.193(2)(b)1., F.S.

<sup>3</sup> s. 316.193(2)(b)3., F.S.

<sup>4</sup> s. 316.193(3)(c)2., F.S.

<sup>5</sup> s. 316.193(3)(c)3.a., F.S., provides that a DUI which results in the death of any human being or unborn child is DUI manslaughter, which is a felony of the second degree. Section 316.193(3)(c)3.b., F.S., in turn, provides that this crime is a felony of the first degree, if at the time of the crash, the person knew, or should have known, that the crash occurred, and the person failed to give information and render aid.

<sup>6</sup> *State v. Geiss*, 70 So. 3d 642 (Fla. 5th DCA 2011).

<sup>7</sup> *Id.* at 650.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

however, the *Geiss* court concluded under the facts of the case that the blood test results should not have been suppressed.<sup>11</sup>

In *Missouri v. McNeely*,<sup>12</sup> the Supreme Court of the United States was presented with the question about whether the natural metabolization of alcohol in the bloodstream presented a “per se exigency” that justified an exception to the Fourth Amendment’s warrant requirement for nonconsensual blood testing in all drunk driving cases.<sup>13</sup> The Court held that it did not. While the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case, it did not do so categorically.<sup>14</sup> Whether a warrantless blood test of a DUI suspect is reasonable has to be determined case-by-case based on the totality of the circumstances.<sup>15</sup> As noted in the majority opinion, “[i]n those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.”<sup>16</sup>

More recently, in *Birchfield v. North Dakota*,<sup>17</sup> the Supreme Court of the United States discussed whether warrantless alcohol testing incident to DUI arrests to determine blood alcohol content was a violation of the Fourth Amendment. The Court held that both breath tests and blood tests are searches within the meaning of the Fourth Amendment. However, the Court analyzed both types of tests under the search incident to arrest doctrine, weighing an individual’s “privacy interests” and “the degree to which it is needed for the promotion of legitimate governmental interests.”<sup>18</sup>

Regarding breath tests, the *Birchfield* Court concluded that breath tests do not implicate significant privacy concerns, but blood tests are significantly more intrusive.<sup>19</sup> As to the government’s interest in the tests, the Court concluded that it serves the very important function of providing an “incentive to cooperate in alcohol testing.”<sup>20</sup> The Court concluded that requiring breath tests is constitutional, but requiring blood tests is not, as the goal of traffic safety can be obtained by less invasive means such as a breath test.<sup>21</sup>

The decision in *Birchfield* involved warrantless alcohol testing incident to a DUI arrest. While the Court noted held that it was impermissible for the State to insist upon an intrusive blood test and impose criminal penalties for refusal, a search may nonetheless be upheld when the subject consents, which can be inferred from the context.<sup>22</sup> Further, the Court reiterated that its prior opinions have approvingly referred to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply.<sup>23</sup> However, motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense.<sup>24</sup>

#### *Distinctions in Florida*

The factual scenario described in *McNeely* involved a routine misdemeanor DUI without a crash; the suspect was arrested and taken by the LEO to the hospital where blood was drawn. Under *McNeely*,

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<sup>11</sup> *Id.* at 651.

<sup>12</sup> *Missouri v. McNeely*, 133 S. Ct. 1552 (2013).

<sup>13</sup> *Id.* at 1556.

<sup>14</sup> *Id.* at 1564 (citing and referring to such as *Schmerber v. California*, 384 U.S. 757 (1966)).

<sup>15</sup> 133 S. Ct. at 1556.

<sup>16</sup> *Id.* at 1561.

<sup>17</sup> *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016).

<sup>18</sup> 136 S. Ct. at 2176-84.

<sup>19</sup> *Id.* at 2184.

<sup>20</sup> *Id.* at 2179.

<sup>21</sup> *Id.* at 2185; see also *Williams v. State*, 2016 Fla. Lexis 2465 (Fla. Nov. 9, 2016) (in which the Florida Supreme Court vacated and remanded a decision to the Fifth District Court of Appeal for reconsideration in light of *Birchfield*).

<sup>22</sup> *Birchfield*, 136 S. Ct. at 2185.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 2186.

the LEO was required to obtain a warrant. However, Florida is limited by the decision in *Geiss*, which does not allow for a search warrant in a misdemeanor DUI case.

Florida law allows LEOs to conduct a warrantless blood draw of a person if there is consent to the search. Further, the Implied Consent Law, s. 316.1932, F.S., permits a LEO to request a blood test of a person who is suspected of operating a motor vehicle while under the influence of alcoholic beverages, chemical substances, or controlled substances if that person appears for treatment in a hospital, clinic, or other medical facility and a breath or urine test is impractical. However, a LEO who is investigating a routine DUI or a DUI crash not involving serious bodily injury or death is not authorized to compel the suspect to submit to a blood draw.

Section 316.1933(1)(a), F.S., provides that a LEO with probable cause to believe a suspect drove under the influence of alcoholic beverages, chemical substances, or controlled substances and has caused serious bodily injury or death of a human being, which are felonies, including the driver, can take blood by using reasonable force if necessary.

A 2016 case, though, has called s. 316.1933(1)(a), F.S. into question. In *State v. Liles*,<sup>25</sup> the Fifth District Court of Appeal held that a trial court erred by suppressing warrantless blood draws in two fatal DUI cases from 2011 and 2012 because it was reasonable for LEOs at the time to have a good faith belief in the validity of warrantless blood draws pursuant to s. 316.1933(1)(a), F.S., before the issuance of *McNeely*.<sup>26</sup> However, the Fifth District explained that under *McNeely*, the natural metabolization of alcohol in the blood does not create a per se exigency to the Fourth Amendment's warrant requirement justifying warrantless, nonconsensual blood testing in all DUI cases.<sup>27</sup> Therefore, LEOs are not categorically allowed to obtain a suspect's blood sample without a warrant simply because alcohol is leaving a person's blood stream, and s. 316.1933(1)(a), F.S., does not create an exception to the Fourth Amendment's warrant requirement.<sup>28</sup>

#### *Grounds for Issuance of a Search Warrant*

Section 933.02, F.S., which governs the grounds for issuance of a search warrant, does not authorize a search warrant to obtain blood evidence in a misdemeanor DUI case; however, this section does provide that a search warrant may be issued:

- When any property has been used as a means to commit a crime; or
- If any property constitutes evidence relevant to proving that a felony has been committed. As discussed above, Florida case law has interpreted this provision to authorize a search warrant to obtain blood evidence in felony DUI cases.

#### *Summary*

Based on the above cases and statutes, Florida law currently permits a LEO to draw blood:

- Without a warrant when the suspect voluntarily consents to the test; or
- With a warrant in felony cases; or
- Pursuant to a subpoena if a hospital takes the suspect's blood after an accident and tests it for medical purposes.

#### **Effect of the Bill**

The bill amends s. 933.02, F.S., to expand the grounds for issuance of a search warrant to include blood if it constitutes evidence relevant to proving that a misdemeanor DUI has been committed.

The bill also provides:

<sup>25</sup> *State v. Liles*, 191 So. 3d 484 (Fla. 5th DCA 2016). The decision in *Liles* was cited in two, subsequent per curiam decisions by the Fifth District Court of Appeal: *Abbott v. State*, 193 So. 3d 1050, 41 Fla. L. Weekly D1446 (Fla. 5th DCA 2016); and *Arnold v. State*, 204 So. 3d 580, 41 Fla. L. Weekly D2701 (Fla. 5th DCA 2016).

<sup>26</sup> *Liles*, 191 So. 3d at 489-91.

<sup>27</sup> *Id.* at 488-89.

<sup>28</sup> *Id.* at 488.

- The issuance of a search warrant for blood for DUI is not precluded by any rights or privileges under s. 316.1932, F.S., and is considered an additional method to secure evidence subsequent to the testing of breath, urine, or blood that may be required under the implied consent law.
- A search warrant for blood for a misdemeanor DUI may be requested only after a refusal to submit to testing under s. 316.1932, F.S., has occurred.

Finally, the bill makes technical, non-substantive changes for clarification.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 933.02, F.S., relating to grounds for issuance of a search warrant.

Section 2. Provides an effective date of July 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: This bill does not appear to have an impact on local government revenues.
2. Expenditures: There may be an increase in expenditures related blood submissions for toxicology.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: This bill does not appear to have an impact on local government revenues.
2. Expenditures: There may be an increase in expenditures related to blood submissions for toxicology. There may also be an increase in the need for jail beds to the extent that the bill's provisions authorizing blood to be obtained pursuant to a search warrant in misdemeanor DUI cases results in a greater number of convictions.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS: None.**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.
2. Other: In Florida, courts follow the United States Supreme Court's decisions in addressing search and seizure issues.<sup>29</sup> Florida law is currently limited by s. 933.02, F.S., which does not authorize a search warrant for misdemeanor DUI. Since the *McNeely* Court recognized that a warrant could

<sup>29</sup> FLA. CONST. art. I, s. 12; *see also* *Bernie v. State*, 524 So. 2d 988 (Fla. 1988).

have or should have been obtained in a routine DUI misdemeanor case, the bill would address that limitation in Florida.

B. RULE-MAKING AUTHORITY: This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A.

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A bill to be entitled  
 An act relating to search warrants; amending s.  
 933.02, F.S.; expanding the grounds for issuance of a  
 search warrant to include blood if it constitutes  
 evidence relevant to proving that misdemeanor driving  
 under the influence has been committed; providing that  
 specified rights or privileges do not preclude the  
 issuance of a search warrant for blood in a driving  
 under the influence case which is considered an  
 additional method to secure evidence subsequent to  
 various other methods; authorizing the issuance of a  
 search warrant for blood in a misdemeanor driving  
 under the influence case only after a condition has  
 been met; making technical changes; providing an  
 effective date.

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

Section 1. Section 933.02, Florida Statutes, is amended to  
 read:

933.02 Grounds for issuance of search warrant.—Upon proper  
 affidavits being made, a search warrant may be issued under ~~the~~  
~~provisions of~~ this chapter upon any of the following grounds:

(1) When the property was ~~shall have been~~ stolen or  
 embezzled in violation of law.†

- 26 (2) When any property was ~~shall have been~~ used:
- 27 (a) As a means to commit any crime;
- 28 (b) In connection with gambling and, gambling implements
- 29 and appliances; or
- 30 (c) In violation of s. 847.011 or other laws in reference
- 31 to obscene prints and literature.+
- 32 (3) When any property, including blood, constitutes
- 33 evidence relevant to proving that:
- 34 (a) A misdemeanor for driving under the influence has been
- 35 committed; or
- 36 (b) A felony has been committed.+
- 37
- 38 The issuance of a search warrant for blood for driving under the
- 39 influence is not precluded by any of the rights or privileges
- 40 enumerated under s. 316.1932 and is considered an additional
- 41 method to secure evidence subsequent to the breath, urine, or
- 42 blood testing that may be required under s. 316.1932. A search
- 43 warrant for blood for a misdemeanor driving under the influence
- 44 may be requested only after a refusal to submit to testing under
- 45 s. 316.1932 has occurred.
- 46 (4) When any property is being held or possessed in
- 47 violation of any of the following:
- 48 (a) ~~In violation of any of the~~ Laws prohibiting the
- 49 manufacture, sale, and transportation of intoxicating liquors.+
- 50 (b) ~~In violation of the~~ Fish and game laws.+



51           (c) ~~In violation of the~~ Laws relative to food and drug.†  
 52 ~~or~~

53           (d) ~~In violation of the~~ Laws relative to citrus disease  
 54 pursuant to s. 581.184.† ~~or~~

55           (5) When the laws in relation to cruelty to animals, as  
 56 provided in chapter 828, have been or are violated in any  
 57 particular building or place.

58  
 59 This section also applies to any papers or documents used as a  
 60 means of or in aid of the commission of any offense against the  
 61 laws of the state.

62           Section 2. This act shall take effect July 1, 2017.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Criminal Justice

2 Subcommittee

3 Representative Killebrew offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove lines 34-45 and insert:

7 (a) A misdemeanor violation of s. 316.193 or s. 327.35 has  
8 been committed; or

9 (b) A felony has been committed.

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11 The issuance of a search warrant for blood for a violation of s.  
 12 316.193 or s. 327.35 is not precluded by any of the rights or  
 13 privileges enumerated under s. 316.1932 or s. 327.352 and is  
 14 considered an additional method to secure evidence subsequent to  
 15 the breath, urine, or blood testing that may be required under  
 16 s. 316.1932 or s. 327.352. A search warrant for blood for a



Amendment No. 1

17 misdemeanor violation of s. 316.193 or s. 327.35 may be  
18 requested only after a refusal to submit to testing under s.  
19 316.1932 or s. 327.352 has occurred.

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**T I T L E   A M E N D M E N T**

Remove lines 6-12 and insert:

or boating under the influence has been committed; providing  
that specified rights or privileges do not preclude the issuance  
of a search warrant for blood in a driving or boating under the  
influence case which is considered an additional method to  
secure evidence subsequent to various other methods; authorizing  
the issuance of a search warrant for blood in a misdemeanor  
driving or boating



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 939 Use or Operation of a Drone by Certain Offenders

**SPONSOR(S):** Metz

**TIED BILLS:** IDEN./SIM. BILLS: SB 1122

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Hall <i>WH</i>	White <i>JW</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

A drone is an unmanned aircraft that is manufactured in varying sizes and can be flown by remote control or on a programmed flight path. Drones can be equipped with surveillance devices such as thermal imaging cameras, laser scanners, and devices that intercept electronic transmissions. The Federal Aviation Administration ("FAA") is in charge of overseeing the integration of drones into U.S. airspace. In order to comply with FAA regulations, a drone being used for recreational purposes must be registered and its user must comply with safety guidelines, while drones used for research or commercial purposes are subject to greater regulation.

The Florida Sexual Predators Act ("Act") contains various registration requirements for sexual predators, and provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of a list of enumerated offenses.

The bill creates a third degree felony for a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, a violation or attempted violation of a qualifying offense, to use or operate a drone for the purpose of viewing or recording an image of a minor who is on or at the minor's domicile or on or at a business, school, child care facility, park, playground, or other place where children regularly congregate.

The Criminal Justice Impact Conference (CJIC) has not yet considered the impact of this bill. However, the CJIC considered substantively the same bill during the 2016 legislative session, and determined that the bill would have a positive insignificant impact on the Department of Corrections (i.e., an increase of 10 or fewer prison beds). Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill is effective October 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Drones

A drone is an unmanned aircraft that can be flown by remote control or on a programmed flight path<sup>1</sup> and can be as small as an insect or as large as a commercial airliner.<sup>2</sup> Drones can be equipped with various devices such as thermal imaging cameras,<sup>3</sup> laser scanners,<sup>4</sup> and devices that intercept electronic transmissions.<sup>5</sup> While historically the use of drones was concentrated primarily in military, civil government, and commercial use, in recent years the demand for civilian drones used for recreational purposes has been on the rise.<sup>6</sup>

The Federal Aviation Administration (“FAA”) is in charge of overseeing the integration of drones into U.S. airspace.<sup>7</sup> In doing so, it must balance the integration of drones with the safety of the nation’s airspace.<sup>8</sup> The FAA has allowed the use of drones since 1990 for essential public operations such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, and scientific research.<sup>9</sup> More recently the FAA has exercised more control over the operation of drones in national airspace, such as prohibiting drone operations over major urban areas.<sup>10</sup>

The FAA requires recreational users to register drones and to follow the laws and safety guidelines that apply to operating drones in national airspace.<sup>11</sup> As of mid-March 2016, the FAA estimates there have been over 408,000 registrations for model aircraft and recreational drones.<sup>12</sup>

Florida law prohibits the use of a drone<sup>13</sup> by law enforcement agencies or private persons or entities to record an image for the purpose of conducting surveillance on private property, where persons have a reasonable expectation of privacy, without the person’s consent.<sup>14</sup> Under this law, a person is presumed to have a reasonable expectation of privacy on his or her privately owned property if he or

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<sup>1</sup> Richard M. Thompson, II, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, CONGRESSIONAL RESEARCH SERVICE (April 3, 2013), [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf).

<sup>2</sup> Jeremiah Gertler, *U.S. Unmanned Aerial Systems*, CONGRESSIONAL RESEARCH SERVICE (Jan. 3, 2012), [www.fas.org/sgp/crs/natsec/R42136.pdf](http://www.fas.org/sgp/crs/natsec/R42136.pdf).

<sup>3</sup> See, e.g., MICRODRONES, *Applications*, <https://www.microdrones.com/en/applications/> (last visited March 10, 2017).

<sup>4</sup> *Id.*

<sup>5</sup> Andy Greenberg, *Flying Drone Can Crack Wi-Fi Networks, Snoop on Cell Phones*, FORBES (July 28, 2011), <http://www.forbes.com/sites/andygreenberg/2011/07/28/flying-drone-can-crack-wifi-networks-snoop-on-cell-phones/#48ff77237856> (last visited March 10, 2017).

<sup>6</sup> Nick Wingfield, *A Field Guide to Civilian Drones*, THE NEW YORK TIMES (August 29, 2016), [https://www.nytimes.com/interactive/2015/technology/guide-to-civilians-drones.html?\\_r=0](https://www.nytimes.com/interactive/2015/technology/guide-to-civilians-drones.html?_r=0).

<sup>7</sup> FEDERAL AVIATION ADMIN., *Unmanned Aircraft Systems*, <https://www.faa.gov/uas/> (last visited March 10, 2017).

<sup>8</sup> FEDERAL AVIATION ADMIN., *Fact Sheet—Unmanned Aircraft Systems (UAS)*, (Feb. 15, 2015) [http://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=18297](http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297) (last visited March 10, 2017).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> FEDERAL AVIATION ADMIN., *Unmanned Aircraft Systems (UAS (Unmanned Aircraft Systems)) Frequently Asked Questions*, <https://www.faa.gov/uas/faqs/#ffr> (last visited March 10, 2017).

<sup>12</sup> FEDERAL AVIATION ADMIN., *FAA Aerospace Forecast, Fiscal Years 2016-2036*, [https://www.faa.gov/data\\_research/aviation/aerospace\\_forecasts/media/FY2016-36\\_FAA\\_Aerospace\\_Forecast.pdf](https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf) (last visited March 10, 2017).

<sup>13</sup> “Drone” is defined to mean “a powered, aerial vehicle that: 1. Does not carry a human operator; 2. Uses aerodynamic forces to provide vehicle lift; 3. Can fly autonomously or be piloted remotely; 4. Can be expendable or recoverable; and 5. Can carry a lethal or nonlethal payload.” s. 934.50(2)(a), F.S.

<sup>14</sup> Law enforcement must first obtain a search warrant signed by a judge to authorize the use of a drone for this purpose. See s. 934.50(3), F.S.

she is not observable by other persons located at ground level in a place where they have a legal right to be.<sup>15</sup> Florida law currently does not regulate the use of drones in any other manner.

### Sexual Predators

Section 775.21, F.S., provides the Florida Sexual Predators Act ("Act"). The Act contains various registration requirements for sexual predators, and provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

- A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
  - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian;<sup>16</sup>
  - Section 794.011, F.S. (sexual battery);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 847.0145, F.S. (buying or selling minors); or
- Any felony violation, or attempted violation of:
  - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
  - Section 394.4593(2), F.S. (sexual misconduct with a patient);
  - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the offender is not the victim's parent or guardian;<sup>17</sup>
  - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
  - Section 794.011, F.S. (sexual battery), excluding s. 794.011(10), F.S.;<sup>18</sup>
  - Section 794.05, F.S. (unlawful activity with certain minors);
  - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
  - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
  - Section 810.145(8)(b), F.S. (relating to video voyeurism);
  - Section 825.1025, F.S. (lewd or lascivious battery upon or in the presence of an elderly person or disabled person);
  - Section 827.071, F.S. (sexual performance by a child);
  - Section 847.0135, F.S., excluding s. 847.0135(6), F.S. (computer pornography);
  - Section 847.0145, F.S. (selling or buying of minors);
  - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
- The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).<sup>19</sup>

If the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the

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<sup>15</sup> s. 934.50(3)(b), F.S.

<sup>16</sup> These convictions can only be used as a qualifying offense for designation as a sexual predator if there is a finding that the conviction has a sexual component. The Fourth District Court of Appeal has held that the sexual offender designation that resulted from a false imprisonment conviction that had no sexual motivation failed the "rationally related" test. The Court held the state has an interest in protecting the public from sexual offenders and the designation of a person as a sexual offender is rationally related to that goal. However, if it is clear that the qualifying crime is totally devoid of a sexual component, such rational basis is lost. *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001).

<sup>17</sup> *Id.*

<sup>18</sup> Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

<sup>19</sup> s. 775.21(4)(a)1.a., F.S.

department as provided<sup>20</sup> in the Act, and is subject to the community and public notification as provided<sup>21</sup> in the Act.<sup>22</sup>

Section 775.21(10)(b), F.S. creates a third degree felony<sup>23</sup> for failure to comply with the registration requirements for a person designated as a sexual predator. Additionally, s. 775.21(10)(b), F.S., creates a third degree felony<sup>24</sup> for certain acts committed by a sexual predator who has been held criminally liable for committing crimes enumerated in the Act. Specifically, the section provides that a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication of guilt, any violation, or attempted violation, of ss. 787.01, 787.02, or 787.025(2)(c), F.S., where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S., excluding s. 794.011(10), F.S.; ss. 794.05; former 796.03; former 796.035; 800.04; 827.071; 847.0133; 847.0135(5); 847.0145; or 985.701(1), F.S.; or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree felony.

Florida law currently does not have any similar provisions in place to prohibit a sexual offender from using a drone or similar device for the purpose of viewing a minor.

### **Effect of the Bill**

The bill creates s. 810.146, F.S., prohibiting a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, a violation or attempted violation of a qualifying offense, from using or operating a drone for the purpose of viewing or recording an image of a minor who is on or at the minor's domicile or on or at a business, school, child care facility, park, playground, or other place where children regularly congregate.

The bill defines key terms:

- A drone is defined in accordance with s. 934.50, F.S.
- A qualifying offense is an offense under:
  - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), when the victim of the offense was a minor;
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;
  - Section 794.05, F.S. (unlawful activity with certain minors);
  - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
  - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
  - Section 800.04, F.S. (lewd or lascivious offenses involving persons less than 16 years of age);
  - Section 827.071, F.S. (sexual performance by a child);
  - Section 847.0133, F.S. (protection of minors / obscenity);
  - Section 847.0135(5), F.S. (lewd and lascivious exhibition via a computer transmission);
  - Section 847.0145, F.S. (selling or buying of minors);
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); or
  - A violation of another jurisdiction's similar law when the victim of the offense was a minor.

The bill provides that a violation of s. 810.146, F.S., is a third felony and adds the new criminal prohibition to the Offense Severity Ranking Chart as a level 7 offense.

The bill provides an effective date of October 1, 2017.

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<sup>20</sup> Registration requirements are provided under s. 775.21(6), F.S.

<sup>21</sup> Community and public notification requirements are provided under s. 775.21(7), F.S.

<sup>22</sup> s. 775.21(4)(c), F.S.

<sup>23</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>24</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.



**B. SECTION DIRECTORY:**

Section 1. Creates s. 810.146, F.S., relating to use or operation of a drone by certain offenders; penalty.

Section 2. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 3. Provides an effective date of October 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: The bill does not appear to have any impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) has not yet considered the impact of this bill. However, the CJIC considered substantively the same bill during the 2016 legislative session, and determined that the bill would have a positive insignificant impact on the Department of Corrections (i.e., an increase of 10 or fewer prison beds).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS: None.**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.
2. Other: The bill may implicate the First Amendment rights of freedom of speech and freedom of press by limiting a person's ability to photograph minors who are in a public place. When a law restricts fundamental rights, the courts have examined how narrowly tailored the law is to accomplishing the government's purpose. The bill is narrowly tailored in that it applies only to sexual predators and applies only to using a drone for the purpose of viewing or recording an image of a minor. However, because of a lack of case law directly addressing this issue, it would be speculative to predict what the outcome would be if a court were asked to examine its constitutionality based on a First Amendment challenge.

**B. RULE-MAKING AUTHORITY: The bill does not appear to create the need for rulemaking or rulemaking authority.**

**C. DRAFTING ISSUES OR OTHER COMMENTS: None.**

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A

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A bill to be entitled  
 An act relating to use or operation of a drone by  
 certain offenders; creating s. 810.146, F.S.;  
 prohibiting the use or operation of a drone by certain  
 offenders for the purpose of viewing or recording an  
 image of a minor in specified locations; providing a  
 definition; providing criminal penalties; amending s.  
 921.0022, F.S.; assigning an offense severity ranking  
 in the Criminal Punishment Code; providing an  
 effective date.

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

Section 1. Section 810.146, Florida Statutes, is created  
 to read:

810.146 Use or operation of a drone by certain offenders;  
 penalty.-

(1) A sexual predator who has been convicted of or found  
 to have committed, or has pled nolo contendere or guilty to,  
 regardless of adjudication, a violation or attempted violation  
 of a qualifying offense may not use or operate a drone, as  
 defined in s. 934.50, for the purpose of viewing or recording an  
 image of a minor who is on or at the minor's domicile or on or  
 at a business, school, child care facility, park, playground, or  
 other place where children regularly congregate.

(2) For the purposes of this section, a qualifying offense

27 is an offense under s. 787.01 or s. 787.02, when the victim of  
28 the offense was a minor; s. 787.025(2)(c); s. 794.011, excluding  
29 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;  
30 s. 800.04; s. 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145;  
31 or s. 985.701(1); or a violation of a similar law of another  
32 jurisdiction when the victim of the offense was a minor.

33 (3) A violation of this section is a felony of the third  
34 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
35 775.084.

36 Section 2. Paragraph (g) of subsection (3) of section  
37 921.0022, Florida Statutes, is amended to read:

38 921.0022 Criminal Punishment Code; offense severity  
39 ranking chart.—

40 (3) OFFENSE SEVERITY RANKING CHART

41 (g) LEVEL 7

42

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury

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HB 939

2017

			or death to another person; 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.
46	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
47	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
48	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
49	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
50	456.065(2)	3rd	Practicing a health care profession without a license.

HB 939

2017

51	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
52	458.327 (1)	3rd	Practicing medicine without a license.
53	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
54	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
55	461.012 (1)	3rd	Practicing podiatric medicine without a license.
56	462.17	3rd	Practicing naturopathy without a license.
57	463.015 (1)	3rd	Practicing optometry without a license.
58	464.016 (1)	3rd	Practicing nursing without a license.

HB 939

2017

59	465.015(2)	3rd	Practicing pharmacy without a license.
60	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
61	467.201	3rd	Practicing midwifery without a license.
62	468.366	3rd	Delivering respiratory care services without a license.
63	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
64	483.901(7)	3rd	Practicing medical physics without a license.
65	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
66	484.053	3rd	Dispensing hearing aids without a license.
67			

HB 939

2017

68	494.0018 (2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
69	560.123 (8) (b) 1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
70	560.125 (5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
71	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or



HB 939

2017

			identification card; other registration violations.
72	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
73	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
74	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
75	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
76	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular

HB 939

2017

			homicide).
77	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
78	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
79	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
80	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
81	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
82	784.048 (7)	3rd	Aggravated stalking; violation of court order.
83	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
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HB 939

2017

85	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
86	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
87	784.081(1)	1st	Aggravated battery on specified official or employee.
88	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
89	784.083(1)	1st	Aggravated battery on code inspector.
90	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.

HB 939

2017

91	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
92	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
93	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
94	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
95	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
96	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

HB 939

2017

97	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
98	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
99	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
100	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
101	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
102	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older

HB 939

2017

			but younger than 16 years of age; offender 18 years of age or older.
103	800.04 (5) (e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
104	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
105	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
106	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
107	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
108	810.02 (3) (e)	2nd	Burglary of authorized

HB 939

2017

			emergency vehicle.
109	<u>810.146</u>	<u>3rd</u>	<u>Use or operation of a drone by certain offenders.</u>
110	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
111	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
112	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
113	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
114	812.0145(2)(a)	1st	Theft from person 65 years of

115			age or older; \$50,000 or more.
	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
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	812.131(2)(a)	2nd	Robbery by sudden snatching.
117			
	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
118			
	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
119			
	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
120			
	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
121			
	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
122			



HB 939

2017

	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
123	817.535(2) (a)	3rd	Filing false lien or other unauthorized document.
124	817.611(2) (b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
125	825.102(3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
126	825.103(3) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
127	827.03(2) (b)	2nd	Neglect of a child causing

HB 939

2017

			great bodily harm, disability, or disfigurement.
128	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
129	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
130	838.015	2nd	Bribery.
131	838.016	2nd	Unlawful compensation or reward for official behavior.
132	838.021(3)(a)	2nd	Unlawful harm to a public servant.
133	838.22	2nd	Bid tampering.
134	843.0855(2)	3rd	Impersonation of a public officer or employee.
135	843.0855(3)	3rd	Unlawful simulation of legal process.

HB 939

2017

136	843.0855(4)	3rd	Intimidation of a public officer or employee.
137	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
138	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
139	872.06	2nd	Abuse of a dead human body.
140	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
141	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
142	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s.

HB 939

2017

893.03(1)(a), (1)(b), (1)(d),  
 (2)(a), (2)(b), or (2)(c)4.)  
 within 1,000 feet of a child  
 care facility, school, or  
 state, county, or municipal  
 park or publicly owned  
 recreational facility or  
 community center.

143

893.13(1)(e)1.            1st    Sell, manufacture, or deliver  
 cocaine or other drug  
 prohibited under s.

893.03(1)(a), (1)(b), (1)(d),  
 (2)(a), (2)(b), or (2)(c)4.,  
 within 1,000 feet of property  
 used for religious services or  
 a specified business site.

144

893.13(4)(a)            1st    Use or hire of minor; deliver  
 to minor other controlled  
 substance.

145

893.135(1)(a)1.        1st    Trafficking in cannabis, more  
 than 25 lbs., less than 2,000  
 lbs.

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HB 939

2017

147	893.135 (1) (b) 1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
148	893.135 (1) (c) 1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
149	893.135 (1) (c) 2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
150	893.135 (1) (c) 2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
151	893.135 (1) (c) 3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
152	893.135 (1) (c) 3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
	893.135 (1) (d) 1.	1st	Trafficking in phencyclidine, more than 28 grams, less than

HB 939

2017

			200 grams.
153	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
154	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
155	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
156	893.135 (1) (h) 1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
157	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
158	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.

HB 939

2017

159

893.1351(2) 2nd Possession of place for trafficking in or manufacturing of controlled substance.

160

896.101(5)(a) 3rd Money laundering, financial transactions exceeding \$300 but less than \$20,000.

161

896.104(4)(a)1. 3rd Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.

162

943.0435(4)(c) 2nd Sexual offender vacating permanent residence; failure to comply with reporting requirements.

163

943.0435(8) 2nd Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

164

943.0435(9)(a) 3rd Sexual offender; failure to

HB 939

2017

			comply with reporting requirements.
165	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
166	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
167	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
168	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
169	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.



HB 939

2017

170

944.607(13)                    3rd    Sexual offender; failure to  
report and reregister; failure  
to respond to address  
verification; providing false  
registration information.

171

985.4815(10)                3rd    Sexual offender; failure to  
submit to the taking of a  
digitized photograph.

172

985.4815(12)                3rd    Failure to report or providing  
false information about a  
sexual offender; harbor or  
conceal a sexual offender.

173

985.4815(13)                3rd    Sexual offender; failure to  
report and reregister; failure  
to respond to address  
verification; providing false  
registration information.

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175

Section 3. This act shall take effect October 1, 2017.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 83 Offenses by Illegal Immigrants  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Hall <i>WH</i>	White <i>W</i>

### SUMMARY ANALYSIS

For certain offenses, Florida law provides for reclassification of the crime to the next higher degree and increases the offense severity ranking by one level. Examples of current offenses that are subject to reclassification provisions are crimes motivated by prejudice under s. 775.085, F.S., and assault and battery offenses against a law enforcement officer engaged in the lawful performance of his or her duties under s. 784.07, F.S. Florida does not currently authorize reclassification for an offense committed by a person who is unlawfully present in the United States.

The PCS creates s. 775.0864, F.S., to reclassify five violent crimes to the next higher degree when the crime is committed by an alien who is unlawfully present in the United States. The offenses qualifying for the enhanced penalty under the PCS are:

- Sexual battery;
- Aggravated assault with a deadly weapon;
- Murder;
- Unlawful throwing, placing, or discharging a destructive device or bomb; and
- Armed burglary.

The PCS provides that the degree of the offense is reclassified as follows:

- A first degree misdemeanor is reclassified to a third degree felony;
- A third degree felony is reclassified to a second degree felony;
- A second degree felony is reclassified to a first degree felony; and
- A first degree felony is reclassified to a life felony.

The PCS also enhances the offense severity ranking of a reclassified crime to one level higher than the normal ranking.

The Criminal Justice Impact Conference (CJIC) met on March 2, 2017, and considered a version of this PCS which would have applied to a broader range of offenses and determined the bill would have a positive indeterminate impact (unquantifiable increase in the amount of prison beds). Although the PCS applies to a narrower class of offenses, it is still anticipated it will have a positive indeterminate impact. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The PCS provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### *Alien Inmate Population in Florida*

Federal law defines the term “alien” to mean any person who is not a citizen or national of the United States.<sup>1</sup> Additionally, federal immigration law classifies an alien as “unlawfully present” when the alien is in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.<sup>2</sup>

The Florida Department of Corrections (DOC) maintains data related to the number of aliens<sup>3</sup> currently incarcerated in the state’s prison system. This data indicates that, as of June 30, 2016, there were a total of 4,754 confirmed alien inmates. Data regarding the number of alien inmates who are unlawfully present is not collected.<sup>4</sup>

###### *Reclassification of Offenses*

Florida’s statutes currently contain multiple offenses for which the degree of the offense is enhanced if specific circumstances are present. Such an enhancement results in the offense level of the crime increasing by one degree. For example, a third degree felony (typically punishable by a maximum of five years imprisonment and a \$5,000 fine<sup>5</sup>) is enhanced to a second degree felony (punishable by a maximum of 15 years imprisonment and a \$10,000 fine<sup>6</sup>).

For some statutes the enhancement is based upon the offender’s actions, while others base the enhancement on a certain classification of the victim. For example, s. 775.085, F.S., known as Florida’s “Hate Crimes” statute, reclassifies an offense to the next higher offense level if the commission of a crime “evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age of the victim.” This enhancement is based on the offender’s action, while s. 784.07, F.S., reclassifies an offense based on the victim of the offense. Section 784.07, F.S., reclassifies assault and battery offenses against law enforcement officers and other specified officers or providers, who are engaged in the lawful performance of their duty at the time of the offense, to an offense level one degree higher.

###### *Consideration of Immigration Status in Criminal Sentencing*

While Florida allows reclassification based on certain offenses, no Florida court has ever considered the reclassification of a criminal offense based on a defendant’s immigration status. In a 2001 case from the District of Columbia, *Yemson v. United States*,<sup>7</sup> a defendant challenged the trial court’s imposition of consecutive prison terms following a guilty plea to various fraud-related charges. The defendant, who was from Nigeria, had previously fled the country on separate occasions to avoid prosecution for other crimes. He had been rearrested and convicted of other charges in federal court, including illegal entry after deportation. The sentencing judge based his decision to impose sentence on the defendant’s failure to appear for sentencing five years earlier; his lengthy record for many of the same charges; and his failure to accept responsibility for his actions.<sup>8</sup> The District of Columbia Court of Appeals affirmed, noting that it would obviously be unconstitutional to treat a defendant more harshly

<sup>1</sup> 8 U.S.C. § 1101(a)(3) (2015).

<sup>2</sup> 8 U.S.C. § 1182(a)(9)(B)(ii) (2015).

<sup>3</sup> DOC considers an inmate who does not have U.S. citizenship to be an “alien inmate”. FLORIDA DEPARTMENT OF CORRECTIONS, *Inmate Population, 2015-2016 Statistics*, [http://www.dc.state.fl.us/pub/annual/1516/stats/ip\\_alien.html](http://www.dc.state.fl.us/pub/annual/1516/stats/ip_alien.html) (last visited March 12, 2017).

<sup>4</sup> *Id.*

<sup>5</sup> ss. 775.082 and 775.083, F.S.

<sup>6</sup> ss. 775.082 and 775.083, F.S.

<sup>7</sup> *Yemson v. United States*, 764 A.2d 816 (D.C. 2001).

<sup>8</sup> *Id.* at 819

than another defendant solely because of his or her nationality or alien status. But the court explained that its decision does not mean . . . that a sentencing court, in deciding what sentence to impose, must close its eyes to the defendant's status as an illegal alien and his history of violating the law, including any law related to immigration. Indeed, "the sentencing court . . . must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed."<sup>9</sup>

In 2008, the Indiana Court of Appeals in *Sanchez v. State*,<sup>10</sup> citing *Yemson*, upheld a trial court's finding that a defendant's status as an illegal alien was a valid sentencing aggravator. The Court also upheld a related finding that the defendant's illegal alien status reflected a disregard for the law.<sup>11</sup>

*Yemson* and *Sanchez* involve the discretion of a judge to impose a particular sentence based on aggravating and mitigating circumstances, of which, illegal alien immigration status was held to be one such aggravator. Thus, while those cases approve of using a defendant's illegal alien status as a factor to be considered in sentencing, they do not involve an offense reclassification statute.

#### *Criminal Punishment Code, Offense Severity Ranking Chart*

In Florida, the Criminal Punishment Code uses a system that assigns point values to crimes based on the severity of the offense listed in the offense severity ranking chart.<sup>12</sup> These point values are used in conjunction with a Criminal Punishment Code scoresheet to calculate a sentencing score for felony offenders. The offense severity ranking chart is separated into 10 levels, ranked from least severe which are level one offenses, to most severe which are level 10 offenses. Each felony offense is assigned a level according to the severity of the offense.<sup>13</sup> If an offense is not specifically listed in the offense severity ranking chart, s. 921.0023, F.S., creates a default provision to assign a severity ranking based upon the degree of the felony. For example, a third degree felony not specifically ranked will be a level one offense for the purpose of computing the Criminal Punishment Code scoresheet.<sup>14</sup> Florida law specifies that reclassification of the degree of a felony offense, to provide an enhanced penalty, will not result in the offense becoming unlisted to subject it to the default provisions of s. 921.0023, F.S.

#### **Effect of the Bill**

The bill reclassifies five violent crimes to the next higher degree when the crime is committed by an alien who is unlawfully present in the United States. The offenses qualifying for the enhanced penalty under the bill are:

- Sexual battery, pursuant to s. 794.011, F.S.;
- Aggravated assault with a deadly weapon, pursuant to s. 784.021(1)(a), F.S.;
- Murder, pursuant to s. 782.04, F.S.;
- Unlawful throwing, placing, or discharging a destructive device or bomb, pursuant to s. 790.1615, F.S.; and
- Armed burglary, pursuant to s. 810.02(2)(b), F.S.

The bill provides that the degree of the offense is reclassified as follows:

- A first degree misdemeanor<sup>15</sup> is reclassified to a third degree felony;<sup>16</sup>
- A third degree felony is reclassified to a second degree felony;<sup>17</sup>
- A second degree felony is reclassified to a first degree felony;<sup>18</sup> and

<sup>9</sup> *Id.* (citations omitted).

<sup>10</sup> *Sanchez v. State*, 891 N.E.2d 174 (Ind. Ct. App. 2008).

<sup>11</sup> *Id.* at 176-77.

<sup>12</sup> ss. 921.0022 and 921.0023, F.S.

<sup>13</sup> s. 921.0022, F.S.

<sup>14</sup> s. 921.0023, F.S.

<sup>15</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>16</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>17</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

- A first degree felony is reclassified to a life felony<sup>19</sup>.

The bill provides that any offense reclassified is to be ranked one level above the ranking normally specified for the crime for the purpose of computing the Criminal Punishment Code scoresheet and determining incentive gain-time eligibility. For example, aggravated assault with a deadly weapon is ranked as a level six offense on the offense severity ranking chart. Thus, under the bill, if an unlawfully present alien offender commits the offense, it will be reclassified as a level seven offense for ranking purposes.

Additionally, s. 921.0022, relating to the offense severity ranking chart, is amended to include the newly created s. 775.0864, F.S., as one of the enumerated reclassification statutes that will not cause an offense to become unlisted so that it is subject to the default ranking provisions of s. 921.0023, F.S.

The bill provides an effective date of July 1, 2017.

#### B. SECTION DIRECTORY:

Section 1: Creating s. 775.0864, F.S.; relating to offenses against persons by unlawfully present aliens; reclassification.

Section 2: Amending s. 921.0022, F.S.; relating to the Criminal Punishment Code; offense severity ranking chart.

Section 3: Providing an effective date of July 1, 2017.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) met on March 2, 2017 and considered a broader version of this bill that reclassified any offense involving the use or threat of physical force or violence against another person when committed by an alien unlawfully present in the United States. The CJIC determined the bill would have a positive indeterminate impact (unquantifiable increase in the amount of prison beds). Although this bill applies to a narrower class of offenses, it is still anticipated that it will have a positive indeterminate impact on prison beds.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill may reduce the need for jail beds because it reclassifies a misdemeanor of the first degree, which could result only in a sentence to jail for less than one year, to a third degree felony, which result in a prison sentence.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

#### D. FISCAL COMMENTS: None.

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<sup>18</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

<sup>19</sup> A life felony is generally punishable by life imprisonment or a term of years not to exceed life imprisonment and a fine of up to \$15,000. ss. 775.082 and 775.083, F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.
2. Other: An issue that may arise is whether the bill is subject to preemption by federal law. In *De Canas v. Bica*,<sup>20</sup> a 1976 decision, the U.S. Supreme Court held that federal immigration law does not inherently preempt state court jurisdiction over all matters involving immigration issues. The Court noted that it has never held that every state statute “which in any way deals with aliens is a regulation of immigration and thus per se pre-empted by this constitutional power....”<sup>21</sup> This decision was rendered 10 years before Congress passed the Immigration Reform and Control Act of 1986 and current federal law, which was enacted for “combating the employment of illegal aliens.”<sup>22</sup>

In *Arizona v. United States*,<sup>23</sup> a 2012 U.S. Supreme Court decision rendered after the Immigration Reform and Control Act, the Court noted that the current federal law was substantially different than it was when *De Canas* was decided. The Court said that “federal governance of immigration and alien status is extensive and complex.”<sup>24</sup>

The Arizona Court also expounded on the federal preemption doctrine as it involves immigration law. Under the federal preemption doctrine, states are precluded from regulating conduct that Congress has determined must be regulated by federal law. Additionally, state statutes are preempted when they are in conflict with federal law. It is clear that the broad scope of federal immigration law significantly limits the power of states to regulate immigration. However, because of the absence of case law that addresses issues sufficiently similar to the issues raised by the bill, it is unclear whether this bill is preempted by federal law.

The Court noted that, “As a general rule, it is not a crime for a removable alien to remain present in the United States”<sup>25</sup> and that removal proceedings are determined to be civil, not criminal, proceedings.<sup>26</sup> Unlike the Arizona statute under review, the bill does not seek to detain unlawfully present aliens based upon a suspicion of their removability. Under this bill, unlawfully present aliens have been arrested and are being prosecuted for a state criminal offense.

- B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

- C. DRAFTING ISSUES OR OTHER COMMENTS: None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

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<sup>20</sup> *De Canas v. Bica*, 424 U.S. 351 (1976).

<sup>21</sup> *Id.* 355.

<sup>22</sup> *Arizona v. United States*, 132 S. Ct. 2492, 2504 (2012).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 2499.

<sup>25</sup> *Id.* at 2505.

<sup>26</sup> *Id.* at 2499.

1                                   A bill to be entitled  
 2           An act relating to offenses by aliens unlawfully  
 3           present in the United States; creating s. 775.0864,  
 4           F.S.; requiring specified offenses to be reclassified  
 5           if committed by such aliens; specifying the  
 6           reclassification of these offenses; specifying the  
 7           enhancement of the level of the ranking for purposes  
 8           of sentencing and gain-time eligibility; amending s.  
 9           921.0022, F.S.; revising references to offense  
 10          reclassification provisions to conform to changes made  
 11          by the act; providing an effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15           Section 1. Section 775.0864, Florida Statutes, is created  
 16 to read:

17           775.0864 Offenses against persons by unlawfully present  
 18 aliens; reclassification.-

19           (1) A violation of any of the following provisions must be  
 20 reclassified to the next higher degree, as provided in  
 21 subsection (2), if the offense is committed against a person in  
 22 this state by an alien, as defined in 8 U.S.C. s. 1101(a), who  
 23 is unlawfully present in the United States:

24           (a) Section 794.011, relating to sexual battery.

25           (b) Section 784.021(1)(a), relating to aggravated assault



26 with a deadly weapon.

27 (c) Section 782.04, relating to murder.

28 (d) Section 790.1615, relating to unlawful throwing,  
 29 placing, or discharging of a destructive device or bomb.

30 (e) Section 810.02(2)(b), relating to armed burglary.

31  
 32 (2) In the case of an offense identified in subsection  
 33 (1):

34 (a) A misdemeanor of the first degree is reclassified to a  
 35 felony of the third degree. For purposes of sentencing under  
 36 chapter 921, such offense is ranked in level 2 of the offense  
 37 severity ranking chart.

38 (b) A felony of the third degree is reclassified to a  
 39 felony of the second degree.

40 (c) A felony of the second degree is reclassified to a  
 41 felony of the first degree.

42 (d) A felony of the first degree is reclassified to a life  
 43 felony.

44  
 45 For purposes of sentencing under chapter 921 and determining  
 46 incentive gain-time eligibility under chapter 944, a felony  
 47 offense that is reclassified under this subsection is ranked one  
 48 level above the ranking specified under s. 921.0022 or s.  
 49 921.0023 of the felony offense committed.

50 Section 2. Subsection (2) of section 921.0022, Florida

51 Statutes, is amended to read:

52 921.0022 Criminal Punishment Code; offense severity  
53 ranking chart.-

54 (2) The offense severity ranking chart has 10 offense  
55 levels, ranked from least severe, which are level 1 offenses, to  
56 most severe, which are level 10 offenses, and each felony  
57 offense is assigned to a level according to the severity of the  
58 offense. For purposes of determining which felony offenses are  
59 specifically listed in the offense severity ranking chart and  
60 which severity level has been assigned to each of these  
61 offenses, the numerical statutory references in the left column  
62 of the chart and the felony degree designations in the middle  
63 column of the chart are controlling; the language in the right  
64 column of the chart is provided solely for descriptive purposes.  
65 Reclassification of the degree of the felony through the  
66 application of s. 775.0845, s. 775.085, s. 775.0861, s.  
67 775.0862, s. 775.0863, s. 775.0864, s. 775.087, s. 775.0875, s.  
68 794.023, or any other law that provides an enhanced penalty for  
69 a felony offense, to any offense listed in the offense severity  
70 ranking chart in this section shall not cause the offense to  
71 become unlisted and is not subject to the provisions of s.  
72 921.0023.

73 Section 3. This act shall take effect July 1, 2017.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 361 Bail Bonds  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Hall <i>WH</i>	White <i>W</i>

### SUMMARY ANALYSIS

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S. Bail requires an arrestee to pay a set sum of money to the court to be released from jail. As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond executed by a bail bond agent. A bail bond agent is generally enlisted by paying a nonrefundable fee to the bond agent equal to 10 percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond. This contract acts as an insurance policy against the risk that the defendant will not abide by the conditions of his or her release.

The bill makes a number of changes to ch. 903, F.S., including:

- Adds a requirement for any person, company, or entity that charges a fee to post a cash or surety bail bond to be licensed pursuant to ch. 648, F.S.;
- Narrows the general responsibilities and liabilities of a bail bond agent;
- Removes any breach of the bond as a basis on which a forfeiture can occur, and narrows it to only a failure to appear before the court in a proceeding for which the surety bond was posted;
- Revises the bases on which a forfeiture can be discharged;
- Expands the circumstances in which the clerk of court may automatically discharge a bond to include circumstances where the defendant is arrested and returned to the county of the jurisdiction of the court or has posted a new bond for the case at issue before judgment;
- Removes judicial discretion to reduce the amount remitted to the bond agent in a remission of forfeiture order;
- Adds a circumstance in which a bond is considered to be satisfied for the purposes of canceling the bond to include cases in which a period of 36 months has passed since the original bond was posted;
- Limits the requirements for cancellation of a bond to exclude cases in which a bond has been declared forfeited before the 36-month expiration; and
- Adds placement in any court-ordered program, including a residential mental health facility, to the list of circumstances in which an original bond is not considered to guarantee the defendant's appearance.

The bill may have a fiscal impact on state and local governments. Please see "Fiscal Analysis & Impact Statement," *infra*.

The bill takes effect on July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Pretrial Release**

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.<sup>1</sup> Judges are required to presume that nonmonetary conditions<sup>2</sup> are sufficient for any person to be granted pretrial release<sup>3</sup> who is not charged with a dangerous crime.<sup>4</sup> Although courts have the authority to impose any number of pretrial release conditions, courts must impose conditions of release that require the defendant to refrain from criminal activity of any kind and to refrain from contact with the victim.<sup>5</sup> If a defendant violates the conditions of pretrial release imposed by the court, the person may be arrested and held to answer before the court that has jurisdiction to try the defendant.<sup>6</sup>

##### **Bail Bonds**

###### Issuance of a Bail Bond and the Commitment and Obligation of a Bail Bond Agent

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S., and requires an arrestee to pay a set sum of money, commonly called a cash bond, to the court to be released from jail.<sup>7</sup> As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond<sup>8</sup> executed by a bail bond agent licensed pursuant to ch. 648, F.S. A criminal surety bail bond requires a defendant to pay the bail bond agent a nonrefundable fee equal to 10 percent of the bail bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond.<sup>9</sup> This contract acts as an insurance policy against the risk that the defendant will not abide by the conditions of his or her release. Section 903.045, F.S. (emphasis added) currently provides that a criminal surety bail bond:

[S]hall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding **or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.**

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<sup>1</sup> Conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130, Fla. R. Crim. Proc.

<sup>2</sup> Nonmonetary conditions include any condition that does not require the payment of a financial guarantee, such as releasing the arrestee on his or her recognizance, placement in a pretrial release program, or placing restrictions on the arrestee's travel, association, or place of abode. See FLA. R. CRIM. P. 3.131.

<sup>3</sup> s. 907.041(3)(a), F.S.

<sup>4</sup> "Dangerous crimes" include arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of chapter 893; and attempting or conspiring to commit any such crime. s. 907.041, F.S.

<sup>5</sup> s. 903.047, F.S.

<sup>6</sup> FLA. R. CRIM. P. 3.131; s. 903.0471, F.S.; s. 907.041, F.S.

<sup>7</sup> The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges. *Universal Bail Bonds v. Florida*, 929 So.2d 697 (Fla. 3d DCA 2006).

<sup>8</sup> ss. 903.011, and 903.105, F.S.

<sup>9</sup> Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2015*, Report No. 16-10 (Dec. 2016) at 2.

### *Effect of the Bill*

The bill amends s. 903.045, F.S., to require any person, corporation, company, or entity that charges a fee or a premium to post a cash or surety bail bond to be licensed pursuant to ch. 648, F.S. For example, a credit card company charging a fee would have to obtain a bail bond agent license in order for an arrested person to use the credit card to post a bond. Additionally, the bill requires the bail bond agent to ensure that the defendant appears at all criminal proceedings for which the surety bond was posted and, in doing so, the bill narrows the obligation of the bail bond agent, such that the defendant's failure to appear at proceedings not specifically ensured by the bond and the defendant's breach of any other bond condition no longer constitute a breach of the bail bond agent's commitment and obligation.

### Forfeiture of a Bail Bond

If there is a breach of the bond, which may be caused by a failure to appear before the court or for any other violation of the pretrial release conditions,<sup>10</sup> the court generally must declare the bond and any money deposited to be forfeited.<sup>11</sup> However, this forfeiture requirement does not apply even if there is a breach of the bond, when the information, indictment, or affidavit in the criminal case is not filed within six months of arrest, or the clerk of the court failed to provide the agent with at least 72 hours' notice of the time and date of the required appearance for the defendant.<sup>12</sup> Within five days after forfeiture of a bond, the court must mail or electronically transmit a notice to the bail bond agent and the surety company.<sup>13</sup> The value of the forfeited bond must be paid by the bail bond agent within 60 days of the date the notice was mailed or transmitted.<sup>14</sup>

### *Effect of the Bill*

The bill amends s. 903.26(2), F.S., to remove **any** breach of the bond as a basis on which a forfeiture can occur, and narrows it to only a defendant's failure to appear before the court in a proceeding for which the surety bond was posted.

### Discharge of a Bail Bond Forfeiture

In specific circumstances, a bond forfeiture can be effectively cancelled when a discharge is entered by the court. Current law requires a court to discharge a forfeiture within 60 days if the court determines that:

- It was impossible for the defendant to appear as required due to circumstances beyond the defendant's control;
- At the time of the required appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison; or
- The defendant surrenders or is arrested, if the delay has not thwarted the proper prosecution of the defendant.<sup>15</sup>

In addition to the above, the clerk of court must discharge the forfeiture without further order of the court if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment. The bail bond agent is required to pay the costs associated with returning the defendant to the county of jurisdiction, as a condition of the clerk discharging the forfeiture.<sup>16</sup> Such costs include the "costs incurred by the sheriff's office in actually transporting the defendant from the county of arrest to the

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<sup>10</sup> If the defendant appears at some point on the date of his or her required appearance, the court in its discretion may direct the clerk to set aside a forfeiture of the bond which may have been previously entered. Any appearance of the defendant after that day, however, constitutes forfeiture of the bond. s. 903.26(2)(b), F.S.

<sup>11</sup> s. 903.26(2)(a), F.S.

<sup>12</sup> s. 903.26(1), F.S.

<sup>13</sup> s. 903.26(2)(a), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> s. 903.26(5), F.S.

<sup>16</sup> s. 903.26(8), F.S.

county holding the warrant.”<sup>17</sup> This includes the prorated salary of the officers involved in transporting the defendant as well as the actual expenses for transportation.<sup>18</sup>

#### *Effect of the Bill*

The bases on which a forfeiture can be discharged are amended to include circumstances when:

- The court determines it was impossible for the defendant to appear as required or *within 60 days after the required appearance* due to circumstances beyond the defendant’s control;
- The courts determines that at the time of the required appearance or *within 60 days after the required appearance*, the defendant was confined in an institution or hospital or in any county, state, federal, or immigration detention facility; was deported; or is deceased;
- The defendant has been surrendered or arrested at the time of the required appearance or *within 60 days after the required appearance* in any county, state, or federal jail or prison, and a hold is placed to return the defendant to the jurisdiction of the court;
- The court determines that the state is unwilling to seek nationwide extradition of the fugitive defendant within 30 days after a request by the surety agent to do so, and contingent upon the surety agent’s consent to pay all transportation costs incurred by an official in returning the defendant to the jurisdiction of the court, up to the penal amount of the bond;<sup>19</sup> or
- The defendant has been arrested and returned to the county of the jurisdiction of the court or has posted a new bond for the case at issue before judgment, in which case, the clerk of court shall automatically discharge a bond without further hearing or order by the court.<sup>20</sup>

The extension of the time period, as indicated in italics above, for a bail bond agent to make this showing, may reduce the need for bail bond agents to pay the full amount of the forfeiture and later require a remission hearing when they can locate the defendant up to 60 days after the failure to appear. For example, if a defendant fails to appear in court and the bail bond agent locates him or her in another county jail and a hold is placed on the defendant for his or her return to the county holding the warrant within 60 days, the court may discharge the bond forfeiture. This would negate the current requirement for the bond agent to pay the full amount of the forfeiture, wait until the defendant is returned to the jurisdiction holding the warrant, and then require the court to hold a remission hearing.

The bill also repeals s. 903.26(6), F.S., which provides that discharge of a forfeiture by the court is limited to the bases provided above; thus, it appears that the court may discharge a forfeiture for other bases.

#### Remission of a Bail Bond Forfeiture

Remission of a bond forfeiture means a partial to total reimbursement of the bail bond agent’s loss of the forfeited amount. A bail bond agent has two years from the time of the forfeiture of the bond to apply for remission of the forfeiture.<sup>21</sup> The remission of a forfeiture may not be entered for any reason other than the reasons specified in s. 903.28, F.S. The length of the time period in which the defendant surrenders or is apprehended and the actions of the bail bond agent in producing the defendant determine the amount of the forfeiture that may be remitted. The following circumstances must be present for a bail bond agent to recoup losses arising from a bond forfeiture:

- The defendant surrenders or is apprehended;
- The bail bond agent apprehended and surrendered the defendant; or the apprehension or surrender of the defendant was substantially procured or caused by the bail bond agent; or the bail bond agent substantially attempted to procure or cause the apprehension or surrender of the defendant; and

<sup>17</sup> *Easy Bail Bonds v. Polk County*, 784 So. 2d 1173, 1177 (Fla. 2d 2001).

<sup>18</sup> *Id.*

<sup>19</sup> The “penal amount” is the amount in which the bond is issued. US LEGAL, *Bonds Construction Law and Legal Definition*, <https://definitions.uslegal.com/b/bonds-construction/> (last visited March 1, 2017).

<sup>20</sup> In this specific circumstance the automatic discharge may be entered without further hearing and order of the court.

<sup>21</sup> s. 903.28(1), F.S.

- The delay has not thwarted the proper prosecution of the defendant.<sup>22</sup>

The time period in which these requirements occur determine the percent of reimbursement the bail bond agent is eligible to recoup. If the defendant surrenders or is apprehended within:

- 90 days of the forfeiture, the court may direct remission of up to 100 percent of the bond amount;
- 180 days of the forfeiture, the court may direct remission of up to 95 percent of the bond amount;
- 270 days of the forfeiture, the court may direct remission of up to 90 percent of the bond amount;
- One year of the forfeiture, the court may direct remission of up to 85 percent of the bond amount; or
- Two years of the forfeiture, the court may direct remission of up to 50 percent of the bond amount.<sup>23</sup>

#### *Effect of the Bill*

The bill removes judicial discretion to reduce the amount remitted to the bail bond agent in a remission of forfeiture order. The bill provides that the judge must order remission amounts as follows:

- 100 percent of the forfeiture when the defendant surrenders or is arrested within 90 days of the forfeiture;
- 95 percent of the forfeiture when the defendant surrenders or is apprehended within 180 days of the forfeiture;
- 90 percent of the forfeiture when the defendant surrenders or is apprehended within 270 days of the forfeiture;
- 85 percent of the forfeiture when the defendant surrenders or is apprehended within 1 year of the forfeiture; or
- 50 percent of the forfeiture when the defendant surrenders or is apprehended within 2 years of the forfeiture.

#### Cancellation of a Bail Bond

A cancellation of a bond concludes the bond and finalizes the extent of the bail bond agent's liabilities arising from the bond in question. Within 10 days after the conditions of a bond have been satisfied or a bond forfeiture has been discharged or remitted, the court shall order the bond to be canceled.<sup>24</sup> The original bond shall expire 36 months after the bond was posted for the release of the defendant.<sup>25</sup> In any case where formal charges have not been filed against the defendant within 365 days after arrest, the court shall order the bond canceled unless the state can show good cause for the failure. The conditions of a bond will be considered satisfied in any of the following circumstances:

- An adjudication of guilt or innocence;
- An acquittal; or
- A withholding of an adjudication of guilt.<sup>26</sup>

The original bond is not considered to guarantee the appearance of a defendant for certain circumstances in which he or she may later be released, including:

- Deferred sentences;
- Appearance during or after a presentence investigation;
- Appearance during or after appeals;<sup>27</sup>

<sup>22</sup> s. 903.28(2), F.S.

<sup>23</sup> s. 903.28, F.S.

<sup>24</sup> s. 903.31(1), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> While an appeal is pending a defendant may be granted a supersedeas bond conditioned on the defendant personally answering and abiding by the final order, sentence, or judgment of the appellate court and, if the case is remanded, on the defendant appearing before the court in which the case originated and not departing without leave of court. s. 924.065, F.S.



- Conduct during or appearance after admission to a pretrial intervention program;
- Payment of fines; or
- Attendance at educational or rehabilitation facilities the court otherwise provides in the judgment.<sup>28</sup>

*Effect of the Bill*

The bill amends the circumstances in which a bond is considered satisfied to add cases in which 36 months have passed since the original bond was posted. The bill excludes cases in which a bond was declared forfeited before the 36-month expiration period from the application of the cancellation provisions. The bill also adds placement in any court-ordered program, including a residential mental health facility, to the list of circumstances in which the original bond is not considered to guarantee the defendant's appearance.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 903.045, F.S., relating to the nature of criminal surety bail bonds.

Section 2. Amends s. 903.26, F.S., relating to forfeiture of the bond.

Section 3. Amends 903.28, F.S., relating to remission of forfeiture.

Section 4. Amends s. 903.31, F.S., relating to canceling the bond.

Section 5. Providing an effective date of July 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: The bill may decrease amounts deposited into the fine and forfeiture fund under s. 142.01, F.S., as a result of bond forfeitures that may be reduced by the bill.<sup>29</sup>
2. Expenditures: The bill does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill may decrease amounts deposited into a municipal fund under s. 903.26(3)(b), F.S., as a result of bond forfeitures that may be reduced by the bill.
2. Expenditures: The bill creates flexibility for judges and bail bond agents to remedy and resolve breaches of a bond. To the extent that a greater number of bonds are reinstated after forfeiture, and to the extent that signing onto bonds is more affordable for the bail bond agent, this may increase the number of arrestees that are able to post bail, thereby reducing the need for jail beds.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** The bill creates flexibility for judges and bail bond agents to remedy and resolve breaches of a bond. This may reduce losses to bail bond agents related to the forfeiture of bonds.

**D. FISCAL COMMENTS:** None.

<sup>28</sup> s. 903.31(2), F.S.

<sup>29</sup> s. 903.26(3)

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1                                   A bill to be entitled  
 2           An act relating to bail bonds; amending s. 903.045,  
 3           F.S.; revising legislative intent concerning the  
 4           obligations of a bail bond agent; revising the  
 5           commitments and obligations of a bail bond agent;  
 6           revising the circumstances that are ensured by a  
 7           surety bond and that constitute a breach by the bail  
 8           bond agent; requiring that anyone charging a fee or  
 9           premium to post a cash or surety bail bond must be  
 10          licensed under specified provisions; amending s.  
 11          903.26, F.S.; revising the circumstances for which a  
 12          surety bond deposited as bail must be forfeited;  
 13          revising the circumstances that require a forfeiture  
 14          to be discharged; amending s. 903.28, F.S.; clarifying  
 15          the amount of forfeiture to be remitted under  
 16          different specified conditions; amending s. 903.31,  
 17          F.S.; specifying that certain provisions concerning  
 18          cancellation of a bond do not apply if the bond is  
 19          forfeited within a specified period after it has been  
 20          posted; providing that an original appearance bond  
 21          does not guarantee placement in a court-ordered  
 22          program; providing an effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:  
 25

26           Section 1. Section 903.045, Florida Statutes, is amended  
 27 to read:

28           903.045 Nature of criminal surety bail bonds.—It is the  
 29 public policy of this state and the intent of the Legislature  
 30 that a criminal surety bail bond, executed by a bail bond agent  
 31 licensed pursuant to chapter 648 in connection with the pretrial  
 32 or appellate release of a criminal defendant, shall be construed  
 33 as a commitment by and an obligation upon the bail bond agent to  
 34 ensure that the defendant appears at all ~~subsequent~~ criminal  
 35 proceedings for which the surety bond was posted. A person,  
 36 corporation, company, or other entity that charges a fee or  
 37 premium to facilitate the release of an accused defendant from  
 38 jail through the posting of a cash or surety bail bond must be  
 39 licensed pursuant to chapter 648 and otherwise fulfills all  
 40 conditions of the bond. The failure of a defendant to appear at  
 41 any subsequent criminal proceeding or the breach by the  
 42 defendant of any other condition of the bond constitutes a  
 43 breach by the bail bond agent of this commitment and obligation.

44           Section 2. Subsections (2), (5), (6), (7), and (8) of  
 45 section 903.26, Florida Statutes, are amended to read:

46           903.26 Forfeiture of the bond; when and how directed;  
 47 discharge; how and when made; effect of payment.—

48           (2)(a) If there is a failure of the defendant to appear as  
 49 required breach of the bond, the court shall declare the bond  
 50 and any bonds or money deposited as bail forfeited. The clerk of

51 the court shall mail or electronically transmit a notice to the  
 52 surety agent and surety company within 5 days after the  
 53 forfeiture. A certificate signed by the clerk of the court or  
 54 the clerk's designee, certifying that the notice required herein  
 55 was mailed or electronically transmitted on a specified date and  
 56 accompanied by a copy of the required notice, shall constitute  
 57 sufficient proof that such mailing or electronic transmission  
 58 was properly accomplished as indicated therein. If such mailing  
 59 or electronic transmission was properly accomplished as  
 60 evidenced by such certificate, the failure of the surety agent,  
 61 of a company, or of a defendant to receive such notice shall not  
 62 constitute a defense to such forfeiture and shall not be grounds  
 63 for discharge, remission, reduction, set aside, or continuance  
 64 of such forfeiture. The forfeiture shall be paid within 60 days  
 65 after ~~of~~ the date the notice was mailed or electronically  
 66 transmitted.

67 (b) Failure of the defendant to appear at the time, date,  
 68 and place of required appearance shall result in forfeiture of  
 69 the bond. Such forfeiture shall be automatically entered by the  
 70 clerk upon such failure to appear, and the clerk shall follow  
 71 the procedures ~~outlined~~ in paragraph (a). However, the court may  
 72 determine, in its discretion, in the interest of justice, that  
 73 an appearance by the defendant on the same day as required does  
 74 not warrant forfeiture of the bond; and the court may direct the  
 75 clerk to set aside any such forfeiture which may have been

76 entered. Any appearance by the defendant later than the required  
 77 day constitutes forfeiture of the bond, and the court shall not  
 78 preclude entry of such forfeiture by the clerk.

79 (c) If there is a forfeiture ~~breach~~ of the bond, the clerk  
 80 shall provide, upon request, a certified copy of the warrant or  
 81 capias to the bail bond agent or surety company.

82 (5) The court shall discharge a forfeiture within 60 days  
 83 upon:

84 (a) A determination that it was impossible for the  
 85 defendant to appear as required or within 60 days after the date  
 86 of the required appearance due to circumstances beyond the  
 87 defendant's control. The potential adverse economic consequences  
 88 of appearing as required may ~~shall~~ not be considered as  
 89 constituting a ground for such a determination;

90 (b) A determination that, at the time of the required  
 91 appearance or within 60 days after the date of the required  
 92 appearance, the defendant was ~~adjudicated insane and~~ confined in  
 93 an institution or hospital; ~~or~~ was confined in any county,  
 94 state, federal, or immigration detention facility; had been  
 95 deported; or is deceased ~~a jail or prison;~~

96 (c) Surrender or arrest of the defendant at the time of  
 97 the required appearance or within 60 days after the date of the  
 98 required appearance in any county, state, or federal jail or  
 99 prison and a hold is placed to return the defendant to the  
 100 jurisdiction of the court ~~if the delay has not thwarted the~~

101 ~~proper prosecution of the defendant. If the forfeiture has been~~  
 102 ~~before discharge, the court shall direct remission of the~~  
 103 ~~forfeiture.~~ The court shall condition a discharge or remission  
 104 on the payment of costs and the expenses incurred by an official  
 105 in returning the defendant to the jurisdiction of the court; or  
 106 (d) A determination that the state is unwilling to seek  
 107 extradition of the fugitive defendant within 30 days after a  
 108 request by the surety agent to do so, and contingent upon the  
 109 surety agent's consent to pay all transportation costs incurred  
 110 by an official in returning the defendant to the jurisdiction of  
 111 the court, up to the penal amount of the bond.

112 ~~(6) The discharge of a forfeiture shall not be ordered for~~  
 113 ~~any reason other than as specified herein.~~

114 ~~(6)-(7)~~ The payment by a surety of a forfeiture under ~~the~~  
 115 ~~provisions of~~ this law shall have the same effect on the bond as  
 116 payment of a judgment.

117 ~~(7)-(8)~~ If the defendant is arrested and returned to the  
 118 county of jurisdiction of the court or has posted a new bond for  
 119 the case at issue before ~~prior to~~ judgment, the clerk, upon  
 120 affirmation by the sheriff or the chief correctional officer,  
 121 shall, without further hearing or order of the court, discharge  
 122 the forfeiture of the bond. However, if the surety agent fails  
 123 to pay the costs and expenses incurred in returning the  
 124 defendant to the county of jurisdiction, the clerk shall not  
 125 discharge the forfeiture of the bond. If the surety agent and

126 the sheriff fail to agree on the amount of said costs, then the  
 127 court, after notice to the sheriff and the state attorney, shall  
 128 determine the amount of the costs.

129 Section 3. Subsections (2), (3), (4), (5), and (6) of  
 130 section 903.28, Florida Statutes, are amended to read:

131 903.28 Remission of forfeiture; conditions.—

132 (2) If the defendant surrenders or is apprehended within  
 133 90 days after forfeiture, the court, on motion at a hearing upon  
 134 notice having been given to the clerk of the circuit court and  
 135 the state attorney as required in subsection (8), shall direct  
 136 remission of ~~up to, but not more than,~~ 100 percent of a  
 137 forfeiture if the surety apprehended and surrendered the  
 138 defendant or if the apprehension or surrender of the defendant  
 139 was substantially procured or caused by the surety, or the  
 140 surety has substantially attempted to procure or cause the  
 141 apprehension or surrender of the defendant, and the delay has  
 142 not thwarted the proper prosecution of the defendant. In  
 143 addition, remission shall be granted when the surety did not  
 144 substantially participate or attempt to participate in the  
 145 apprehension or surrender of the defendant when the costs of  
 146 returning the defendant to the jurisdiction of the court have  
 147 been deducted from the remission and when the delay has not  
 148 thwarted the proper prosecution of the defendant.

149 (3) If the defendant surrenders or is apprehended within  
 150 180 days after forfeiture, the court, on motion at a hearing



151 upon notice having been given to the clerk of the circuit court  
 152 and the state attorney as required in subsection (8), shall  
 153 direct remission of ~~up to, but not more than,~~ 95 percent of a  
 154 forfeiture if the surety apprehended and surrendered the  
 155 defendant or if the apprehension or surrender of the defendant  
 156 was substantially procured or caused by the surety, or the  
 157 surety has substantially attempted to procure or cause the  
 158 apprehension or surrender of the defendant, and the delay has  
 159 not thwarted the proper prosecution of the defendant. In  
 160 addition, remission shall be granted when the surety did not  
 161 substantially participate or attempt to participate in the  
 162 apprehension or surrender of the defendant when the costs of  
 163 returning the defendant to the jurisdiction of the court have  
 164 been deducted from the remission and when the delay has not  
 165 thwarted the proper prosecution of the defendant.

166       (4) If the defendant surrenders or is apprehended within  
 167 270 days after forfeiture, the court, on motion at a hearing  
 168 upon notice having been given to the clerk of the circuit court  
 169 and the state attorney as required in subsection (8), shall  
 170 direct remission of ~~up to, but not more than,~~ 90 percent of a  
 171 forfeiture if the surety apprehended and surrendered the  
 172 defendant or if the apprehension or surrender of the defendant  
 173 was substantially procured or caused by the surety, or the  
 174 surety has substantially attempted to procure or cause the  
 175 apprehension or surrender of the defendant, and the delay has

176 not thwarted the proper prosecution of the defendant. In  
177 addition, remission shall be granted when the surety did not  
178 substantially participate or attempt to participate in the  
179 apprehension or surrender of the defendant when the costs of  
180 returning the defendant to the jurisdiction of the court have  
181 been deducted from the remission and when the delay has not  
182 thwarted the proper prosecution of the defendant.

183 (5) If the defendant surrenders or is apprehended within 1  
184 year after forfeiture, the court, on motion at a hearing upon  
185 notice having been given to the clerk of the circuit court and  
186 the state attorney as required in subsection (8), shall direct  
187 remission of ~~up to, but not more than,~~ 85 percent of a  
188 forfeiture if the surety apprehended and surrendered the  
189 defendant or if the apprehension or surrender of the defendant  
190 was substantially procured or caused by the surety, or the  
191 surety has substantially attempted to procure or cause the  
192 apprehension or surrender of the defendant, and the delay has  
193 not thwarted the proper prosecution of the defendant. In  
194 addition, remission shall be granted when the surety did not  
195 substantially participate or attempt to participate in the  
196 apprehension or surrender of the defendant when the costs of  
197 returning the defendant to the jurisdiction of the court have  
198 been deducted from the remission and when the delay has not  
199 thwarted the proper prosecution of the defendant.

200 (6) If the defendant surrenders or is apprehended within 2

201 years after forfeiture, the court, on motion at a hearing upon  
202 notice having been given to the clerk of the circuit court and  
203 the state attorney as required in subsection (8), shall direct  
204 remission of ~~up to, but not more than,~~ 50 percent of a  
205 forfeiture if the surety apprehended and surrendered the  
206 defendant or if the apprehension or surrender of the defendant  
207 was substantially procured or caused by the surety, or the  
208 surety has substantially attempted to procure or cause the  
209 apprehension or surrender of the defendant, and the delay has  
210 not thwarted the proper prosecution of the defendant. In  
211 addition, remission shall be granted when the surety did not  
212 substantially participate or attempt to participate in the  
213 apprehension or surrender of the defendant when the costs of  
214 returning the defendant to the jurisdiction of the court have  
215 been deducted from the remission and when the delay has not  
216 thwarted the proper prosecution of the defendant.

217 Section 4. Section 903.31, Florida Statutes, is amended to  
218 read:

219 903.31 Canceling the bond.—

220 (1) Within 10 business days after the conditions of a bond  
221 have been satisfied or the forfeiture discharged or remitted,  
222 the court shall order the bond canceled and, if the surety has  
223 attached a certificate of cancellation to the original bond, the  
224 clerk of the court shall mail or electronically furnish an  
225 executed certificate of cancellation to the surety without cost.

226 An adjudication of guilt or innocence, an acquittal, if a period  
 227 of 36 months has passed since the original bond was posted, or a  
 228 withholding of an adjudication of guilt shall satisfy the  
 229 conditions of the bond. The original appearance bond shall  
 230 expire 36 months after such bond has been posted for the release  
 231 of the defendant from custody. This subsection does not apply to  
 232 cases in which a bond has been declared forfeited before the 36-  
 233 month expiration.

234 (2) The original appearance bond does not guarantee a  
 235 deferred sentence; ~~sentences,~~ appearance during or after a  
 236 presentence investigation;; appearance during or after appeals;;  
 237 conduct during or appearance after admission to a pretrial  
 238 intervention program;; placement in a court-ordered program,  
 239 including a residential mental health facility; payment of  
 240 fines;; or attendance at educational or rehabilitation  
 241 facilities the court otherwise provides in the judgment. If the  
 242 original appearance bond has been forfeited or revoked, the bond  
 243 shall not be reinstated without approval from the surety on the  
 244 original bond.

245 (3) If ~~In any case where~~ no formal charges are ~~have been~~  
 246 brought against the defendant within 365 days after arrest, the  
 247 court shall order the bond canceled unless good cause is shown  
 248 by the state.

249 Section 5. This act shall take effect July 1, 2017.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 477 Controlled Substances  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 150

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Hall <i>WH</i>	White <i>W</i>

**SUMMARY ANALYSIS**

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act ("the Act") which classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein. The distinguishing factors between the different schedules are the "potential for abuse" of the substances and whether there is a currently accepted medical use for the substances. Florida law also regulates emerging substances, not yet included in the schedules, under s. 893.0356, F.S., the Analogue Statute. An analog drug is substantially similar in chemical structure and potential for abuse to a drug already prohibited by statute and is treated the same as the controlled substance to which it is an analog for the purpose of assigning criminal penalties.

Recently, Florida has experienced increased incidents involving fentanyl. Fentanyl is a Schedule II synthetic opioid drug that is approximately 50 to 100 times stronger than morphine and has analogs that can be up to 100 times stronger than the drug itself. Similar synthetic opioid compounds previously used as "research drugs" have also surfaced in the state. In addition to users, these drugs are dangerous to emergency responders and law enforcement, as even small amounts absorbed through the skin or inhaled can be lethal.

The PCS enhances existing penalties and creates new penalties for synthetic opioid drugs by:

- Adding certain fentanyl related controlled substances to the substances for which distribution, that results in death and is the proximate cause of a user's death, is punishable as murder;
- Adding a class of fentanyl derivatives and five "research drugs" to Schedule I;
- Creating a first degree felony for possession of 10 grams or more of certain Schedule II substances including certain fentanyl related substances;
- Revising the substances that constitute trafficking offenses for hydrocodone, oxycodone, phencyclidine, and phenethylamines;
- Creating trafficking offenses for fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines; and
- Authorizing certain crime laboratory personnel to possess, store, and administer emergency opioid antagonists used to treat opioid overdoses.

Additionally, the PCS, in order to ensure that all of Florida's statutes are automatically updated whenever the Act is amended, creates s. 893.015, F.S., to specify that cross-references throughout the Florida Statutes to the Act, or any portion thereof, include all subsequent amendments to the Act.

The Criminal Justice Impact Conference met on March 2, 2017 and determined the PCS will have a positive significant impact (increase of more than 25 prison beds) to the extent that it creates new felony offenses and sets minimum mandatory sentencing requirements. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The PCS provides it takes effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### *Regulation of Controlled Substances*

Chapter 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act (“the Act”), classifies controlled substances into five categories, called schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”<sup>1</sup> of the substance and whether there is a currently accepted medical use for the substance.<sup>2</sup>

The Controlled Substance Schedules are as follows:

- Schedule I substances have a high potential for abuse and currently have no accepted medical use in the United States, including substances such as cannabis and heroin.<sup>3</sup>
- Schedule II substances have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States, including substances such as raw opium, fentanyl, and codeine.<sup>4</sup>
- Schedule III substances have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States, including substances such as stimulants and anabolic steroids.<sup>5</sup>
- Schedule IV substances have a low potential for abuse relative to substances in Schedule III and have a currently accepted medical use in the United States, including substances such as benzodiazepines and barbiturates.<sup>6</sup>
- Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States, including substances such as mixtures that contain small quantities of opiates, narcotics, or stimulants.<sup>7</sup>

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes and provides the penalties for the possession, sale, purchase, manufacture, and delivery of controlled substances. In general, the severity of the penalty for a violation of these provisions depends on the schedule in which the controlled substance is listed.<sup>8</sup> Other factors such as the quantity of the controlled substance involved or the location where the violation occurs may also enhance the penalties for a violation of ch. 893.13, F.S. Additionally, s. 893.135, F.S., provides penalties for drug trafficking offenses, including minimum mandatory sentences and fines, which increase in severity as the quantity of the controlled substance involved increases.

In an effort to regulate emerging substances that are not yet included in the schedules, the Legislature created s. 893.0356, F.S., commonly called the Analogue Statute, to prohibit drugs that are

---

<sup>1</sup> Section 893.035(3)(a), F.S., defines “potential for abuse” to mean that a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: 1) used in amounts that create a hazard to the user’s health or safety of the community; 2) diverted from legal channels and distributed through illegal channels; or 3) taken on the user’s own initiative rather than on the basis of professional medical advice.

<sup>2</sup> See s. 893.03, F.S.

<sup>3</sup> s. 893.03(1), F.S.

<sup>4</sup> s. 893.03(2), F.S.

<sup>5</sup> s. 893.03(3), F.S.

<sup>6</sup> s. 893.03(4), F.S.

<sup>7</sup> s. 893.03(5), F.S.

<sup>8</sup> See s. 893.13, F.S.

substantially similar to those prohibited by statute.<sup>9</sup> Under the law a “controlled substance analog” is defined as:

- A substance which, due to its chemical structure and potential for abuse, is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and
- Either has or is represented to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.<sup>10</sup>

The Analogue Statute requires the controlled substance analog to be treated the same as the highest scheduled controlled substance in s. 893.03, F.S. of which it is an analog, for the purposes of determining criminal penalties.<sup>11</sup> The Analogue Statute specifies that a “controlled substance analog” does not include:

- A controlled substance;
- Any substance for which there is an approved new drug application;
- Any compound, mixture, or preparation which contains any controlled substance which is not for administration to a human being or animal, and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; or
- Any substance to which an investigation exemption applies under s. 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. § 355, but only to the extent that conduct with respect to the substance is pursuant to such exemption.

#### *Fentanyl and Related Drugs*

Fentanyl, carfentanil,<sup>12</sup> alfentanil,<sup>13</sup> and sufentanil<sup>14</sup> are Schedule II controlled substances.<sup>15</sup> Florida law punishes the possession of these controlled substances as a third degree felony,<sup>16</sup> and the possession with intent to sell, manufacture, or deliver, or the sale, manufacture, or delivery of these controlled substances as a second degree felony.<sup>17</sup>

Fentanyl is a synthetic opioid analgesic that is approximately 50 to 100 times more potent than morphine.<sup>18</sup> When prescribed by a physician, fentanyl is typically used to treat patients with severe pain or to manage pain after surgery and is administered via injection, transdermal patch, or in lozenges.<sup>19</sup> Although prescription fentanyl can be misused, most overdoses and related deaths have been linked to illicitly manufactured fentanyl, including fentanyl analogs.<sup>20</sup> Such illicitly manufactured fentanyl is produced in clandestine laboratories and can be sold as a powder, spiked on blotter paper, mixed with heroin, or as tablets made to look like other, less potent opioids.<sup>21</sup>

<sup>9</sup> The Analogue Statute, created in 1987, is largely modeled after the federal Controlled Substance Analogue Enforcement Act under 21 U.S.C. § 802(32)(A).

<sup>10</sup> s. 893.0356(2)(a), F.S.

<sup>11</sup> s. 893.0356(5), F.S.

<sup>12</sup> Carfentanil was first developed in the 1970s and is only routinely used as an anesthetic for elephants and other large animals. Erika Kinetz & Desmond Butler, *Chemical Weapon for sale: China's unregulated narcotic*, AP TOP NEWS, October 07, 2016, available at <https://apnews.com/7c85cda5658e46f3a3be95a367f727e6>.

<sup>13</sup> Alfentanil is a fentanyl derivative opioid anesthetic, which has a faster onset of action, and also the shorter duration of action than fentanyl. PUBMED, *Clinical uses of fentanyl, sufentanil, and alfentanil*, <https://www.ncbi.nlm.nih.gov/pubmed/1834393> (last visited February 22, 2017).

<sup>14</sup> Sufentanil is a fentanyl derivative that is even more potent than fentanyl. *Id.*

<sup>15</sup> s. 893.03(2)(b), F.S.

<sup>16</sup> Violation of s. 893.13(6)(a), F.S., is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>17</sup> Violation of s. 893.13(1)(a)1. is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

<sup>18</sup> NATIONAL INSTITUTE ON DRUG ABUSE, *Fentanyl*, <https://www.drugabuse.gov/publications/drugfacts/fentanyl> (last visited February 2, 2017).

<sup>19</sup> *Id.*

<sup>20</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *Increases in Fentanyl-Related Overdose Deaths-Florida and Ohio, 2013-2015*, <https://www.cdc.gov/mmwr/volumes/65/wr/mm6533a3.htm> (last visited February 7, 2017).

<sup>21</sup> *Id.*



Frequently, fentanyls are mixed into other drugs and sold without the customer's knowledge of the presence of fentanyl.<sup>22</sup> The Drug Enforcement Agency (DEA) reports that since 2014, law enforcement agencies within the United States have begun seizing counterfeit prescription opioid pills, mimicking authentic medications, which contain fentanyls.<sup>23</sup> Recently in Florida, nine overdose deaths in Pinellas County were linked to counterfeit Xanax pills containing a combination of Xanax and fentanyl.<sup>24</sup>

Between late 2013 and late 2014, the DEA estimates over 700 deaths in the United States were related to fentanyl; however, this number is believed to be underestimated due to variations in reporting techniques between states and deaths being attributed to heroin.<sup>25</sup> According to a recent report from the Centers for Disease Control and Prevention (CDC), fentanyl submissions to law enforcement increased 494 percent in Florida (from 33 to 196) between 2013 and 2014, while the state also experienced a 115 percent increase (from 185 to 397) in fentanyl-related deaths during the same time frame.<sup>26</sup> Fentanyl analogs, specifically, were implicated in 49 drug overdose deaths in Florida between January and June 2015.<sup>27</sup> The CDC estimates the numbers and rates of fentanyl deaths, relating to Florida specifically, are also underestimated because testing for fentanyl and fentanyl analogs is not systematic statewide.<sup>28</sup>

Carfentanil, one fentanyl analog, has been responsible for multiple overdose deaths in Florida. The drug is chemically similar to, but 100 times stronger, than fentanyl itself and is so deadly that an amount smaller than a poppy seed can be lethal.<sup>29</sup> In Manatee County, FL, carfentanil was confirmed in at least 43 fatal overdoses in 2016, with 12 more cases in which the drug was suspected, but not yet confirmed by the toxicology lab as the cause of death.<sup>30</sup> In August 2016, the National Institute on Drug Abuse issued an alert for Ohio and Florida concerning carfentanil overdoses, warning that the drug is likely being added to mixtures of heroin and other street drugs, creating a higher risk for overdoses.<sup>31</sup>

In addition to the rise of fentanyl and its analogs, a new group of synthetic opioid compounds has emerged. These drugs are a part of a group of compounds known as "research chemicals" that have been typically reserved for industrial and medical trials and remain largely untested in humans.<sup>32</sup> This group includes, but is not limited to:

- W-15, 4-chloro-N- [1- (2-phenylethyl) -2-piperidinylidene] -benzenesulfonamide.
- W-18, 4-chloro-N- [1-[ 2-(4-nitrophenyl) ethyl] -2-piperidinylidene] -benzenesulfonamide<sup>33</sup>.
- AH-7921, 3, 4-dichloro-N- [[1-dimethylamino) cyclohexyl]methyl] -benzamide<sup>34</sup>.

<sup>22</sup> Drug Enforcement Agency, *Counterfeit Prescription Pills Containing Fentanyls: A Global Threat*, DEA INTELLIGENCE BRIEF, July 2016, at 2, available at

[https://content.govdelivery.com/attachments/USDOJDEA/2016/07/22/file\\_attachments/590360/fentanyl%2Bpills%2Breport.pdf](https://content.govdelivery.com/attachments/USDOJDEA/2016/07/22/file_attachments/590360/fentanyl%2Bpills%2Breport.pdf).

<sup>23</sup> *Id.* at 2.

<sup>24</sup> Kristen Mitchell, *Sheriff: Blend of Xanax, fentanyl has killed nine people in Pinellas*, TAMPA BAY ONLINE (March 22, 2016), <http://www.tbo.com/pinellas-county/sheriff-blend-of-xanax-fentanyl-has-killed-nine-people-in-pinellas-20160322/>.

<sup>25</sup> Drug Enforcement Agency, *Counterfeit Prescription Pills Containing Fentanyls: A Global Threat*, DEA INTELLIGENCE BRIEF, July 2016, at 9, available at

[https://content.govdelivery.com/attachments/USDOJDEA/2016/07/22/file\\_attachments/590360/fentanyl%2Bpills%2Breport.pdf](https://content.govdelivery.com/attachments/USDOJDEA/2016/07/22/file_attachments/590360/fentanyl%2Bpills%2Breport.pdf).

<sup>26</sup> In contrast, the prescription rate for fentanyl only increased five percent in the state of Florida. CENTERS FOR DISEASE CONTROL AND PREVENTION, *Increases in Fentanyl-Related Overdose Deaths-Florida and Ohio*, 2013-2015, <https://www.cdc.gov/mmwr/volumes/65/wr/mm6533a3.htm> (last visited February 7, 2017).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Erika Kinetz & Desmond Butler, *Chemical Weapon for sale: China's unregulated narcotic*, AP TOP NEWS, October 07, 2016, available at <https://apnews.com/7c85cda5658e46f3a3be95a367f727e6>.

<sup>30</sup> Jessica De Leon, *Bradenton is opioid overdose capital of Florida. And still no one knows why.*, BRADENTON HERALD (December 19, 2016, 8:58 AM), <http://www.bradenton.com/news/local/heroin-epidemic/article121725633.html>.

<sup>31</sup> NATIONAL INSTITUTE ON DRUG ABUSE, *Alert Issued in Ohio for Human Use of Animal Sedative Carfentanil, with Cases Also Seen in Florida*, <https://www.drugabuse.gov/drugs-abuse/emerging-trends-alerts> (last visited February 23, 2017).

<sup>32</sup> Christopher Moraff, *How Knockoff Fentanyl Dodges Cops*, THE DAILY BEAST (June 07, 2016, 1:00 AM), <http://www.thedailybeast.com/articles/2016/06/07/how-knockoff-fentanyl-dodges-cops.html>.

<sup>33</sup> The drug is said to be 10,000 times stronger than morphine (however, tests have only been conducted on mice). *Id.*

<sup>34</sup> The synthetic opioid drug was emergency scheduled by the DEA in May 2016. *Id.*

- U47700, *trans*-3, 4-dichloro-N- [2-(dimethylamino) cyclohexyl] -N-methyl-benzamide<sup>35</sup>.
- MT-45, 1-cyclohexyl-4- (1,2-diphenylethyl) -piperazine, dihydrochloride.

In March 2016, law enforcement in Lorain County, Ohio seized 500 pills that appeared to be oxycodone pills but were actually the research chemical U-4770. The DEA estimates that U-47700 has been linked to at least 46 deaths in the United States.<sup>36</sup> Also in March 2016, law enforcement in South Florida discovered counterfeit OxyContin tablets containing the research chemical W-18 in Miramar, FL.<sup>37</sup> The DEA predicts that although many counterfeit opioid pill traffickers currently use fentanyl, it is likely that synthetic opioids like these will be utilized if fentanyl becomes unavailable or if user preferences shift.<sup>38</sup>

#### *Effect of the Bill on the Regulation of Controlled Substances*

The bill amends s. 893.03(1)(a), F.S., to add certain substances, called fentanyl derivatives, to Schedule I, including:

- A general class by chemical structure;
- A description of chemical substitutions that can be made to the structure to remain an illicit member of the structure family;
- Twenty-three substances specifically identified as fentanyl derivatives; and
- An exclusion for alfentanil, carfentanil, fentanyl, and sufentanil so as to not alter their current placement in Schedule II.<sup>39</sup>

Offenses involving fentanyl derivatives will be subject to the following criminal penalties:

- Possession<sup>40</sup> of less than 10 grams is a third degree felony.<sup>41</sup>
- Possession of 10 grams or more is a first degree felony.<sup>42</sup>
- Purchase or possession with intent to purchase is a second degree felony.<sup>43</sup>
- Sale, manufacture, or delivery, or possession with intent to sell, manufacture, or deliver is a second degree felony.<sup>44</sup>

The bill amends s. 893.03(1)(c), F.S., to add five new substances to Schedule I. These substances have traditionally been used as research chemicals, but have emerged for illicit use and include:

- W-15, 4-chloro-N- [1- (2-phenylethyl) -2-piperidinylidene] –benzenesulfonamide.
- W-18, 4-chloro-N- [1- [2-(4-nitrophenyl) ethyl] -2-piperidinylidene] –benzenesulfonamide.
- AH-7921, 3, 4-dichloro-N- [1-(dimethylamino) cyclohexyl] methyl] –benzamide.
- U47700, *trans*-3, 4-dichloro-N- [2-(dimethylamino) cyclohexyl] -N-methyl-benzamide.
- MT-45, 1-cyclohexyl-4- (1, 2-diphenylethyl) -piperazine, dihydrochloride.

<sup>35</sup> This drug was developed by pharmaceutical manufacturer Upjohn in the 1970s and is 7.5 times more powerful than morphine. *Id.*

<sup>36</sup> NATIONAL INSTITUTE ON DRUG ABUSE, *DEA Temporarily Bans Synthetic Opioid U-47700 ("Pink"), Linked to Nearly 50 Deaths*, <http://www.drugabuse.gov/drug-abuse/emerging-trends-alerts> (last visited February 23, 2017).

<sup>37</sup> Jerry Iannelli, *New Synthetic Drug, W-18, Found in South Florida*, NEW TIMES BROWARD-PALM BEACH, March 22, 2016, available at <http://www.browardpalmbeach.com/new-synthetic-drug-w-18-found-in-south-florida-7667569>.

<sup>38</sup> Drug Enforcement Agency, *Counterfeit Prescription Pills Containing Fentanyl: A Global Threat*, DEA INTELLIGENCE BRIEF, July 2016, at 2, available at

[https://content.govdelivery.com/attachments/USDOJDEA/2016/07/22/file\\_attachments/590360/fentanyl%2Bpills%2Breport.pdf](https://content.govdelivery.com/attachments/USDOJDEA/2016/07/22/file_attachments/590360/fentanyl%2Bpills%2Breport.pdf).

<sup>39</sup> These fentanyl derivative compounds have limited medical or veterinary applications. See s. 893.03(b), F.S.

<sup>40</sup> Unless lawfully obtained from a practitioner or pursuant to a valid prescription. s. 893.13(6)(a), F.S.

<sup>41</sup> Pursuant to s. 893.13(6)(a), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>42</sup> Pursuant to s. 893.13(6)(c), F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

<sup>43</sup> Pursuant to s. 893.13(2)(a)1., F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

<sup>44</sup> Pursuant to s. 893.13(1)(a)1., F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

Offenses involving these drugs are subject to the following criminal penalties:

- Possession is a third degree felony.<sup>45</sup>
- Purchase or possession with intent to purchase is a third degree felony.<sup>46</sup>
- Sale, manufacture, or delivery, or possession with intent to sell, manufacture, or deliver is a third degree felony.<sup>47</sup>

The bill amends s. 893.13(6)(c), F.S., to add 29 Schedule II controlled substances listed in s. 893.03(2)(b), F.S., to the list of substances for which possession of 10 grams or more is now punishable as a first degree felony. These substances include, but are not limited to: alfentanil, carfentanil, fentanyl, and sufentanil.

The bill amends existing trafficking offenses to revise the prohibited substances that are subject to heightened penalties.<sup>48</sup> The bill amends s. 893.135(1)(c)2., F.S., trafficking in hydrocodone, to:

- Add codeine,<sup>49</sup> a Schedule II substance and an isomer<sup>50</sup> of hydrocodone,<sup>51</sup> to the controlled substances punishable under this subparagraph, and
- Remove “derivative, isomer, or salt of an isomer” related to hydrocodone from those punishable under this subparagraph.<sup>52</sup>

By adding codeine to the trafficking in hydrocodone offenses, codeine becomes subject to the following mandatory minimum sentences and fines or capital penalties:

Amount	14 < 28 grams	28 < 50 grams	50 < 200 grams	200 grams < 30 kilograms	30+ kilos
Minimum Mandatory Sentence and Fine or Capital Offense	3 years \$50,000	7 years \$100,000	15 years \$500,000	25 years \$750,000	Capital trafficking and importation in illegal drugs <sup>53</sup>

The bill amends s. 893.135(1)(c)3., F.S, trafficking in oxycodone, to remove “derivative, isomer, or salt of an isomer” related to oxycodone punishable under this subparagraph. The removal of the language has no effect on the types of substances prohibited because there have not been any drugs identified as a derivative, isomer, or salt of an isomer of oxycodone.<sup>54</sup>

<sup>45</sup> Pursuant to s. 893.13(6)(a), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>46</sup> Pursuant to s. 893.13(2)(a)2., F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>47</sup> Pursuant to s. 893.13(1)(a)2., F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>48</sup> Trafficking is a first degree felony punishable by up to 30 years imprisonment. s. 775.082, F.S.

<sup>49</sup> Codeine is classified as an opioid, typically prescribed as a pain reliever and cough suppressant, which has a high potential for addiction. DRUG ABUSE.COM, *The Effects of Codeine Use*, [drugabuse.com/library/the-effects-of-codeine-use/](http://drugabuse.com/library/the-effects-of-codeine-use/) (last visited February 24, 2017).

<sup>50</sup> Isomers are compounds with the same chemical formula but different structures. BODNER RESEARCH WEB, *Isomers*, [chemed.chem.purdue.edu/genchem/topicreview/bp/ch12/isomers.php](http://chemed.chem.purdue.edu/genchem/topicreview/bp/ch12/isomers.php) (last visited February 24, 2017).

<sup>51</sup> Email from Michelle DePaola, Chemistry Technical Leader, Florida Department of Law Enforcement, HB 0477 (February 23, 2017) (on file with the Criminal Justice Subcommittee).

<sup>52</sup> This language is stricken since codeine is the only known isomer of hydrocodone and is now specifically listed in the law. *Id.*

<sup>53</sup> s. 893.13(1)(c)5. and 6., F.S.

<sup>54</sup> Email from Michelle DePaola, Chemistry Technical Leader, Florida Department of Law Enforcement, HB 0477 (February 23, 2017) (on file with Criminal Justice Subcommittee).

The bill amends s. 893.135(1)(d), F.S., relating to trafficking in phencyclidine,<sup>55</sup> to add the following substances to those currently punishable under this paragraph:

- Substituted phenylcyclohexylamines,<sup>56</sup>
- Five controlled substances identified as phenylcyclohexylamine analogs; or
- Any mixture thereof.

By adding the new substances to the trafficking in phencyclidine offenses, the new substances become subject to the following mandatory minimum sentences and fines or capital penalties:

Amount	28 <200 grams	200 < 400 grams	400 < 800 grams	800+ grams
Minimum Mandatory Sentence and Fine or Capital Offense	3 years \$50,000	7 years \$100,000	15 years \$250,000	Capital importation or manufacture <sup>57</sup>

The bill amends s. 893.135(1)(k), F.S., relating to trafficking in phenethylamines<sup>58</sup>, to add the following substances to those punishable under this paragraph:

- Approximately sixty controlled substances identified as phenethylamines or cathinones,<sup>59</sup>
- Substituted cathinones listed in s. 893.03(1)(c)191., F.S.;
- Substituted phenethylamines listed in s. 893.03(1)(c)192., F.S.;
- Any mixture thereof; or
- Any mixture of the salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers thereof.

By adding the new substances to the trafficking in phenethylamines offenses, the new substances become subject to the following mandatory minimum sentences and fines or capital penalties:

Amount	10 <200 grams	200 < 400 grams	400 grams < 30 kilograms	30+ kilograms
Minimum Mandatory Sentence and Fine or Capital Offense	3 years \$50,000	7 years \$100,000	15 years \$250,000	Capital Importation or Manufacture <sup>60</sup>

In addition to amending existing trafficking offenses, the bill creates new trafficking offenses for possession of threshold amounts of certain controlled substances including: fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines.

The bill amends s. 893.135(1)(c)4., F.S., to create the offense of trafficking in fentanyl, for the possession of certain threshold amounts of the following controlled substances and creates penalties as follows:

<sup>55</sup> Phencyclidine is classified as a hallucinogen and goes by the street name "PCP". DRUG ENFORCEMENT AGENCY DIVERSION CONTROL, *Phencyclidine*, [www.deadiversion.usdoj.gov/drug\\_chem\\_info/pcp.pdf](http://www.deadiversion.usdoj.gov/drug_chem_info/pcp.pdf) (last visited February 24, 2017).

<sup>56</sup> These substances are phencyclidine analogs. See generally Richard R. Laing, HALLUCINOGENS: A FORENSIC DRUG HANDBOOK, 60-62, Jay A. Siegel (2003).

<sup>57</sup> This offense is punishable as provided in ss. 775.082 and 921.142, F.S., and the offender may be ordered to pay a fine up to \$250,000. s. 893.135(6)(d)2., F.S.

<sup>58</sup> This class of controlled substances includes hallucinogenic drugs such as MDMA (Ecstasy), MDA, and MDEA. FLORIDA DEPARTMENT OF LAW ENFORCEMENT, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2015 Annual Report*, September 2016, at 52, available at <http://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2015-Annual-Drug-Report.aspx>.

<sup>59</sup> Cathinones are drug "cousins" of phenethylamines and include drugs such as "Molly" and "Flakka". *Id.*

<sup>60</sup> This offense is punishable as provided in ss. 775.082 and 921.142, F.S., and the offender may be ordered to pay a fine up to \$250,000. s. 893.135(6)(k)2., F.S.

- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil;
- Fentanyl derivatives;
- Fentanyl analogs; or
- Any mixture thereof.

Amount	4 <14 grams	14 < 28 grams	28 grams+
Minimum Mandatory Sentence and Fine	3 years \$50,000	15 years \$100,000	25 years \$500,000

The bill adds s. 893.135(1)(m), F.S., to create the offense of trafficking in synthetic cannabinoids, for the possession of certain threshold amounts of the following controlled substances and create penalties as follows:

- Approximately 56 controlled substances identified as synthetic cannabinoids;
- Synthetic cannabinoids as described in s. 893.03(1)(c)190., F.S.; or
- Any mixture thereof.

Amount	280 <500 grams	500 < 1,000 grams	1,000 grams < 30 kilograms	30+ kilograms
Minimum Mandatory Sentence and Fine	3 years \$50,000	7 years \$100,000	15 years \$200,000	25 years \$750,000

The bill adds s. 893.135(1)(n), F.S., to create the offense of trafficking in n-benzyl phenethylamines, for the possession of certain threshold amounts of the following controlled substances and create penalties as follows:

- Eleven controlled substances identified as n-benzyl phenethylamines;
- N-benzyl phenethylamine compounds as described in s. 893.03(1)(c)193., F.S.; or
- Any mixture thereof.

Amount	14 <100 grams	100 < 200 grams	200 < 400 grams	400+ grams
Minimum Mandatory Sentence and Fine	3 years \$50,000	7 years \$100,000	15 years \$500,000	Capital Importation or Manufacture

The bill amends s. 921.0022, F.S., the Criminal Punishment Code Offense Severity Ranking chart, to include rankings for the trafficking offenses either amended or created by the bill. The following offenses will be classified as a Level 7 offense:

- Trafficking in phencyclidine (28 g. or more < 200 g. and 200 g. or more < 400 g.)
- Trafficking in phenethylamines (10 g. or more < 200 g. and 200 g. or more < 400 g.)
- Trafficking in synthetic cannabinoids (280 g. or more < 500 g. and 500 g. or more < 1,000 g.)
- Trafficking in n-benzyl phenethylamines (14 g. or more < 100 g. and 100 g. or more < 200 g.)

The remaining trafficking offenses amended or created by the bill will be classified as Level 8 offenses and include:

- Trafficking in phencyclidine, 400 g. or more < 800 g.
- Trafficking in synthetic cannabinoids, 1,000 g. or more < 30 kg.
- Trafficking in phenethylamines, 400 g. or more < 30 kg.
- Trafficking in n-benzyl phenethylamines, 200 g. or more < 400 g.

### *Felony Murder by Drug Distribution*

Currently, if a person 18 years of age or older unlawfully distributes certain controlled substances that are later proven to be the proximate cause of the death of a drug user, the distributor commits murder in the first degree, constituting a capital felony. The controlled substances currently included in the felony murder law include:

- Any substance controlled under s. 893.03(1), F.S.;
- Cocaine<sup>61</sup>;
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium; or
- Methadone.<sup>62</sup>

Florida courts have held that under s. 782.04(1)(a)3., F.S., a defendant does not need to intend an act of homicide, have knowledge of a drug overdose, or be present when it occurs. In order to be guilty of this offense, the defendant need only intend to unlawfully distribute one of the prohibited drugs that results in a death caused by the drug.<sup>63</sup>

### *Effect of the bill on Felony Murder by Drug Distribution*

The bill amends s. 782.04(1)(a)3., F.S., to add additional controlled substances for which a distributor may be guilty of felony murder if the distribution of the drug results in the death of a user. The bill adds the following fentanyl-related controlled substances:

- Alfentanil;<sup>64</sup>
- Carfentanil;<sup>65</sup>
- Fentanyl;<sup>66</sup>
- Sufentanil;<sup>67</sup>
- Fentanyl derivatives;<sup>68</sup>
- An analog thereto;<sup>69</sup> or
- Any mixture thereof.

A drug distributor who unlawfully distributes any of these Schedule I or II controlled substances will be subject to the provisions of s. 782.04(1)(a)3., F.S., if such distribution causes death, regardless of whether he or she intended such a result.

### *Emergency Treatment for Suspected Opioid Overdose*

In addition to being deadly to drug users, fentanyl related drugs pose a dangerous threat to first responders and law enforcement, as a lethal dose can be accidentally inhaled or absorbed through the skin.<sup>70</sup> In September 2016, the DEA issued a warning to first responders, medical, treatment, and laboratory personnel about the serious danger posed in handling fentanyl and fentanyl related compounds.<sup>71</sup> The agency warned these personnel to take measures to protect themselves from accidental exposure and to immediately administer Naloxone, a drug used to treat opioid overdoses, in the event of exposure.<sup>72</sup>

Currently, Florida law contains an exception to the general requirement to possess a prescription for an emergency opioid antagonist, like Naloxone, to permit the emergency administration of the medication

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<sup>61</sup> As described in s. 893.03(2)(a)4., F.S.

<sup>62</sup> s. 782.04(1)(a)3., F.S.

<sup>63</sup> *Pena v. State*, 829 So. 2d 289, 294 (Fla. 2d 2002), *see also Aumuller v. State*, 944 So. 2d 1137, 1142 (Fla. 2d 2006).

<sup>64</sup> As described in s. 893.03(2)(b)1., F.S.

<sup>65</sup> As described in s. 893.03(2)(b)6., F.S.

<sup>66</sup> As described in s. 893.03(2)(b)9., F.S.

<sup>67</sup> As described in s. 893.03(2)(b)29., F.S.

<sup>68</sup> As described in s. 893.03(1)(a)62., F.S.

<sup>69</sup> As described in s. 893.0356, F.S.

<sup>70</sup> DRUG ENFORCEMENT AGENCY, *DEA Issues Carfentanil Warning to Police and Public*, <http://www.dea.gov/divisions/hq/2016/hq092216.html> (last visited February 23, 2017).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

to a person believed to be experiencing an opioid overdose. Section 381.887, F.S., authorizes certain emergency responders to “possess, store, and administer emergency opioid antagonists as clinically indicated.”<sup>73</sup> Section 381.887, F.S., does not currently authorize crime laboratory personnel to possess, store, and administer opioid antagonists.

*Effect of the bill on Emergency Treatment for Suspected Opioid Overdose*

The bill amends s. 381.887, F.S., to add certain crime laboratory personnel to the group of persons authorized to possess, store, and administer emergency opioid antagonists as clinically indicated.

These crime laboratory personnel include, but are not limited to:

- Analysts;
- Evidence intake personnel; and
- Their supervisors.

Crime laboratory personnel will be authorized to administer the medication without a prescription, allowing them to respond in the event of accidental exposure in the course of their job performance.

*Cross-References to the Florida Comprehensive Drug Abuse Prevention and Control Act*

There are two types of statutory cross-references, general and specific. A general reference is a cross-reference to a general body of law, e.g., a reference in a statute to the “Florida Comprehensive Drug Abuse Prevention and Control Act” would be considered a general reference. A specific reference is a cross-reference to a specific section of law, e.g., a reference to s. 893.03, F.S., would be considered a specific reference.

Under case law, a general reference in statute incorporates the referenced law and any subsequent amendments of that law.<sup>74</sup> A specific reference in statute, however, incorporates the referenced statute as it existed at the time the cross-reference was adopted. Such specific reference is unaffected by subsequent amendments to the incorporated statute,<sup>75</sup> unless the specific reference is reenacted by the legislation that amends the incorporated statute.

To avoid the necessity of reenacting specific references to sections within certain chapters of law, the Legislature has codified provisions that allow for all specific references to sections of law within certain chapters to automatically incorporate all subsequent amendments. Such chapters of law include ch. 435, F.S., entitled “Employment Screening,” and ch. 938, F.S., entitled “Court Costs.”<sup>76</sup>

Currently, there are hundreds of specific references to sections contained in ch. 893, F.S. There is no statutory authority allowing such specific references to automatically incorporate subsequent amendments.

*Effect of the Bill on Cross-References to the Act*

The bill creates s. 893.015, F.S., to specify that the purpose of ch. 893, F.S., is to comprehensively address drug abuse prevention and control in this state, and, as such, unless expressly provided otherwise, a specific reference to ch. 893, F.S., or any section thereof incorporates all subsequent amendments to ch. 893, F.S., or any section thereof.

The bill provides it shall take effect upon becoming law.

B. SECTION DIRECTORY:

<sup>73</sup> Such emergency responders include: law enforcement officers, paramedics, and emergency medical technicians. s. 381.887(4), F.S.

<sup>74</sup> See *Williams v. State ex rel. Newberger*, 100 Fla. 1567, 125 So. 358 (1930), rev'd on other grounds on rehearing, 100 Fla. 1570, 131 So. 864 (1930); *State ex rel. Springer v. Smith*, 189 So. 2d 846 (Fla. 4th D.C.A. 1966); *Reino v. State*, 352 So. 2d 853 (Fla. 1977).

<sup>75</sup> See *Overstreet v. Blum*, 227 So. 2d 197 (Fla. 1969); *Hecht v. Shaw*, 112 Fla. 762, 151 So. 333 (1933); *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693 (1918); and *State ex rel. Springer v. Smith*, *ibid.*

<sup>76</sup> See ss. 435.01 and 983.31, F.S.

Section 1: Amends s. 381.887, F.S., providing that certain crime laboratory personnel may possess, store, and administer emergency opioid antagonist.

Section 2: Amends s. 782.04, F.S., providing that unlawful distribution of specified controlled substances and analogs or mixtures thereof which proximately cause a death is murder; providing criminal penalties.

Section 3: Creates s. 893.015, F.S., specifying the chapter's purpose; providing that a reference to ch. 893, F.S., or to any section or portion thereof, includes all subsequent amendments.

Section 4: Amends s. 893.03, F.S., adding certain synthetic opioid substitute compounds to the list of Schedule I controlled substances.

Section 5: Amends s. 893.13, F.S., prohibiting possession of more than 10 grams of specified substances; providing criminal penalties.

Section 6: Amends s. 893.135, F.S., revising the substances that constitute the offenses of trafficking in hydrocodone, trafficking in oxycodone, trafficking in phencyclidine and capital importation of phencyclidine, trafficking in phenethylamines and capital importation of phenethylamines; creating the offense of trafficking in fentanyl; creating the offenses of trafficking in n-benzyl phenethylamines and capital manufacture or importation of a n-benzyl phenethylamine compound; providing specified minimum terms of imprisonment and fines based on the quantity involved in the offense.

Section 7: Amends s. 921.0022, F.S., ranking offenses on the offense severity ranking chart of the Criminal Punishment Code; reenacting multiple sections of law to incorporate the amendments made by the bill in cross-references to amended provisions; providing an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: This bill does not appear to have an impact on state revenues.
2. Expenditures: The Criminal Justice Impact Conference met on March 2, 2017 and estimates this bill will have a positive significant impact on the Department of Corrections (i.e., an increase of more than 25 prison beds), as the bill creates new felony trafficking offenses and sets minimum mandatory sentencing requirements. Per the Department of Corrections (DOC), in Fiscal Year (FY) 2015-2016, 694 offenders were sentenced for trafficking offenses similar to fentanyl. Of that total, 529 or just over 76 percent were sentenced to prison. The DOC indicates that only one person was arrested for selling fentanyl while two people received an adjudication or an adjudication withheld; however, the agency does not currently track the number of admissions to prison for fentanyl, so that population is unknown.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill does not appear to have an impact on local government revenues.
2. Expenditures: The bill does not appear to have an impact on local government expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

### **D. FISCAL COMMENTS: None.**

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**



1. Applicability of Municipality/County Mandates Provision: The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A.

1                   A bill to be entitled  
2           An act relating to controlled substances; amending s.  
3           381.887, F.S.; providing that certain emergency  
4           responders and crime laboratory personnel may possess,  
5           store, and administer emergency opioid antagonists;  
6           amending s. 782.04, F.S.; providing that unlawful  
7           distribution of specified controlled substances and  
8           analogues or mixtures thereof by an adult which  
9           proximately cause a death is murder; providing  
10          criminal penalties; creating s. 893.015, F.S.;  
11          specifying purpose relating to drug abuse prevention  
12          and control; providing that a reference to ch. 893,  
13          F.S., or to any section or portion thereof, includes  
14          all subsequent amendments; amending s. 893.03, F.S.;  
15          adding certain synthetic opioid substitute compounds  
16          to the list of Schedule I controlled substances;  
17          amending s. 893.13, F.S.; prohibiting possession of  
18          more than 10 grams of specified substances; providing  
19          criminal penalties; amending s. 893.135, F.S.;  
20          revising the substances that constitute the offenses  
21          of trafficking and capital trafficking in, and capital  
22          importation of, hydrocodone and oxycodone; creating  
23          the offense of trafficking in fentanyl; providing  
24          penalties and specified minimum terms of imprisonment  
25          and fines based on the quantity involved in the

26 offense; revising the substances that constitute the  
 27 offenses of trafficking in phencyclidine and capital  
 28 importation of phencyclidine; revising the substances  
 29 that constitute trafficking in phenethylamines and  
 30 capital manufacture or importation of phenethylamines;  
 31 creating the offense of trafficking in synthetic  
 32 cannabinoids; providing penalties and specified  
 33 minimum terms of imprisonment and fines based on the  
 34 quantity involved in the offense; creating the  
 35 offenses of trafficking in n-benzyl phenethylamines  
 36 and capital manufacture or importation of a n-benzyl  
 37 phenethylamine compound; providing penalties and  
 38 specified minimum terms of imprisonment and fines  
 39 based on the quantity involved in the offense;  
 40 reenacting and amending s. 921.0022, F.S.; ranking  
 41 offenses on the offense severity ranking chart of the  
 42 Criminal Punishment Code; incorporating the amendments  
 43 made by the act in cross-references to amended  
 44 provisions; reenacting ss. 39.806(1)(d), 63.089(4)(b),  
 45 95.11(10), 775.082(1)(b) and (3)(a), (b), and (c),  
 46 775.0823(1) and (2), 921.16(1), 948.06(8)(c),  
 47 948.062(1)(a), 985.265(3)(b), 1012.315(1)(d), and  
 48 1012.467(2)(g), relating to grounds for termination of  
 49 parental rights, proceeding to terminate parental  
 50 rights pending adoption, limitations other than for

51 the recovery of real property, penalties, when  
 52 sentences to be concurrent and when consecutive,  
 53 violent offenses committed against specified  
 54 officials, violation of probation or community  
 55 control, reviewing and reporting serious offenses  
 56 committed by offenders placed on probation or  
 57 community control, detention transfer and release,  
 58 disqualification from employment, and noninstructional  
 59 contractors who are permitted access to school grounds  
 60 when students are present, respectively, to  
 61 incorporate the amendments made by the act in cross-  
 62 references to amended provisions; providing an  
 63 effective date.

64  
 65 Be It Enacted by the Legislature of the State of Florida:

66  
 67 Section 1. Subsection (4) of section 381.887, Florida  
 68 Statutes, is amended to read:

69 381.887 Emergency treatment for suspected opioid  
 70 overdose.—

71 (4) The following persons ~~Emergency responders, including,~~  
 72 ~~but not limited to, law enforcement officers, paramedics, and~~  
 73 ~~emergency medical technicians,~~ are authorized to possess, store,  
 74 and administer emergency opioid antagonists as clinically  
 75 indicated:

76        (a) Emergency responders, including, but not limited to,  
 77        law enforcement officers, paramedics, and emergency medical  
 78        technicians.

79        (b) Crime laboratory personnel for the statewide criminal  
 80        analysis laboratory system as described in s. 943.32, including,  
 81        but not limited to, analysts, evidence intake personnel, and  
 82        their supervisors.

83                Section 2. Paragraph (a) of subsection (1) of section  
 84        782.04, Florida Statutes, is amended to read:

85                782.04 Murder.—

86                (1)(a) The unlawful killing of a human being:

87                1. When perpetrated from a premeditated design to effect  
 88        the death of the person killed or any human being;

89                2. When committed by a person engaged in the perpetration  
 90        of, or in the attempt to perpetrate, any:

91                a. Trafficking offense prohibited by s. 893.135(1),

92                b. Arson,

93                c. Sexual battery,

94                d. Robbery,

95                e. Burglary,

96                f. Kidnapping,

97                g. Escape,

98                h. Aggravated child abuse,

99                i. Aggravated abuse of an elderly person or disabled  
 100        adult,

- 101 j. Aircraft piracy,
- 102 k. Unlawful throwing, placing, or discharging of a
- 103 destructive device or bomb,
- 104 l. Carjacking,
- 105 m. Home-invasion robbery,
- 106 n. Aggravated stalking,
- 107 o. Murder of another human being,
- 108 p. Resisting an officer with violence to his or her
- 109 person,
- 110 q. Aggravated fleeing or eluding with serious bodily
- 111 injury or death,
- 112 r. Felony that is an act of terrorism or is in furtherance
- 113 of an act of terrorism,
- 114 s. Human trafficking; or
- 115 3. Which resulted from the unlawful distribution by a
- 116 person 18 years of age or older of any of the following
- 117 substances, or mixture containing any of the following
- 118 substances ~~substance controlled under s. 893.03(1), cocaine as~~
- 119 ~~described in s. 893.03(2)(a)4., opium or any synthetic or~~
- 120 ~~natural salt, compound, derivative, or preparation of opium, or~~
- 121 ~~methadone by a person 18 years of age or older, when such~~
- 122 substance or mixture ~~drug~~ is proven to be the proximate cause of
- 123 the death of the user:
- 124 a. A substance controlled under s. 893.03(1);
- 125 b. Cocaine as described in s. 893.03(2)(a)4.;

- 126 c. Opium or any synthetic or natural salt, compound,
- 127 derivative, or preparation of opium;
- 128 d. Methadone;
- 129 e. Alfentanil, as described in s. 893.03(2)(b)1.;
- 130 f. Carfentanil, as described in s. 893.03(2)(b)6.;
- 131 g. Fentanyl, as described in s. 893.03(2)(b)9.;
- 132 h. Sufentanil, as described in s. 893.03(2)(b)29.; or
- 133 i. A controlled substance analog, as described in s.
- 134 893.0356, of any substance specified in sub-subparagraphs a.-h.,

135

136 is murder in the first degree and constitutes a capital felony,

137 punishable as provided in s. 775.082.

138 Section 3. Section 893.015, Florida Statutes, is created to

139 read:

140 893.015 Statutory references.—The purpose of this chapter

141 is to comprehensively address drug abuse prevention and control

142 in this state. To this end, unless expressly provided otherwise,

143 a reference in any section of the Florida Statutes to chapter

144 893 or to any section or portion of a section of chapter 893

145 includes all subsequent amendments to chapter 893 or to the

146 referenced section or portion of a section.

147 Section 4. Paragraphs (a) and (c) of subsection (1) of

148 section 893.03, Florida Statutes, are amended to read:

149 893.03 Standards and schedules.—The substances enumerated

150 in this section are controlled by this chapter. The controlled

151 substances listed or to be listed in Schedules I, II, III, IV,  
 152 and V are included by whatever official, common, usual,  
 153 chemical, trade name, or class designated. The provisions of  
 154 this section shall not be construed to include within any of the  
 155 schedules contained in this section any excluded drugs listed  
 156 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
 157 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
 158 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
 159 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
 160 Anabolic Steroid Products."

161 (1) SCHEDULE I.—A substance in Schedule I has a high  
 162 potential for abuse and has no currently accepted medical use in  
 163 treatment in the United States and in its use under medical  
 164 supervision does not meet accepted safety standards. The  
 165 following substances are controlled in Schedule I:

166 (a) Unless specifically excepted or unless listed in  
 167 another schedule, any of the following substances, including  
 168 their isomers, esters, ethers, salts, and salts of isomers,  
 169 esters, and ethers, whenever the existence of such isomers,  
 170 esters, ethers, and salts is possible within the specific  
 171 chemical designation:

- 172 1. Acetyl-alpha-methylfentanyl.
- 173 2. Acetylmethadol.
- 174 3. Allylprodine.
- 175 4. Alphacetylmethadol (except levo-alphacetylmethadol,



176 also known as levo-alpha-acetylmethadol, levomethadyl acetate,  
 177 or LAAM).

178 5. Alphamethadol.

179 6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)  
 180 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-  
 181 (N-propanilido) piperidine).

182 7. Alpha-methylthiofentanyl.

183 8. Alphameprodine.

184 9. Benzethidine.

185 10. Benzylfentanyl.

186 11. Betacetylmethadol.

187 12. Beta-hydroxyfentanyl.

188 13. Beta-hydroxy-3-methylfentanyl.

189 14. Betameprodine.

190 15. Betamethadol.

191 16. Betaprodine.

192 17. Clonitazene.

193 18. Dextromoramide.

194 19. Diampromide.

195 20. Diethylthiambutene.

196 21. Difenoquin.

197 22. Dimenoxadol.

198 23. Dimepheptanol.

199 24. Dimethylthiambutene.

200 25. Dioxaphetyl butyrate.

- 201           26. Dipipanone.
- 202           27. Ethylmethylthiambutene.
- 203           28. Etonitazene.
- 204           29. Etoxeridine.
- 205           30. Flunitrazepam.
- 206           31. Furethidine.
- 207           32. Hydroxypethidine.
- 208           33. Ketobemidone.
- 209           34. Levomoramide.
- 210           35. Levophenacymorphan.
- 211           36. Desmethylprodine (1-Methyl-4-Phenyl-4-
- 212 Propionoxypiperidine).
- 213           37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
- 214 piperidyl]-N-phenylpropanamide).
- 215           38. 3-Methylthiofentanyl.
- 216           39. Morpheridine.
- 217           40. Noracymethadol.
- 218           41. Norlevorphanol.
- 219           42. Normethadone.
- 220           43. Norpipanone.
- 221           44. Para-Fluorofentanyl.
- 222           45. Phenadoxone.
- 223           46. Phenampromide.
- 224           47. Phenomorphan.
- 225           48. Phenoperidine.

- 226 49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-
- 227 Acetyloxypiperidine).
- 228 50. Piritramide.
- 229 51. Proheptazine.
- 230 52. Properidine.
- 231 53. Propiram.
- 232 54. Racemoramide.
- 233 55. Thenylfentanyl.
- 234 56. Thiofentanyl.
- 235 57. Tilidine.
- 236 58. Trimeperidine.
- 237 59. Acetylfentanyl.
- 238 60. Butyrylfentanyl.
- 239 61. Beta-Hydroxythiofentanyl.
- 240 62. Fentanyl Derivatives. Unless specifically excepted,
- 241 listed in another schedule, or contained within a pharmaceutical
- 242 product approved by the United States Food and Drug
- 243 Administration, any material, compound, mixture, or preparation,
- 244 including its salts, isomers, esters, or ethers, and salts of
- 245 isomers, esters, or ethers, whenever the existence of such salts
- 246 is possible within any of the following specific chemical
- 247 designations containing a 4-anilidopiperidine structure:
- 248 a. With or without substitution at the carbonyl of the
- 249 aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl,
- 250 methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl,

251 | dihydrofuranyl, benzyl moiety, or rings containing heteroatoms  
252 | sulfur, oxygen, or nitrogen;

253 |       b. With or without substitution at the piperidine amino  
254 | moiety with a phenethyl, benzyl, alkylaryl (including  
255 | heteroaromatics), alkyltetrazolyl ring, or an alkyl or  
256 | carbomethoxy group, whether or not further substituted in the  
257 | ring or group;

258 |       c. With or without substitution or addition to the  
259 | piperidine ring to any extent with one or more methyl,  
260 | carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester  
261 | groups;

262 |       d. With or without substitution of one or more hydrogen  
263 | atoms for halogens, or methyl, alkyl, or methoxy groups, in the  
264 | aromatic ring of the anilide moiety;

265 |       e. With or without substitution at the alpha or beta  
266 | position of the piperidine ring with alkyl, hydroxyl, or methoxy  
267 | groups;

268 |       f. With or without substitution of the benzene ring of the  
269 | anilide moiety for an aromatic heterocycle; and

270 |       g. With or without substitution of the piperidine ring for  
271 | a pyrrolidine ring, perhydroazepine ring, or azepine ring;

272 |  
273 | excluding, Alfentanil, Carfentanil, Fentanyl, and Sufentanil;  
274 | including, but not limited to:

275 |       (I) Acetyl-alpha-methylfentanyl.

- 276        (II) Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
- 277 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
- 278 (N-propanilido) piperidine).
- 279        (III) Alpha-methylthiofentanyl.
- 280        (IV) Benzylfentanyl.
- 281        (V) Beta-hydroxyfentanyl.
- 282        (VI) Beta-hydroxy-3-methylfentanyl.
- 283        (VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
- 284 piperidyl]-N-phenylpropanamide).
- 285        (VIII) 3-Methylthiofentanyl.
- 286        (IX) Para-Fluorofentanyl.
- 287        (X) Thenylfentanyl or Thienyl fentanyl.
- 288        (XI) Thiofentanyl.
- 289        (XII) Acetylfentanyl.
- 290        (XIII) Butyrylfentanyl.
- 291        (XIV) Beta-Hydroxythiofentanyl.
- 292        (XV) Lofentanil.
- 293        (XVI) Ocfentanil.
- 294        (XVII) Ohmfentanyl.
- 295        (XVIII) Benzodioxolefentanyl.
- 296        (XIX) Furanyl fentanyl.
- 297        (XX) Pentanoyl fentanyl.
- 298        (XXI) Cyclopentyl fentanyl.
- 299        (XXII) Isobutyryl fentanyl.
- 300        (XXIII) Remifentanil.

301 (c) Unless specifically excepted or unless listed in  
 302 another schedule, any material, compound, mixture, or  
 303 preparation that contains any quantity of the following  
 304 hallucinogenic substances or that contains any of their salts,  
 305 isomers, including optical, positional, or geometric isomers,  
 306 homologues, nitrogen-heterocyclic analogs, esters, ethers, and  
 307 salts of isomers, homologues, nitrogen-heterocyclic analogs,  
 308 esters, or ethers, if the existence of such salts, isomers, and  
 309 salts of isomers is possible within the specific chemical  
 310 designation or class description:

- 311 1. Alpha-Ethyltryptamine.
- 312 2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-  
 313 oxazoline).
- 314 3. Aminorex (2-Amino-5-phenyl-2-oxazoline).
- 315 4. DOB (4-Bromo-2,5-dimethoxyamphetamine).
- 316 5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
- 317 6. Bufotenine.
- 318 7. Cannabis.
- 319 8. Cathinone.
- 320 9. DET (Diethyltryptamine).
- 321 10. 2,5-Dimethoxyamphetamine.
- 322 11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine).
- 323 12. DMT (Dimethyltryptamine).
- 324 13. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine  
 325 analog of phencyclidine).

- 326 14. JB-318 (N-Ethyl-3-piperidyl benzilate).
- 327 15. N-Ethylamphetamine.
- 328 16. Fenethylamine.
- 329 17. 3,4-Methylenedioxy-N-hydroxyamphetamine.
- 330 18. Ibogaine.
- 331 19. LSD (Lysergic acid diethylamide).
- 332 20. Mescaline.
- 333 21. Methcathinone.
- 334 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 335 23. PMA (4-Methoxyamphetamine).
- 336 24. PMMA (4-Methoxymethamphetamine).
- 337 25. DOM (4-Methyl-2,5-dimethoxyamphetamine).
- 338 26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
- 339 27. MDA (3,4-Methylenedioxyamphetamine).
- 340 28. JB-336 (N-Methyl-3-piperidyl benzilate).
- 341 29. N,N-Dimethylamphetamine.
- 342 30. Parahexyl.
- 343 31. Peyote.
- 344 32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine
- 345 analog of phencyclidine).
- 346 33. Psilocybin.
- 347 34. Psilocyn.
- 348 35. Salvia divinorum, except for any drug product approved
- 349 by the United States Food and Drug Administration which contains
- 350 Salvia divinorum or its isomers, esters, ethers, salts, and

PCS for HB 477

ORIGINAL

2017

351 salts of isomers, esters, and ethers, if the existence of such  
352 isomers, esters, ethers, and salts is possible within the  
353 specific chemical designation.

354 36. Salvinorin A, except for any drug product approved by  
355 the United States Food and Drug Administration which contains  
356 Salvinorin A or its isomers, esters, ethers, salts, and salts of  
357 isomers, esters, and ethers, if the existence of such isomers,  
358 esters, ethers, and salts is possible within the specific  
359 chemical designation.

360 37. Xylazine.

361 38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)  
362 (Thiophene analog of phencyclidine).

363 39. 3,4,5-Trimethoxyamphetamine.

364 40. Methyloone (3,4-Methylenedioxyamphetaminone).

365 41. MDPV (3,4-Methylenedioxypropylamphetamine).

366 42. Methyloone.

367 43. Methoxyamphetaminone.

368 44. Fluoromethyloone.

369 45. Methylethylamphetaminone.

370 46. CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-  
371 yl)phenol) and its dimethyloctyl (C8) homologue.

372 47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-  
373 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-  
374 ol].

375 48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).



- 376 49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
- 377 50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-
- 378 naphthoyl)indole).
- 379 51. BZP (Benzylpiperazine).
- 380 52. Fluorophenylpiperazine.
- 381 53. Methylphenylpiperazine.
- 382 54. Chlorophenylpiperazine.
- 383 55. Methoxyphenylpiperazine.
- 384 56. DBZP (1,4-Dibenzylpiperazine).
- 385 57. TFMPP (Trifluoromethylphenylpiperazine).
- 386 58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-
- 387 Methylenedioxy-N-methylbutanamine).
- 388 59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
- 389 60. 5-Hydroxy-N-methyltryptamine.
- 390 61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
- 391 62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
- 392 63. Methyltryptamine.
- 393 64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
- 394 65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
- 395 66. Tyramine (4-Hydroxyphenethylamine).
- 396 67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
- 397 68. DiPT (N,N-Diisopropyltryptamine).
- 398 69. DPT (N,N-Dipropyltryptamine).
- 399 70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
- 400 71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).

- 401 | 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 402 | 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 403 | 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 404 | 75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
- 405 | 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 406 | 77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
- 407 | 78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
- 408 | 79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
- 409 | 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 410 | 81. Butylone (3,4-Methylenedioxy-alpha-
- 411 | methylaminobutyrophenone).
- 412 | 82. Ethcathinone.
- 413 | 83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
- 414 | 84. Naphyrone (Naphthylpyrovalerone).
- 415 | 85. Dimethylone (3,4-Methylenedioxy-N,N-
- 416 | dimethylcathinone).
- 417 | 86. 3,4-Methylenedioxy-N,N-diethylcathinone.
- 418 | 87. 3,4-Methylenedioxy-propiofenone.
- 419 | 88. 3,4-Methylenedioxy-alpha-bromopropiofenone.
- 420 | 89. 3,4-Methylenedioxy-propiofenone-2-oxime.
- 421 | 90. 3,4-Methylenedioxy-N-acetylcathinone.
- 422 | 91. 3,4-Methylenedioxy-N-acetylmethcathinone.
- 423 | 92. 3,4-Methylenedioxy-N-acetylethcathinone.
- 424 | 93. Bromomethcathinone.
- 425 | 94. Buphedrone (alpha-Methylamino-butyrophenone).

- 426           95. Eutylone (3,4-Methylenedioxy-alpha-
- 427 ethylaminobutyrophenone).
- 428           96. Dimethylcathinone.
- 429           97. Dimethylmethcathinone.
- 430           98. Pentylone (3,4-Methylenedioxy-alpha-
- 431 methylaminovalerophenone).
- 432           99. MDPPP (3,4-Methylenedioxy-alpha-
- 433 pyrrolidinopropiophenone).
- 434           100. MDPBP (3,4-Methylenedioxy-alpha-
- 435 pyrrolidinobutyrophenone).
- 436           101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
- 437           102. MPHP (Methyl-alpha-pyrrolidinohexanophenone).
- 438           103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP
- 439 (Benocyclidine).
- 440           104. F-MABP (Fluoromethylaminobutyrophenone).
- 441           105. MeO-PBP (Methoxypyrrolidinobutyrophenone).
- 442           106. Et-PBP (Ethylpyrrolidinobutyrophenone).
- 443           107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
- 444           108. Me-EABP (Methylethylaminobutyrophenone).
- 445           109. Etizolam.
- 446           110. PPP (Pyrrolidinopropiophenone).
- 447           111. PBP (Pyrrolidinobutyrophenone).
- 448           112. PVP (Pyrrolidinovalerophenone) or
- 449 (Pyrrolidinopentiophenone).
- 450           113. MPPP (Methyl-alpha-pyrrolidinopropiophenone).

PCS for HB 477

ORIGINAL

2017

- 451 114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).  
 452 115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).  
 453 116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).  
 454 117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).  
 455 118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole).  
 456 119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).  
 457 120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).  
 458 121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-  
 459 methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).  
 460 122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).  
 461 123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).  
 462 124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).  
 463 125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).  
 464 126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).  
 465 127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).  
 466 128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).  
 467 129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).  
 468 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-  
 469 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-  
 470 ol).  
 471 131. HU-308 ([ (1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-  
 472 methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-  
 473 enyl] methanol).  
 474 132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-  
 475 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-

- 476 1,4-dione).
- 477 133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene).
- 478 134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
- 479 undecanamide).
- 480 135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
- 481 undecanamide).
- 482 136. CP 55,940 (2-[3-Hydroxy-6-propanol-cyclohexyl]-5-(2-
- 483 methyloctan-2-yl)phenol).
- 484 137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).
- 485 138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).
- 486 139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).
- 487 140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-
- 488 methoxyphenylacetyl)indole).
- 489 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
- 490 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
- 491 naphthalenylmethanone).
- 492 142. WIN55,212-3 ([ (3S)-2,3-Dihydro-5-methyl-3-(4-
- 493 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
- 494 naphthalenylmethanone).
- 495 143. Pentedrone (alpha-Methylaminovalerophenone).
- 496 144. Fluoroamphetamine.
- 497 145. Fluoromethamphetamine.
- 498 146. Methoxetamine.
- 499 147. Methiopropamine.
- 500 148. Methylbuphedrone (Methyl-alpha-

- 501 | methylaminobutyrophenone).
- 502 |       149. APB ((2-Aminopropyl)benzofuran).
- 503 |       150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).
- 504 |       151. UR-144 (1-Pentyl-3-(2,2,3,3-
- 505 | tetramethylcyclopropanoyl)indole).
- 506 |       152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-
- 507 | tetramethylcyclopropanoyl)indole).
- 508 |       153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-
- 509 | tetramethylcyclopropanoyl)indole).
- 510 |       154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-
- 511 | carboxamide).
- 512 |       155. AM-2233(1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-
- 513 | iodobenzoyl)indole).
- 514 |       156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-
- 515 | carboxamide).
- 516 |       157. URB-597 ((3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-
- 517 | cyclohexylcarbamate).
- 518 |       158. URB-602 ([1,1'-Biphenyl]-3-yl-carbamic acid,
- 519 | cyclohexyl ester).
- 520 |       159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-
- 521 | benzoxazin-4-one).
- 522 |       160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
- 523 |       161. 2C-H (2,5-Dimethoxyphenethylamine).
- 524 |       162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
- 525 |       163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

- 526 | 164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-  
527 | methoxybenzyl)]phenethylamine).  
528 | 165. MDMA (3,4-Methylenedioxyamphetamine).  
529 | 166. PB-22 (8-Quinoliny 1-pentylindole-3-carboxylate).  
530 | 167. Fluoro PB-22 (8-Quinoliny 1-(fluoropentyl)indole-3-  
531 | carboxylate).  
532 | 168. BB-22 (8-Quinoliny 1-(cyclohexylmethyl)indole-3-  
533 | carboxylate).  
534 | 169. Fluoro AKB48 (N-Adamant-1-yl 1-  
535 | (fluoropentyl)indazole-3-carboxamide).  
536 | 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-  
537 | pentylindazole-3-carboxamide).  
538 | 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-  
539 | (4-fluorobenzyl)indazole-3-carboxamide).  
540 | 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-  
541 | 1-pentylindazole-3-carboxamide).  
542 | 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-  
543 | yl)-1-(fluoropentyl)indole-3-carboxamide).  
544 | 174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-  
545 | methoxybenzyl)]phenethylamine).  
546 | 175. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-  
547 | methoxybenzyl)]phenethylamine).  
548 | 176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-  
549 | (cyclohexylmethyl)indazole-3-carboxamide).  
550 | 177. FUB-PB-22 (8-Quinoliny 1-(4-fluorobenzyl)indole-3-

- 551 carboxylate).
- 552 178. Fluoro-NNEI (N-Naphthalen-1-yl 1-
- 553 (fluoropentyl) indole-3-carboxamide).
- 554 179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
- 555 (fluoropentyl) indazole-3-carboxamide).
- 556 180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-
- 557 naphthoyl) indazole).
- 558 181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-
- 559 1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).
- 560 182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-
- 561 (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-
- 562 hexahydrobenzo[c]chromen-1-ol).
- 563 183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-
- 564 (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-
- 565 hexahydrobenzo[c]chromen-1-ol).
- 566 184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-
- 567 6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9
- 568 diol).
- 569 185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-
- 570 dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-
- 571 tetrahydro-6aH-benzo[c]chromen-1-ol).
- 572 186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-
- 573 6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).
- 574 187. MAPB ((2-Methylaminopropyl) benzofuran).
- 575 188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).



576 189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).

577 190. Synthetic Cannabinoids.—Unless specifically excepted

578 or unless listed in another schedule or contained within a

579 pharmaceutical product approved by the United States Food and

580 Drug Administration, any material, compound, mixture, or

581 preparation that contains any quantity of a synthetic

582 cannabinoid found to be in any of the following chemical class

583 descriptions, or homologues, nitrogen-heterocyclic analogs,

584 isomers (including optical, positional, or geometric), esters,

585 ethers, salts, and salts of homologues, nitrogen-heterocyclic

586 analogs, isomers, esters, or ethers, whenever the existence of

587 such homologues, nitrogen-heterocyclic analogs, isomers, esters,

588 ethers, salts, and salts of isomers, esters, or ethers is

589 possible within the specific chemical class or designation.

590 Since nomenclature of these synthetically produced cannabinoids

591 is not internationally standardized and may continually evolve,

592 these structures or the compounds of these structures shall be

593 included under this subparagraph, regardless of their specific

594 numerical designation of atomic positions covered, if it can be

595 determined through a recognized method of scientific testing or

596 analysis that the substance contains properties that fit within

597 one or more of the following categories:

598 a. Tetrahydrocannabinols.—Any tetrahydrocannabinols

599 naturally contained in a plant of the genus Cannabis, the

600 synthetic equivalents of the substances contained in the plant

601 or in the resinous extracts of the genus Cannabis, or synthetic  
 602 substances, derivatives, and their isomers with similar chemical  
 603 structure and pharmacological activity, including, but not  
 604 limited to, Delta 9 tetrahydrocannabinols and their optical  
 605 isomers, Delta 8 tetrahydrocannabinols and their optical  
 606 isomers, Delta 6a,10a tetrahydrocannabinols and their optical  
 607 isomers, or any compound containing a tetrahydrobenzo[c]chromene  
 608 structure with substitution at either or both the 3-position or  
 609 9-position, with or without substitution at the 1-position with  
 610 hydroxyl or alkoxy groups, including, but not limited to:

- 611 (I) Tetrahydrocannabinol.
- 612 (II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-  
 613 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-  
 614 ol).
- 615 (III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-  
 616 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-  
 617 ol).
- 618 (IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-  
 619 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
- 620 (V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-  
 621 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
- 622 (VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-  
 623 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
- 624 (VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-  
 625 (2,3-dimethylpentan-2-yl)-6a,7,10,10a-

626 tetrahydrobenzo [c] chromene) .

627 (VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-  
628 6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo [c] chromen-1-ol) .

629 (IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-  
630 6a,7,10,10a-tetrahydrobenzo [c] chromen-1-ol) .

631 (X) Parahexyl .

632 b. Naphthoylindoles, Naphthoylindazoles,  
633 Naphthoylcarbazoles, Naphthylmethylindoles,  
634 Naphthylmethylindazoles, and Naphthylmethylcarbazoles.—Any  
635 compound containing a naphthoylindole, naphthoylindazole,  
636 naphthoylcarbazole, naphthylmethylindole,  
637 naphthylmethylindazole, or naphthylmethylcarbazole structure,  
638 with or without substitution on the indole, indazole, or  
639 carbazole ring to any extent, whether or not substituted on the  
640 naphthyl ring to any extent, including, but not limited to:

641 (I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole) .

642 (II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-  
643 naphthoyl)indole) .

644 (III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole) .

645 (IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole) .

646 (V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole) .

647 (VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole) .

648 (VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole) .

649 (VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole) .

650 (IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole) .

- 651 (X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
- 652 (XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
- 653 (XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).
- 654 (XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
- 655 (XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-
- 656 naphthoyl)indole).
- 657 (XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).
- 658 (XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
- 659 (XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-
- 660 naphthoyl)indole).
- 661 (XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-
- 662 naphthoyl)indole).
- 663 (XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
- 664 (XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).
- 665 (XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).
- 666 (XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-
- 667 naphthylmethyl]indole).
- 668 (XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-
- 669 naphthoyl)indole).
- 670 (XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-
- 671 naphthoyl)indole).
- 672 (XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-
- 673 naphthoyl)indole).
- 674 (XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
- 675 (XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).

676 (XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-  
 677 naphthoyl)indole).  
 678 (XXIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).  
 679 (XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).  
 680 (XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-  
 681 naphthoyl)indole).  
 682 (XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-  
 683 naphthoyl)indole).  
 684 (XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-  
 685 naphthoyl)indole).  
 686 (XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-  
 687 naphthoyl)indole).  
 688 (XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-  
 689 naphthoyl)indole).  
 690 (XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).  
 691 (XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-  
 692 naphthoyl)indazole).  
 693 (XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-  
 694 naphthoyl)indole).  
 695 (XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-  
 696 naphthoyl)indole).  
 697 (XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).  
 698 (XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-  
 699 naphthoyl)carbazole).  
 700 c. Naphthoylpyrroles.—Any compound containing a

701 naphthoylpyrrole structure, with or without substitution on the  
 702 pyrrole ring to any extent, whether or not substituted on the  
 703 naphthyl ring to any extent, including, but not limited to:

- 704 (I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).
- 705 (II) JWH-031 (1-Hexyl-3-(1-naphthoyl)pyrrole).
- 706 (III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).
- 707 (IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).
- 708 (V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).
- 709 (VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-  
 710 naphthoyl)pyrrole).
- 711 (VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-  
 712 naphthoyl)pyrrole).
- 713 (VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-  
 714 naphthoyl)pyrrole).
- 715 (IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-  
 716 naphthoyl)pyrrole).
- 717 (X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-  
 718 naphthoyl)pyrrole).

719 d. Naphthylmethylenindenes.—Any compound containing a  
 720 naphthylmethylenindene structure, with or without substitution  
 721 at the 3-position of the indene ring to any extent, whether or  
 722 not substituted on the naphthyl ring to any extent, including,  
 723 but not limited to, JWH-176 (3-Pentyl-1-  
 724 (naphthylmethylene)indene).

725 e. Phenylacetylindoles and Phenylacetylindazoles.—Any

726 compound containing a phenylacetylindole or phenylacetylindazole  
 727 structure, with or without substitution on the indole or  
 728 indazole ring to any extent, whether or not substituted on the  
 729 phenyl ring to any extent, including, but not limited to:

- 730 (I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).
- 731 (II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
- 732 (III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).
- 733 (IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
- 734 (V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
- 735 (VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
- 736 (VII) Cannabipiperidiethanone.
- 737 (VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-  
 738 methoxyphenylacetyl)indole).

739 f. Cyclohexylphenols.—Any compound containing a  
 740 cyclohexylphenol structure, with or without substitution at the  
 741 5-position of the phenolic ring to any extent, whether or not  
 742 substituted on the cyclohexyl ring to any extent, including, but  
 743 not limited to:

- 744 (I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-  
 745 yl)phenol).
- 746 (II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8)  
 747 homologue).
- 748 (III) CP-55,940 (2-(3-Hydroxy-6-propanol-cyclohexyl)-5-(2-  
 749 methyloctan-2-yl)phenol).

750 g. Benzoylindoles and Benzoylindazoles.—Any compound

751 containing a benzoylindole or benzoylindazole structure, with or  
 752 without substitution on the indole or indazole ring to any  
 753 extent, whether or not substituted on the phenyl ring to any  
 754 extent, including, but not limited to:

- 755 (I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).
- 756 (II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).
- 757 (III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-  
 758 iodo-5-nitrobenzoyl)indole).
- 759 (IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-  
 760 (4-methoxybenzoyl)indole).
- 761 (V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-  
 762 iodobenzoyl)indole).
- 763 (VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).
- 764 (VII) RCS-4 C4 homologue (1-Butyl-3-(4-  
 765 methoxybenzoyl)indole).
- 766 (VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-  
 767 3-(4-methoxybenzoyl)indole).

768 h. Tetramethylcyclopropanoylindoles and  
 769 Tetramethylcyclopropanoylindazoles.—Any compound containing a  
 770 tetramethylcyclopropanoylindole or  
 771 tetramethylcyclopropanoylindazole structure, with or without  
 772 substitution on the indole or indazole ring to any extent,  
 773 whether or not substituted on the tetramethylcyclopropyl group  
 774 to any extent, including, but not limited to:

- 775 (I) UR-144 (1-Pentyl-3-(2,2,3,3-



776 tetramethylcyclopropanoyl) indole).

777 (II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-

778 tetramethylcyclopropanoyl) indole).

779 (III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-

780 tetramethylcyclopropanoyl) indole).

781 (IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-

782 tetramethylcyclopropanoyl) indole).

783 (V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-

784 tetramethylcyclopropanoyl) indole).

785 (VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-

786 tetramethylcyclopropanoyl) indole).

787 (VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-

788 tetramethylcyclopropanoyl) indole).

789 (VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-

790 tetramethylcyclopropanoyl) indazole).

791 (IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-

792 tetramethylcyclopropanoyl) indole).

793 (X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-

794 tetramethylcyclopropanoyl) indole).

795 i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole

796 carboxamides, and Adamantylindazole carboxamides.—Any compound

797 containing an adamantoyl indole, adamantoyl indazole, adamantyl

798 indole carboxamide, or adamantyl indazole carboxamide structure,

799 with or without substitution on the indole or indazole ring to

800 any extent, whether or not substituted on the adamantyl ring to

801 any extent, including, but not limited to:

802 (I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

803 (II) Fluoro AKB48 (N-Adamant-1-yl 1-

804 (fluoropentyl)indazole-3-carboxamide).

805 (III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-

806 carboxamide).

807 (IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-

808 adamantoyl)indole).

809 (V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).

810 (VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).

811 (VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-

812 adamantoyl)indole).

813 j. Quinolinyndolecarboxylates,

814 Quinolinyndazolecarboxylates, Quinolinyndolecarboxamides,

815 and Quinolinyndazolecarboxamides.—Any compound containing a

816 quinolinyndole carboxylate, quinolinyndazole carboxylate,

817 isoquinolinyndole carboxylate, isoquinolinyndazole

818 carboxylate, quinolinyndole carboxamide, quinolinyndazole

819 carboxamide, isoquinolinyndole carboxamide, or

820 isoquinolinyndazole carboxamide structure, with or without

821 substitution on the indole or indazole ring to any extent,

822 whether or not substituted on the quinoline or isoquinoline ring

823 to any extent, including, but not limited to:

824 (I) PB-22 (8-Quinolinyndole 1-pentylindole-3-carboxylate).

825 (II) Fluoro PB-22 (8-Quinolinyndole 1-(fluoropentyl)indole-3-

826 carboxylate).

827 (III) BB-22 (8-Quinoliny 1-(cyclohexylmethyl)indole-3-

828 carboxylate).

829 (IV) FUB-PB-22 (8-Quinoliny 1-(4-fluorobenzyl)indole-3-

830 carboxylate).

831 (V) NPB-22 (8-Quinoliny 1-pentylindazole-3-carboxylate).

832 (VI) Fluoro NPB-22 (8-Quinoliny 1-(fluoropentyl)indazole-

833 3-carboxylate).

834 (VII) FUB-NPB-22 (8-Quinoliny 1-(4-fluorobenzyl)indazole-

835 3-carboxylate).

836 (VIII) THJ (8-Quinoliny 1-pentylindazole-3-carboxamide).

837 (IX) Fluoro THJ (8-Quinoliny 1-(fluoropentyl)indazole-3-

838 carboxamide).

839 k. Naphthylindolecarboxylates and

840 Naphthylindazolecarboxylates.—Any compound containing a

841 naphthylindole carboxylate or naphthylindazole carboxylate

842 structure, with or without substitution on the indole or

843 indazole ring to any extent, whether or not substituted on the

844 naphthyl ring to any extent, including, but not limited to:

845 (I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-

846 carboxylate).

847 (II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-

848 carboxylate).

849 (III) Fluoro SDB-005 (1-Naphthalenyl 1-

850 (fluoropentyl)indazole-3-carboxylate).

851 (IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-  
852 carboxylate).

853 (V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-  
854 carboxylate).

855 1. Naphthylindole carboxamides and Naphthylindazole  
856 carboxamides.—Any compound containing a naphthylindole  
857 carboxamide or naphthylindazole carboxamide structure, with or  
858 without substitution on the indole or indazole ring to any  
859 extent, whether or not substituted on the naphthyl ring to any  
860 extent, including, but not limited to:

861 (I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).

862 (II) Fluoro-NNEI (N-Naphthalen-1-yl 1-  
863 (fluoropentyl)indole-3-carboxamide).

864 (III) Chloro-NNEI (N-Naphthalen-1-yl 1-  
865 (chloropentyl)indole-3-carboxamide).

866 (IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-  
867 carboxamide).

868 (V) Fluoro MN-18 (N-Naphthalen-1-yl 1-  
869 (fluoropentyl)indazole-3-carboxamide).

870 m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl  
871 indazole carboxamides, Alkylcarbonyl indole carboxylates, and  
872 Alkylcarbonyl indazole carboxylates.—Any compound containing an  
873 alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl,  
874 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-  
875 phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an

876 indole carboxamide, indazole carboxamide, indole carboxylate, or  
 877 indazole carboxylate, with or without substitution on the indole  
 878 or indazole ring to any extent, whether or not substituted on  
 879 the alkylcarbonyl group to any extent, including, but not  
 880 limited to:

881 (I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-  
 882 pentylindole-3-carboxamide).

883 (II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-  
 884 yl)-1-(fluoropentyl)indole-3-carboxamide).

885 (III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-  
 886 1-(fluoropentyl)indole-3-carboxamide).

887 (IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-  
 888 pentylindazole-3-carboxamide).

889 (V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-  
 890 yl)-1-(fluoropentyl)indazole-3-carboxamide).

891 (VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-  
 892 1-pentylindazole-3-carboxamide).

893 (VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-  
 894 oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

895 (VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-  
 896 1-(4-fluorobenzyl)indazole-3-carboxamide).

897 (IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-  
 898 yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

899 (X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-  
 900 (cyclohexylmethyl)indazole-3-carboxamide).

- 901 (XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-  
 902 1-(cyclohexylmethyl)indazole-3-carboxamide).
- 903 (XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-  
 904 yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).
- 905 (XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-  
 906 pentylindazole-3-carboxamide).
- 907 (XIV) Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-  
 908 1-(fluoropentyl)indazole-3-carboxamide).
- 909 (XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-  
 910 fluorobenzyl)indazole-3-carboxamide).
- 911 (XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-  
 912 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).
- 913 (XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-  
 914 oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).
- 915 (XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-  
 916 2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).
- 917 (XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-  
 918 fluoropentyl)indole-3-carboxamide).
- 919 (XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-  
 920 fluoropentyl)indazole-3-carboxamide).
- 921 (XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-  
 922 (cyclohexylmethyl)indazole-3-carboxamide).
- 923 (XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-  
 924 fluorobenzyl)indazole-3-carboxamide).
- 925 (XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-

926 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

927 n. Cumylindolecarboxamides and Cumylindazolecarboxamides.-

928 Any compound containing a N-(2-phenylpropan-2-yl) indole

929 carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide

930 structure, with or without substitution on the indole or

931 indazole ring to any extent, whether or not substituted on the

932 phenyl ring of the cumyl group to any extent, including, but not

933 limited to:

934 (I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-

935 carboxamide).

936 (II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-

937 (fluoropentyl)indole-3-carboxamide).

938 o. Other Synthetic Cannabinoids.-Any material, compound,

939 mixture, or preparation that contains any quantity of a

940 Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

941 (I) With or without modification or replacement of a

942 carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage

943 between either two core rings, or linkage between a core ring

944 and group structure, with or without the addition of a carbon or

945 replacement of a carbon;

946 (II) With or without replacement of a core ring or group

947 structure, whether or not substituted on the ring or group

948 structures to any extent; and

949 (III) Is a cannabinoid receptor agonist, unless

950 specifically excepted or unless listed in another schedule or

951 contained within a pharmaceutical product approved by the United  
 952 States Food and Drug Administration.

953 191. Substituted Cathinones.—Unless specifically excepted,  
 954 listed in another schedule, or contained within a pharmaceutical  
 955 product approved by the United States Food and Drug  
 956 Administration, any material, compound, mixture, or preparation,  
 957 including its salts, isomers, esters, or ethers, and salts of  
 958 isomers, esters, or ethers, whenever the existence of such salts  
 959 is possible within any of the following specific chemical  
 960 designations:

961 a. Any compound containing a 2-amino-1-phenyl-1-propanone  
 962 structure;

963 b. Any compound containing a 2-amino-1-naphthyl-1-  
 964 propanone structure; or

965 c. Any compound containing a 2-amino-1-thiophenyl-1-  
 966 propanone structure,

967 whether or not the compound is further modified:

968 (I) With or without substitution on the ring system to any  
 969 extent with alkyl, alkylthio, thio, fused alkylenedioxy, alkoxy,  
 970 haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused  
 971 dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide  
 972 substituents;

973 (II) With or without substitution at the 3-propanone  
 974 position with an alkyl substituent or removal of the methyl  
 975 group at the 3-propanone position;



- 976 (III) With or without substitution at the 2-amino nitrogen  
 977 atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or  
 978 not further substituted in the ring system; or
- 979 (IV) With or without inclusion of the 2-amino nitrogen  
 980 atom in a cyclic structure, including, but not limited to:
- 981 (A) Methcathinone.
  - 982 (B) Ethcathinone.
  - 983 (C) Methydone (3,4-Methylenedioxy-methcathinone).
  - 984 (D) 2,3-Methylenedioxy-methcathinone.
  - 985 (E) MDPV (3,4-Methylenedioxy-pyrovalerone).
  - 986 (F) Methyldmethcathinone.
  - 987 (G) Methoxy-methcathinone.
  - 988 (H) Fluoromethcathinone.
  - 989 (I) Methylethcathinone.
  - 990 (J) Butylone (3,4-Methylenedioxy-alpha-  
 991 methylaminobutyrophenone).
  - 992 (K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
  - 993 (L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).
  - 994 (M) Naphyrone (Naphthylpyrovalerone).
  - 995 (N) Bromomethcathinone.
  - 996 (O) Buphedrone (alpha-Methylaminobutyrophenone).
  - 997 (P) Eutylone (3,4-Methylenedioxy-alpha-  
 998 ethylaminobutyrophenone).
  - 999 (Q) Dimethylcathinone.
  - 1000 (R) Dimethylmethcathinone.

- 1001 (S) Pentylone (3,4-Methylenedioxy-alpha-
- 1002 methylaminovalerophenone).
- 1003 (T) Pentedrone (alpha-Methylaminovalerophenone).
- 1004 (U) MDPPP (3,4-Methylenedioxy-alpha-
- 1005 pyrrolidinopropiophenone).
- 1006 (V) MDPBP (3,4-Methylenedioxy-alpha-
- 1007 pyrrolidinobutyrophenone).
- 1008 (W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).
- 1009 (X) PPP (Pyrrolidinopropiophenone).
- 1010 (Y) PVP (Pyrrolidinovalerophenone) or
- 1011 (Pyrrolidinopentiophenone).
- 1012 (Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
- 1013 (AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).
- 1014 (BB) F-MABP (Fluoromethylaminobutyrophenone).
- 1015 (CC) Me-EABP (Methylethylaminobutyrophenone).
- 1016 (DD) PBP (Pyrrolidinobutyrophenone).
- 1017 (EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).
- 1018 (FF) Et-PBP (Ethylpyrrolidinobutyrophenone).
- 1019 (GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
- 1020 (HH) Dimethylone (3,4-Methylenedioxy-N,N-
- 1021 dimethylcathinone).
- 1022 (II) 3,4-Methylenedioxy-N,N-diethylcathinone.
- 1023 (JJ) 3,4-Methylenedioxy-N-acetylcathinone.
- 1024 (KK) 3,4-Methylenedioxy-N-acetylmethcathinone.
- 1025 (LL) 3,4-Methylenedioxy-N-acetylethcathinone.

1026 (MM) Methylbuphedrone (Methyl-alpha-  
 1027 methylaminobutyrophenone).  
 1028 (NN) Methyl-alpha-methylaminohexanophenone.  
 1029 (OO) N-Ethyl-N-methylcathinone.  
 1030 (PP) PHP (Pyrrolidinohexanophenone).  
 1031 (QQ) PV8 (Pyrrolidinoheptanophenone).  
 1032 (RR) Chloromethcathinone.  
 1033 (SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.  
 1034 192. Substituted Phenethylamines.—Unless specifically  
 1035 excepted or unless listed in another schedule, or contained  
 1036 within a pharmaceutical product approved by the United States  
 1037 Food and Drug Administration, any material, compound, mixture,  
 1038 or preparation, including its salts, isomers, esters, or ethers,  
 1039 and salts of isomers, esters, or ethers, whenever the existence  
 1040 of such salts is possible within any of the following specific  
 1041 chemical designations, any compound containing a phenethylamine  
 1042 structure, without a beta-keto group, and without a benzyl group  
 1043 attached to the amine group, whether or not the compound is  
 1044 further modified with or without substitution on the phenyl ring  
 1045 to any extent with alkyl, alkylthio, nitro, alkoxy, thio,  
 1046 halide, fused alkylendioxy, fused furan, fused benzofuran,  
 1047 fused dihydrofuran, or fused tetrahydropyran substituents,  
 1048 whether or not further substituted on a ring to any extent, with  
 1049 or without substitution at the alpha or beta position by any  
 1050 alkyl substituent, with or without substitution at the nitrogen

- 1051 atom, and with or without inclusion of the 2-amino nitrogen atom  
 1052 in a cyclic structure, including, but not limited to:
- 1053 a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
  - 1054 b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
  - 1055 c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
  - 1056 d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
  - 1057 e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
  - 1058 f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
  - 1059 g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
  - 1060 h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
  - 1061 i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
  - 1062 j. 2C-H (2,5-Dimethoxyphenethylamine).
  - 1063 k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
  - 1064 l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).
  - 1065 m. MDMA (3,4-Methylenedioxyamphetamine).
  - 1066 n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-  
 1067 Methylenedioxy-N-methylbutanamine).
  - 1068 o. MDA (3,4-Methylenedioxyamphetamine).
  - 1069 p. 2,5-Dimethoxyamphetamine.
  - 1070 q. Fluoroamphetamine.
  - 1071 r. Fluoromethamphetamine.
  - 1072 s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
  - 1073 t. DOB (4-Bromo-2,5-dimethoxyamphetamine).
  - 1074 u. DOC (4-Chloro-2,5-dimethoxyamphetamine).
  - 1075 v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).

- 1076 w. DOI (4-Iodo-2,5-dimethoxyamphetamine) .
- 1077 x. DOM (4-Methyl-2,5-dimethoxyamphetamine) .
- 1078 y. PMA (4-Methoxyamphetamine) .
- 1079 z. N-Ethylamphetamine .
- 1080 aa. 3,4-Methylenedioxy-N-hydroxyamphetamine .
- 1081 bb. 5-Methoxy-3,4-methylenedioxyamphetamine .
- 1082 cc. PMMA (4-Methoxymethamphetamine) .
- 1083 dd. N,N-Dimethylamphetamine .
- 1084 ee. 3,4,5-Trimethoxyamphetamine .
- 1085 ff. 4-APB (4-(2-Aminopropyl)benzofuran) .
- 1086 gg. 5-APB (5-(2-Aminopropyl)benzofuran) .
- 1087 hh. 6-APB (6-(2-Aminopropyl)benzofuran) .
- 1088 ii. 7-APB (7-(2-Aminopropyl)benzofuran) .
- 1089 jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran) .
- 1090 kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran) .
- 1091 ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran) .
- 1092 mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran) .
- 1093 nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran) .
- 1094 oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran) .
- 1095 pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran) .
- 1096 qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran) .
- 1097 rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran) .
- 1098 ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-
- 1099 dihydrobenzofuran) ,
- 1100

1101 | which does not include phenethylamine, mescaline as described in  
 1102 | subparagraph 20., substituted cathinones as described in  
 1103 | subparagraph 191., N-Benzyl phenethylamine compounds as  
 1104 | described in subparagraph 193., or methamphetamine as described  
 1105 | in subparagraph (2)(c)4.

1106 |       193. N-Benzyl Phenethylamine Compounds.—Unless  
 1107 | specifically excepted or unless listed in another schedule, or  
 1108 | contained within a pharmaceutical product approved by the United  
 1109 | States Food and Drug Administration, any material, compound,  
 1110 | mixture, or preparation, including its salts, isomers, esters,  
 1111 | or ethers, and salts of isomers, esters, or ethers, whenever the  
 1112 | existence of such salts is possible within any of the following  
 1113 | specific chemical designations, any compound containing a  
 1114 | phenethylamine structure without a beta-keto group, with  
 1115 | substitution on the nitrogen atom of the amino group with a  
 1116 | benzyl substituent, with or without substitution on the phenyl  
 1117 | or benzyl ring to any extent with alkyl, alkoxy, thio,  
 1118 | alkylthio, halide, fused alkylenedioxy, fused furan, fused  
 1119 | benzofuran, or fused tetrahydropyran substituents, whether or  
 1120 | not further substituted on a ring to any extent, with or without  
 1121 | substitution at the alpha position by any alkyl substituent,  
 1122 | including, but not limited to:

- 1123 |       a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-
- 1124 |       methoxybenzyl)]phenethylamine).
- 1125 |       b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-

- 1126 hydroxybenzyl)]phenethylamine).
- 1127 c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-
- 1128 fluorobenzyl)]phenethylamine).
- 1129 d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-
- 1130 methylenedioxybenzyl)]phenethylamine).
- 1131 e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-
- 1132 methoxybenzyl)]phenethylamine).
- 1133 f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-
- 1134 hydroxybenzyl)]phenethylamine).
- 1135 g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-
- 1136 fluorobenzyl)]phenethylamine).
- 1137 h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-
- 1138 methylenedioxybenzyl)]phenethylamine).
- 1139 i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-
- 1140 methoxybenzyl)]phenethylamine).
- 1141 j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-
- 1142 methoxybenzyl)]phenethylamine).
- 1143 k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-
- 1144 methoxybenzyl)]phenethylamine).
- 1145 l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-
- 1146 methoxybenzyl)]phenethylamine).
- 1147 m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-
- 1148 hydroxybenzyl)]phenethylamine).
- 1149 n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-
- 1150 fluorobenzyl)]phenethylamine).

1151 o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-  
1152 methylenedioxybenzyl)]phenethylamine).

1153 p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-  
1154 methoxybenzyl)]phenethylamine).

1155 q. 25H-NBOH (2,5-Dimethoxy-[N-(2-  
1156 hydroxybenzyl)]phenethylamine).

1157 r. 25H-NBF (2,5-Dimethoxy-[N-(2-  
1158 fluorobenzyl)]phenethylamine).

1159 s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-  
1160 methoxybenzyl)]phenethylamine),

1161  
1162 which does not include substituted cathinones as described in  
1163 subparagraph 191.

1164 194. Substituted Tryptamines.—Unless specifically excepted  
1165 or unless listed in another schedule, or contained within a  
1166 pharmaceutical product approved by the United States Food and  
1167 Drug Administration, any material, compound, mixture, or  
1168 preparation containing a 2-(1H-indol-3-yl)ethanamine, for  
1169 example tryptamine, structure with or without mono- or di-  
1170 substitution of the amine nitrogen with alkyl or alkenyl groups,  
1171 or by inclusion of the amino nitrogen atom in a cyclic  
1172 structure, whether or not substituted at the alpha position with  
1173 an alkyl group, whether or not substituted on the indole ring to  
1174 any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy  
1175 groups, including, but not limited to:



- 1176 a. Alpha-Ethyltryptamine.
- 1177 b. Bufotenine.
- 1178 c. DET (Diethyltryptamine).
- 1179 d. DMT (Dimethyltryptamine).
- 1180 e. MET (N-Methyl-N-ethyltryptamine).
- 1181 f. DALT (N,N-Diallyltryptamine).
- 1182 g. EiPT (N-Ethyl-N-isopropyltryptamine).
- 1183 h. MiPT (N-Methyl-N-isopropyltryptamine).
- 1184 i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
- 1185 j. 5-Hydroxy-N-methyltryptamine.
- 1186 k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
- 1187 l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
- 1188 m. Methyltryptamine.
- 1189 n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
- 1190 o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
- 1191 p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
- 1192 q. DiPT (N,N-Diisopropyltryptamine).
- 1193 r. DPT (N,N-Dipropyltryptamine).
- 1194 s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
- 1195 t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
- 1196 u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).
- 1197 v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).
- 1198 w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).
- 1199 x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).
- 1200 y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-

1201 isopropyltryptamine).

1202 z. Methyl-alpha-ethyltryptamine.

1203 aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),

1204

1205 which does not include tryptamine, psilocyn as described in

1206 subparagraph 34., or psilocybin as described in subparagraph 33.

1207 195. Substituted Phenylcyclohexylamines.—Unless

1208 specifically excepted or unless listed in another schedule, or

1209 contained within a pharmaceutical product approved by the United

1210 States Food and Drug Administration, any material, compound,

1211 mixture, or preparation containing a phenylcyclohexylamine

1212 structure, with or without any substitution on the phenyl ring,

1213 any substitution on the cyclohexyl ring, any replacement of the

1214 phenyl ring with a thiophenyl or benzothiophenyl ring, with or

1215 without substitution on the amine with alkyl, dialkyl, or alkoxy

1216 substituents, inclusion of the nitrogen in a cyclic structure,

1217 or any combination of the above, including, but not limited to:

1218 a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP

1219 (Benocyclidine).

1220 b. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog

1221 of phencyclidine).

1222 c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine

1223 analog of phencyclidine).

1224 d. PCPr (Phenylcyclohexylpropylamine).

1225 e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) (Thiophene

- 1226 analog of phencyclidine).
- 1227 f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).
- 1228 g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).
- 1229 h. Methoxetamine.
- 1230 i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).
- 1231 j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).
- 1232 k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).
- 1233 l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).
- 1234 m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).
- 1235 n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).
- 1236 o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).
- 1237 p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).
- 1238 q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).
- 1239 r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).
- 1240 196. W-15, 4-chloro-N-[1-(2-phenylethyl)-2-
- 1241 piperidinylidene]-benzenesulfonamide.
- 1242 197. W-18, 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-
- 1243 piperidinylidene]-benzenesulfonamide.
- 1244 198. AH-7921, 3,4-dichloro-N-[[1-
- 1245 (dimethylamino)cyclohexyl]methyl]-benzamide.
- 1246 199. U47700, trans-3,4-dichloro-N-[2-
- 1247 (dimethylamino)cyclohexyl]-N-methyl-benzamide.
- 1248 200. MT-45, 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine,
- 1249 dihydrochloride.
- 1250 Section 5. Paragraph (c) of subsection (6) of section

1251 893.13, Florida Statutes, is amended to read:

1252 893.13 Prohibited acts; penalties.—

1253 (6)

1254 (c) Except as provided in this chapter, a person may not  
 1255 possess more than 10 grams of any substance named or described  
 1256 in s. 893.03(1)(a), or (1)(b), or (2)(b), or any combination  
 1257 thereof, or any mixture containing any such substance. A person  
 1258 who violates this paragraph commits a felony of the first  
 1259 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 1260 775.084.

1261 Section 6. Paragraphs (c), (d), and (k) of subsection (1)  
 1262 of section 893.135, Florida Statutes, are amended, and  
 1263 paragraphs (m) and (n) are added to that subsection, to read:

1264 893.135 Trafficking; mandatory sentences; suspension or  
 1265 reduction of sentences; conspiracy to engage in trafficking.—

1266 (1) Except as authorized in this chapter or in chapter 499  
 1267 and notwithstanding the provisions of s. 893.13:

1268 (c)1. A person who knowingly sells, purchases,  
 1269 manufactures, delivers, or brings into this state, or who is  
 1270 knowingly in actual or constructive possession of, 4 grams or  
 1271 more of any morphine, opium, hydromorphone, or any salt,  
 1272 derivative, isomer, or salt of an isomer thereof, including  
 1273 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or  
 1274 (3)(c)4., or 4 grams or more of any mixture containing any such  
 1275 substance, but less than 30 kilograms of such substance or

1276 mixture, commits a felony of the first degree, which felony  
 1277 shall be known as "trafficking in illegal drugs," punishable as  
 1278 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
 1279 quantity involved:

1280 a. Is 4 grams or more, but less than 14 grams, such person  
 1281 shall be sentenced to a mandatory minimum term of imprisonment  
 1282 of 3 years and shall be ordered to pay a fine of \$50,000.

1283 b. Is 14 grams or more, but less than 28 grams, such  
 1284 person shall be sentenced to a mandatory minimum term of  
 1285 imprisonment of 15 years and shall be ordered to pay a fine of  
 1286 \$100,000.

1287 c. Is 28 grams or more, but less than 30 kilograms, such  
 1288 person shall be sentenced to a mandatory minimum term of  
 1289 imprisonment of 25 years and shall be ordered to pay a fine of  
 1290 \$500,000.

1291 2. A person who knowingly sells, purchases, manufactures,  
 1292 delivers, or brings into this state, or who is knowingly in  
 1293 actual or constructive possession of, 14 grams or more of  
 1294 hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as  
 1295 described in s. 893.03(2)(a)1.g., or any salt, ~~derivative,~~  
 1296 ~~isomer, or salt of an isomer~~ thereof, or 14 grams or more of any  
 1297 mixture containing any such substance, commits a felony of the  
 1298 first degree, which felony shall be known as "trafficking in  
 1299 hydrocodone," punishable as provided in s. 775.082, s. 775.083,  
 1300 or s. 775.084. If the quantity involved:

1301 a. Is 14 grams or more, but less than 28 grams, such  
 1302 person shall be sentenced to a mandatory minimum term of  
 1303 imprisonment of 3 years and shall be ordered to pay a fine of  
 1304 \$50,000.

1305 b. Is 28 grams or more, but less than 50 grams, such  
 1306 person shall be sentenced to a mandatory minimum term of  
 1307 imprisonment of 7 years and shall be ordered to pay a fine of  
 1308 \$100,000.

1309 c. Is 50 grams or more, but less than 200 grams, such  
 1310 person shall be sentenced to a mandatory minimum term of  
 1311 imprisonment of 15 years and shall be ordered to pay a fine of  
 1312 \$500,000.

1313 d. Is 200 grams or more, but less than 30 kilograms, such  
 1314 person shall be sentenced to a mandatory minimum term of  
 1315 imprisonment of 25 years and shall be ordered to pay a fine of  
 1316 \$750,000.

1317 3. A person who knowingly sells, purchases, manufactures,  
 1318 delivers, or brings into this state, or who is knowingly in  
 1319 actual or constructive possession of, 7 grams or more of  
 1320 oxycodone, as described in s. 893.03(2)(a)1.o., or any salt,  
 1321 ~~derivative, isomer, or salt of an isomer~~ thereof, or 7 grams or  
 1322 more of any mixture containing any such substance, commits a  
 1323 felony of the first degree, which felony shall be known as  
 1324 "trafficking in oxycodone," punishable as provided in s.  
 1325 775.082, s. 775.083, or s. 775.084. If the quantity involved:

1326 a. Is 7 grams or more, but less than 14 grams, such person  
 1327 shall be sentenced to a mandatory minimum term of imprisonment  
 1328 of 3 years and shall be ordered to pay a fine of \$50,000.

1329 b. Is 14 grams or more, but less than 25 grams, such  
 1330 person shall be sentenced to a mandatory minimum term of  
 1331 imprisonment of 7 years and shall be ordered to pay a fine of  
 1332 \$100,000.

1333 c. Is 25 grams or more, but less than 100 grams, such  
 1334 person shall be sentenced to a mandatory minimum term of  
 1335 imprisonment of 15 years and shall be ordered to pay a fine of  
 1336 \$500,000.

1337 d. Is 100 grams or more, but less than 30 kilograms, such  
 1338 person shall be sentenced to a mandatory minimum term of  
 1339 imprisonment of 25 years and shall be ordered to pay a fine of  
 1340 \$750,000.

1341 4.a. A person who knowingly sells, purchases,  
 1342 manufactures, delivers, or brings into this state, or who is  
 1343 knowingly in actual or constructive possession of, 4 grams or  
 1344 more of:

- 1345 (I) Alfentanil, as described in s. 893.03(2)(b)1.;
- 1346 (II) Carfentanil, as described in s. 893.03(2)(b)6.;
- 1347 (III) Fentanyl, as described in s. 893.03(2)(b)9.;
- 1348 (IV) Sufentanil, as described in s. 893.03(2)(b)29.;
- 1349 (V) A fentanyl derivative, as described in s.  
 1350 893.03(1)(a)62.;

1351           (VI) A controlled substance analog, as described in s.  
 1352 893.0356, of any substance described in sub-sub-subparagraphs  
 1353 (I) - (V); or  
 1354           (VII) A mixture containing any substance described in sub-  
 1355 sub-subparagraphs (I) - (VI),  
 1356  
 1357 commits a felony of the first degree, which felony shall be  
 1358 known as "trafficking in fentanyl," punishable as provided in s.  
 1359 775.082, s. 775.083, or s. 775.084.  
 1360           b. If the quantity involved under sub-subparagraph a.:  
 1361           (I) Is 4 grams or more, but less than 14 grams, such  
 1362 person shall be sentenced to a mandatory minimum term of  
 1363 imprisonment of 3 years, and shall be ordered to pay a fine of  
 1364 \$50,000.  
 1365           (II) Is 14 grams or more, but less than 28 grams, such  
 1366 person shall be sentenced to a mandatory minimum term of  
 1367 imprisonment of 15 years, and shall be ordered to pay a fine of  
 1368 \$100,000.  
 1369           (III) Is 28 grams or more, such person shall be sentenced  
 1370 to a mandatory minimum term of imprisonment of 25 years, and  
 1371 shall be ordered to pay a fine of \$500,000.  
 1372           ~~5.4~~ A person who knowingly sells, purchases,  
 1373 manufactures, delivers, or brings into this state, or who is  
 1374 knowingly in actual or constructive possession of, 30 kilograms  
 1375 or more of any morphine, opium, oxycodone, hydrocodone, codeine,



1376 hydromorphone, or any salt, derivative, isomer, or salt of an  
 1377 isomer thereof, including heroin, as described in s.  
 1378 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or  
 1379 more of any mixture containing any such substance, commits the  
 1380 first degree felony of trafficking in illegal drugs. A person  
 1381 who has been convicted of the first degree felony of trafficking  
 1382 in illegal drugs under this subparagraph shall be punished by  
 1383 life imprisonment and is ineligible for any form of  
 1384 discretionary early release except pardon or executive clemency  
 1385 or conditional medical release under s. 947.149. However, if the  
 1386 court determines that, in addition to committing any act  
 1387 specified in this paragraph:

1388       a. The person intentionally killed an individual or  
 1389 counseled, commanded, induced, procured, or caused the  
 1390 intentional killing of an individual and such killing was the  
 1391 result; or

1392       b. The person's conduct in committing that act led to a  
 1393 natural, though not inevitable, lethal result,

1394  
 1395 such person commits the capital felony of trafficking in illegal  
 1396 drugs, punishable as provided in ss. 775.082 and 921.142. A  
 1397 person sentenced for a capital felony under this paragraph shall  
 1398 also be sentenced to pay the maximum fine provided under  
 1399 subparagraph 1.

1400       6.5. A person who knowingly brings into this state 60

1401 kilograms or more of any morphine, opium, oxycodone,  
 1402 hydrocodone, codeine, hydromorphone, or any salt, derivative,  
 1403 isomer, or salt of an isomer thereof, including heroin, as  
 1404 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or  
 1405 60 kilograms or more of any mixture containing any such  
 1406 substance, and who knows that the probable result of such  
 1407 importation would be the death of a person, commits capital  
 1408 importation of illegal drugs, a capital felony punishable as  
 1409 provided in ss. 775.082 and 921.142. A person sentenced for a  
 1410 capital felony under this paragraph shall also be sentenced to  
 1411 pay the maximum fine provided under subparagraph 1.

1412 (d)1. Any person who knowingly sells, purchases,  
 1413 manufactures, delivers, or brings into this state, or who is  
 1414 knowingly in actual or constructive possession of, 28 grams or  
 1415 more of phencyclidine, as described in s. 893.03(2)(b)23., a  
 1416 substituted phenylcyclohexylamine, as described in s.  
 1417 893.03(1)(c)195., or a substance described in s.  
 1418 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
 1419 containing phencyclidine, as described in s. 893.03(2)(b)23.  
 1420 ~~893.03(2)(b)~~, a substituted phenylcyclohexylamine, as described  
 1421 in s. 893.03(1)(c)195., or a substance described in s.  
 1422 893.03(1)(c)13., 32., 38., 103., or 146.,  
 1423 commits a felony of the first degree, which felony shall be  
 1424 known as "trafficking in phencyclidine," punishable as provided  
 1425 in s. 775.082, s. 775.083, or s. 775.084. If the quantity

1426 involved:

1427 a. Is 28 grams or more, but less than 200 grams, such  
 1428 person shall be sentenced to a mandatory minimum term of  
 1429 imprisonment of 3 years, and the defendant shall be ordered to  
 1430 pay a fine of \$50,000.

1431 b. Is 200 grams or more, but less than 400 grams, such  
 1432 person shall be sentenced to a mandatory minimum term of  
 1433 imprisonment of 7 years, and the defendant shall be ordered to  
 1434 pay a fine of \$100,000.

1435 c. Is 400 grams or more, such person shall be sentenced to  
 1436 a mandatory minimum term of imprisonment of 15 calendar years  
 1437 and pay a fine of \$250,000.

1438 2. Any person who knowingly brings into this state 800  
 1439 grams or more of phencyclidine, as described in s.  
 1440 893.03(2)(b)23., a substituted phenylcyclohexylamine, as  
 1441 described in s. 893.03(1)(c)195., or a substance described in s.  
 1442 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
 1443 containing phencyclidine, as described in s. 893.03(2)(b)23.  
 1444 ~~893.03(2)(b)~~, a substituted phenylcyclohexylamine, as described  
 1445 in s. 893.03(1)(c)195., or a substance described in s.  
 1446 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the  
 1447 probable result of such importation would be the death of any  
 1448 person commits capital importation of phencyclidine, a capital  
 1449 felony punishable as provided in ss. 775.082 and 921.142. Any  
 1450 person sentenced for a capital felony under this paragraph shall

1451 also be sentenced to pay the maximum fine provided under  
 1452 subparagraph 1.

1453 (k)1. A person who knowingly sells, purchases,  
 1454 manufactures, delivers, or brings into this state, or who is  
 1455 knowingly in actual or constructive possession of, 10 grams or  
 1456 more of a any of the following substances described in s.  
 1457 893.03(1)(e):

1458 a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,  
 1459 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,  
 1460 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163.,  
 1461 165., or 187.-189., a substituted cathinone, as described in s.  
 1462 893.03(1)(c)191., or substituted phenethylamine, as described in  
 1463 s. 893.03(1)(c)192.;

1464 b. Mixture containing any substance described in sub-  
 1465 subparagraph a.; or

1466 c. Salt, isomer, ester, or ether or salt of an isomer,  
 1467 ester, or ether of a substance described in sub-subparagraph a.,

- 1468 a. ~~(MDMA) 3,4-Methylenedioxyamphetamine;~~
- 1469 b. ~~DOB (4-Bromo-2,5-dimethoxyamphetamine);~~
- 1470 c. ~~2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~
- 1471 d. ~~2,5-Dimethoxyamphetamine;~~
- 1472 e. ~~DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~
- 1473 f. ~~N-ethylamphetamine;~~
- 1474 g. ~~3,4-Methylenedioxy-N-hydroxyamphetamine;~~
- 1475 h. ~~5-Methoxy-3,4-methylenedioxyamphetamine;~~

- 1476 i. ~~PMA (4 methoxyamphetamine);~~
- 1477 j. ~~PMMA (4 methoxymethamphetamine);~~
- 1478 k. ~~DOM (4 Methyl 2,5 dimethoxyamphetamine);~~
- 1479 l. ~~MDEA (3,4 Methylenedioxy N ethylamphetamine);~~
- 1480 m. ~~MDA (3,4 Methylenedioxyamphetamine);~~
- 1481 n. ~~N,N dimethylamphetamine;~~
- 1482 o. ~~3,4,5 Trimethoxyamphetamine;~~
- 1483 p. ~~Methylone (3,4 Methylenedioxymethcathinone);~~
- 1484 q. ~~MDPV (3,4 Methylenedioxypropylvalerone); or~~
- 1485 r. ~~Methylmethcathinone;~~

1486  
 1487 ~~individually or analogs thereto or isomers thereto or in any~~  
 1488 ~~combination of or any mixture containing any substance listed in~~  
 1489 ~~sub-subparagraphs a. r.,~~ commits a felony of the first degree,  
 1490 which felony shall be known as "trafficking in phenethylamines,"  
 1491 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

- 1492 2. If the quantity involved under subparagraph 1.:
- 1493 a. Is 10 grams or more, but less than 200 grams, such
- 1494 person shall be sentenced to a mandatory minimum term of
- 1495 imprisonment of 3 years and shall be ordered to pay a fine of
- 1496 \$50,000.
- 1497 b. Is 200 grams or more, but less than 400 grams, such
- 1498 person shall be sentenced to a mandatory minimum term of
- 1499 imprisonment of 7 years and shall be ordered to pay a fine of
- 1500 \$100,000.

1501 c. Is 400 grams or more, such person shall be sentenced to  
 1502 a mandatory minimum term of imprisonment of 15 years and shall  
 1503 be ordered to pay a fine of \$250,000.

1504 3. A person who knowingly manufactures or brings into this  
 1505 state 30 kilograms or more of a substance described in sub-  
 1506 subparagraph 1.a., a mixture described in sub-subparagraph 1.b.,  
 1507 or a salt, isomer, ester, or ether or a salt of an isomer,  
 1508 ester, or ether described in sub-subparagraph 1.c., any of the  
 1509 following substances described in s. 893.03(1)(c):

- 1510 a. ~~MDMA (3,4-Methylenedioxyamphetamine);~~
- 1511 b. ~~DOB (4-Bromo-2,5-dimethoxyamphetamine);~~
- 1512 c. ~~2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~
- 1513 d. ~~2,5-Dimethoxyamphetamine;~~
- 1514 e. ~~DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~
- 1515 f. ~~N-ethylamphetamine;~~
- 1516 g. ~~N-Hydroxy-3,4-methylenedioxyamphetamine;~~
- 1517 h. ~~5-Methoxy-3,4-methylenedioxyamphetamine;~~
- 1518 i. ~~PMA (4-methoxyamphetamine);~~
- 1519 j. ~~PMMA (4-methoxymethamphetamine);~~
- 1520 k. ~~DOM (4-Methyl-2,5-dimethoxyamphetamine);~~
- 1521 l. ~~MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~
- 1522 m. ~~MDA (3,4-Methylenedioxyamphetamine);~~
- 1523 n. ~~N,N-dimethylamphetamine;~~
- 1524 o. ~~3,4,5-Trimethoxyamphetamine;~~
- 1525 p. ~~Methylone (3,4-Methylenedioxy-methcathinone);~~

1526 ~~q. MDPV (3,4-Methylenedioxypropylvalerone); or~~  
 1527 ~~r. Methylenedioxycathinone,~~  
 1528  
 1529 ~~individually or analogs thereto or isomers thereto or in any~~  
 1530 ~~combination of or any mixture containing any substance listed in~~  
 1531 ~~sub-subparagraphs a. r., and who knows that the probable result~~  
 1532 ~~of such manufacture or importation would be the death of any~~  
 1533 ~~person commits capital manufacture or importation of~~  
 1534 ~~phenethylamines, a capital felony punishable as provided in ss.~~  
 1535 ~~775.082 and 921.142. A person sentenced for a capital felony~~  
 1536 ~~under this paragraph shall also be sentenced to pay the maximum~~  
 1537 ~~fine provided under subparagraph 2. 1-~~  
 1538 (m)1. A person who knowingly sells, purchases,  
 1539 manufactures, delivers, or brings into this state, or who is  
 1540 knowingly in actual or constructive possession of, 280 grams or  
 1541 more of a:  
 1542 a. Substance described in s. 893.03(1)(c)30., 46.-50.,  
 1543 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic  
 1544 cannabinoid, as described in s. 893.03(1)(c)190.; or  
 1545 b. Mixture containing any substance described in sub-  
 1546 subparagraph a.,  
 1547  
 1548 commits a felony of the first degree, which felony shall be  
 1549 known as "trafficking in synthetic cannabinoids," punishable as  
 1550 provided in s. 775.082, s. 775.083, or s. 775.084.

1551        2. If the quantity involved under subparagraph 1.:  
 1552            a. Is 280 grams or more, but less than 500 grams, such  
 1553 person shall be sentenced to a mandatory minimum term of  
 1554 imprisonment of 3 years, and the defendant shall be ordered to  
 1555 pay a fine of \$50,000.  
 1556            b. Is 500 grams or more, but less than 1,000 grams, such  
 1557 person shall be sentenced to a mandatory minimum term of  
 1558 imprisonment of 7 years, and the defendant shall be ordered to  
 1559 pay a fine of \$100,000.  
 1560            c. Is 1,000 grams or more, but less than 30 kilograms such  
 1561 person shall be sentenced to a mandatory minimum term of  
 1562 imprisonment of 15 years, and the defendant shall be ordered to  
 1563 pay a fine of \$200,000.  
 1564            d. Is 30 kilograms or more, such person shall be sentenced  
 1565 to a mandatory minimum term of imprisonment of 25 years, and the  
 1566 defendant shall be ordered to pay a fine of \$750,000.  
 1567            (n)1. A person who knowingly sells, purchases,  
 1568 manufactures, delivers, or brings into this state, or who is  
 1569 knowingly in actual or constructive possession of, 14 grams or  
 1570 more of:  
 1571            a. A substance described in s. 893.03(1)(c)164., 174., or  
 1572 175., a n-benzyl phenethylamine compound, as described in s.  
 1573 893.03(1)(c)193.; or  
 1574            b. A mixture containing any substance described in sub-  
 1575 subparagraph a.,



1576  
 1577 commits a felony of the first degree, which felony shall be  
 1578 known as "trafficking in n-benzyl phenethylamines," punishable  
 1579 as provided in s. 775.082, s. 775.083, or s. 775.084.  
 1580 2. If the quantity involved under subparagraph 1.:  
 1581 a. Is 14 grams or more, but less than 100 grams, such  
 1582 person shall be sentenced to a mandatory minimum term of  
 1583 imprisonment of 3 years, and the defendant shall be ordered to  
 1584 pay a fine of \$50,000.  
 1585 b. Is 100 grams or more, but less than 200 grams, such  
 1586 person shall be sentenced to a mandatory minimum term of  
 1587 imprisonment of 7 years, and the defendant shall be ordered to  
 1588 pay a fine of \$100,000.  
 1589 c. Is 200 grams or more, such person shall be sentenced to  
 1590 a mandatory minimum term of imprisonment of 15 years , and the  
 1591 defendant shall be ordered to pay a fine of \$500,000.  
 1592 3. A person who knowingly manufactures or brings into this  
 1593 state 400 grams or more of a substance described in sub-  
 1594 subparagraph 1.a. or a mixture described in sub-subparagraph  
 1595 1.b., and who knows that the probable result of such manufacture  
 1596 or importation would be the death of any person commits capital  
 1597 manufacture or importation of a n-benzyl phenethylamine  
 1598 compound, a capital felony punishable as provided in ss. 775.082  
 1599 and 921.142. A person sentenced for a capital felony under this  
 1600 paragraph shall also be sentenced to pay the maximum fine under

1601 subparagraph 2.

1602 Section 7. For the purpose of incorporating the amendments  
 1603 made by this act to sections 893.03, 893.13, and 893.135,  
 1604 Florida Statutes, in references thereto, paragraphs (a), (b),  
 1605 (c), (d), and (e) subsection (3) of section 921.0022, Florida  
 1606 Statutes, are reenacted; and paragraphs (g), (h), and (i) of  
 1607 subsection (3) of section 921.0022, Florida Statutes, are  
 1608 amended to read:

1609 921.0022 Criminal Punishment Code; offense severity  
 1610 ranking chart.—

1611 (3) OFFENSE SEVERITY RANKING CHART

1612 (a) LEVEL 1

1613

Florida Statute	Felony Degree	Description
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1614

24.118 (3) (a)	3rd	Counterfeit or altered state lottery ticket.
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1615

212.054 (2) (b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
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1616

212.15 (2) (b)	3rd	Failure to remit sales taxes, amount greater than \$300 but
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PCS for HB 477

ORIGINAL

2017

			less than \$20,000.
1617	316.1935 (1)	3rd	Fleeing or attempting to elude law enforcement officer.
1618	319.30 (5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
1619	319.35 (1) (a)	3rd	Tamper, adjust, change, etc., an odometer.
1620	320.26 (1) (a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
1621	322.212 (1) (a) - (c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
1622	322.212 (4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.

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PCS for HB 477

ORIGINAL

2017

1623	322.212 (5) (a)	3rd	False application for driver license or identification card.
1624	414.39 (3) (a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
1625	443.071 (1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
1626	509.151 (1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
1627	517.302 (1)	3rd	Violation of the Florida Securities and Investor Protection Act.
1628	562.27 (1)	3rd	Possess still or still apparatus.
1629			

PCS for HB 477

ORIGINAL

2017

1630	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
1631	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
1632	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
1633	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
1634	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
1635	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.

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PCS for HB 477

ORIGINAL

2017

1636	826.01	3rd	Bigamy.
1637	828.122(3)	3rd	Fighting or baiting animals.
1638	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
1639	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
1640	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
1641	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
1642	838.15(2)	3rd	Commercial bribe receiving.

PCS for HB 477

ORIGINAL

2017

1643	838.16	3rd	Commercial bribery.
1644	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
1645	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
1646	849.01	3rd	Keeping gambling house.
1647	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
1648	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
1649	849.25(2)	3rd	Engaging in bookmaking.
	860.08	3rd	Interfere with a railroad signal.

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ORIGINAL

2017

1650

860.13 (1) (a) 3rd Operate aircraft while under  
the influence.

1651

893.13 (2) (a) 2. 3rd Purchase of cannabis.

1652

893.13 (6) (a) 3rd Possession of cannabis (more  
than 20 grams).

1653

934.03 (1) (a) 3rd Intercepts, or procures any  
other person to intercept, any  
wire or oral communication.

1654

1655 (b) LEVEL 2

1656

Florida	Felony	
Statute	Degree	Description

1657

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

1658

379.2431	3rd	Possession of more than 11 marine turtle eggs in violation
(1) (e) 4.		



PCS for HB 477

ORIGINAL

2017

			of the Marine Turtle Protection Act.
1659	403.413(6)(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.
1660	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
1661	590.28(1)	3rd	Intentional burning of lands.
1662	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
1663	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
1664	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public

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ORIGINAL

2017

1665			communication or any other public service.
1666	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
1667	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
1668	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
1669	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
1670	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.

PCS for HB 477

ORIGINAL

2017

1671	817.234 (1) (a) 2.	3rd	False statement in support of insurance claim.
1672	817.481 (3) (a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
1673	817.52 (3)	3rd	Failure to redeliver hired vehicle.
1674	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
1675	817.60 (5)	3rd	Dealing in credit cards of another.
1676	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
1677	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.

PCS for HB 477

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ORIGINAL

2017

1678	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
1679	831.01	3rd	Forgery.
1680	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
1681	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
1682	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
1683	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
1684	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.

PCS for HB 477

ORIGINAL

2017

1685	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
1686	843.08	3rd	False personation.
1687	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.
1688	893.147 (2)	3rd	Manufacture or delivery of drug paraphernalia.
1689	(c) LEVEL 3		
1690	Florida Statute	Felony Degree	Description
1691	119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
1692	316.066	3rd	Unlawfully obtaining or using

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ORIGINAL

2017

1693	(3) (b) - (d)		confidential crash reports.
1694	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
1695	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
1696	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
1697	319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
1698	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
1699	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.

PCS for HB 477

ORIGINAL

2017

1700	327.35 (2) (b)	3rd	Felony BUI.
1701	328.05 (2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
1702	328.07 (4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
1703	376.302 (5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
1704	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 Protection Act.

PCS for HB 477

ORIGINAL

2017

1705	379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
1706	400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
1707	400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
1708	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
1709	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
1709	624.401(4)(a)	3rd	Transacting insurance without a

PCS for HB 477

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ORIGINAL

2017

1710			certificate of authority.
	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
1711			
	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
1712			
	697.08	3rd	Equity skimming.
1713			
	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
1714			
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
1715			
	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
1716			
	810.09(2)(c)	3rd	Trespass on property other than

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ORIGINAL

2017

1717			structure or conveyance armed with firearm or dangerous weapon.
	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
1718			
	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
1719			
	815.04 (5) (b)	2nd	Computer offense devised to defraud or obtain property.
1720			
	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
1721			
	817.233	3rd	Burning to defraud insurer.
1722			
	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
1723			

PCS for HB 477

ORIGINAL

2017

1724	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
1725	817.236	3rd	Filing a false motor vehicle insurance application.
1726	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
1727	817.413(2)	3rd	Sale of used goods as new.
1728	817.505(4)	3rd	Patient brokering.
1729	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
1730	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.

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ORIGINAL

2017

1731	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
1732	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
1733	843.19	3rd	Injure, disable, or kill police dog or horse.
1734	860.15(3)	3rd	Overcharging for repairs and parts.
1735	870.01(2)	3rd	Riot; inciting or encouraging.
1736	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).
	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.,

PCS for HB 477

ORIGINAL

2017

(2) (c) 6., (2) (c) 7., (2) (c) 8.,  
 (2) (c) 9., (3), or (4) drugs  
 within 1,000 feet of  
 university.

1737

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.

1738

893.13 (4) (c)            3rd    Use or hire of minor; deliver  
 to minor other controlled  
 substances.

1739

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

1740

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

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ORIGINAL

2017

1741

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

1742

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

1743

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

1744

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.

1745

893.13 (8) (a) 2. 3rd Employ a trick or scheme in the

PCS for HB 477

ORIGINAL

2017

practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

1746

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

1747

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.

1748

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

1749

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

1750

944.47 (1) (c) 2nd Possess contraband while upon

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ORIGINAL

2017

1751			the grounds of a correctional institution.
	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
1752			
1753	(d)	LEVEL 4	
1754			
	Florida	Felony	
	Statute	Degree	Description
1755			
	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.
1756			
	499.0051 (1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
1757			



PCS for HB 477

ORIGINAL

2017

1758	499.0051 (5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
1759	517.07 (1)	3rd	Failure to register securities.
1760	517.12 (1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
1761	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
1762	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
1763	784.075	3rd	Battery on detention or commitment facility staff.
1764	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.

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ORIGINAL

2017

1765	784.081 (3)	3rd	Battery on specified official or employee.
1766	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
1767	784.083 (3)	3rd	Battery on code inspector.
1768	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
1769	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
1770	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
1771	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to

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ORIGINAL

2017

1772			avoid producing child at custody hearing or delivering to designated person.
	787.07	3rd	Human smuggling.
1773			
	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
1774			
	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
1775			
	790.115 (2) (c)	3rd	Possessing firearm on school property.
1776			
	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
1777			
	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
1778			

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ORIGINAL

2017

1779	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
1780	810.06	3rd	Burglary; possession of tools.
1781	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
1782	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
1783	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
1784	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s.

PCS for HB 477

ORIGINAL

2017

1785			893.03(5) drugs.
	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
1786			
	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
1787			
	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
1788			
	837.02(1)	3rd	Perjury in official proceedings.
1789			
	837.021(1)	3rd	Make contradictory statements in official proceedings.
1790			
	838.022	3rd	Official misconduct.
1791			
	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
1792			

PCS for HB 477

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ORIGINAL

2017

1793	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Families.
1794	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
1795	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
1796	843.15 (1) (a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
1797	847.0135 (5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
1798	874.05 (1) (a)	3rd	Encouraging or recruiting another to join a criminal gang.

PCS for HB 477

ORIGINAL

2017

1799	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) 4. drugs).
1800	914.14 (2)	3rd	Witnesses accepting bribes.
1801	914.22 (1)	3rd	Force, threaten, etc., witness, victim, or informant.
1802	914.23 (2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
1803	918.12	3rd	Tampering with jurors.
1804	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
1805	(e) LEVEL 5		
1806	Florida	Felony	
1807	Statute	Degree	Description

PCS for HB 477

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ORIGINAL

2017

1808	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
1809	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
1810	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
1811	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
1812	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply,



PCS for HB 477

ORIGINAL

2017

aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

1813

379.367(4)

3rd

Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

1814

379.407(5)(b)3.

3rd

Possession of 100 or more undersized spiny lobsters.

1815

381.0041(11)(b)

3rd

Donate blood, plasma, or organs knowing HIV positive.

1816

440.10(1)(g)

2nd

Failure to obtain workers' compensation coverage.

1817

PCS for HB 477

ORIGINAL

2017

1818	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
1819	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
1820	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
1821	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
1822	790.01 (2)	3rd	Carrying a concealed firearm.
1823	790.162	2nd	Threat to throw or discharge destructive device.
	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass

PCS for HB 477

ORIGINAL

2017

			destruction, or use of firearms in violent manner.
1824	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
1825	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
1826	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
1827	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
1828	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
1829	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.

PCS for HB 477

ORIGINAL

2017

1830	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
1831	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
1832	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
1833	812.131(2)(b)	3rd	Robbery by sudden snatching.
1834	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
1835	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
1836	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
1837	817.2341(1),	3rd	Filing false financial

PCS for HB 477

ORIGINAL

2017

1838	(2) (a) & (3) (a)	2nd	statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
1839	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 persons.
1840	817.611 (2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
1841	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
	825.1025 (4)	3rd	Lewd or lascivious exhibition

PCS for HB 477

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PCS for HB 477

ORIGINAL

2017

1842	827.071 (4)	2nd	in the presence of an elderly person or disabled adult.
1843	827.071 (5)	3rd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1844	839.13 (2) (b)	2nd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
1845	843.01	3rd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
1846			Resist officer with violence to person; resist arrest with violence.

PCS for HB 477

ORIGINAL

2017

1847	847.0135(5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
1848	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
1849	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
1850	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
1851	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
	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).

PCS for HB 477

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PCS for HB 477

ORIGINAL

2017

			(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.
1855	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.
1856	893.13 (4) (b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
1857	893.1351 (1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
1858			
1859	(g) LEVEL 7		
1860			

Florida

Felony

Description

PCS for HB 477

ORIGINAL

2017

	Statute	Degree	
1861	316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
1862	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
1863	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; 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.
1864	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
1865	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.

PCS for HB 477

ORIGINAL

2017

1866

409.920 3rd Medicaid provider fraud;  
(2) (b) 1.a. \$10,000 or less.

1867

409.920 2nd Medicaid provider fraud; more  
(2) (b) 1.b. than \$10,000, but less than  
\$50,000.

1868

456.065 (2) 3rd Practicing a health care  
profession without a license.

1869

456.065 (2) 2nd Practicing a health care  
profession without a license  
which results in serious bodily  
injury.

1870

458.327 (1) 3rd Practicing medicine without a  
license.

1871

459.013 (1) 3rd Practicing osteopathic medicine  
without a license.

1872

460.411 (1) 3rd Practicing chiropractic  
medicine without a license.

1873

PCS for HB 477

ORIGINAL

2017

1874	461.012(1)	3rd	Practicing podiatric medicine without a license.
1875	462.17	3rd	Practicing naturopathy without a license.
1876	463.015(1)	3rd	Practicing optometry without a license.
1877	464.016(1)	3rd	Practicing nursing without a license.
1878	465.015(2)	3rd	Practicing pharmacy without a license.
1879	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
1880	467.201	3rd	Practicing midwifery without a license.
1881	468.366	3rd	Delivering respiratory care services without a license.
	483.828(1)	3rd	Practicing as clinical

PCS for HB 477

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ORIGINAL

2017

			laboratory personnel without a license.
1882	483.901(7)	3rd	Practicing medical physics without a license.
1883	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
1884	484.053	3rd	Dispensing hearing aids without a license.
1885	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
1886	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
1887	560.125(5)(a)	3rd	Money services business by

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ORIGINAL

2017

1888			unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
1889			
	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
1890			
	775.21 (10) (b)	3rd	Sexual predator working where children regularly congregate.
1891			
	775.21 (10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
1892			
	782.051 (3)	2nd	Attempted felony murder of a

PCS for HB 477

ORIGINAL

2017

1893	782.07(1)	2nd	<p>person by a person other than the perpetrator or the perpetrator of an attempted felony.</p> <p>Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).</p>
1894	782.071	2nd	<p>Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).</p>
1895	782.072	2nd	<p>Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).</p>
1896	784.045(1)(a)1.	2nd	<p>Aggravated battery; intentionally causing great bodily harm or disfigurement.</p>
1897			

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ORIGINAL

2017

1898	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
1899	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
1900	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
1901	784.048 (7)	3rd	Aggravated stalking; violation of court order.
1902	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
1903	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
1904	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
1905	784.081 (1)	1st	Aggravated battery on specified official or employee.



PCS for HB 477

ORIGINAL

2017

1906	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
1907	784.083(1)	1st	Aggravated battery on code inspector.
1908	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
1909	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
1910	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
1911	790.16(1)	1st	Discharge of a machine gun under specified circumstances.

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PCS for HB 477

ORIGINAL

2017

1912	790.165 (2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
1913	790.165 (3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
1914	790.166 (3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
1915	790.166 (4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
1916	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
	794.08 (4)	3rd	Female genital mutilation; consent by a parent, guardian,

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PCS for HB 477

ORIGINAL

2017

			or a person in custodial authority to a victim younger than 18 years of age.
1917	796.05 (1)	1st	Live on earnings of a prostitute; 2nd offense.
1918	796.05 (1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
1919	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
1920	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
1921	800.04 (5) (e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years;

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ORIGINAL

2017

1922			offender 18 years or older; prior conviction for specified sex offense.
	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
1923			
	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
1924			
	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
1925			
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
1926			
	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
1927			
	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property

PCS for HB 477

ORIGINAL

2017

			stolen while causing other property damage; 1st degree grand theft.
1928	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
1929	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
1930	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
1931	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
1932	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
1933	812.131 (2) (a)	2nd	Robbery by sudden snatching.

PCS for HB 477

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ORIGINAL

2017

1934	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
1935	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
1936	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
1937	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1938	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
1939	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.

PCS for HB 477

ORIGINAL

2017

1940	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
1941	817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
1942	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
1943	825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
1944	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
1945	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.

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ORIGINAL

2017

1946	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
1947	838.015	2nd	Bribery.
1948	838.016	2nd	Unlawful compensation or reward for official behavior.
1949	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
1950	838.22	2nd	Bid tampering.
1951	843.0855 (2)	3rd	Impersonation of a public officer or employee.
1952	843.0855 (3)	3rd	Unlawful simulation of legal process.
1953	843.0855 (4)	3rd	Intimidation of a public officer or employee.
1954	847.0135 (3)	3rd	Solicitation of a child, via a

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PCS for HB 477

ORIGINAL

2017

1955			computer service, to commit an unlawful sex act.
	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
1956			
	872.06	2nd	Abuse of a dead human body.
1957			
	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
1958			
	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
1959			
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or

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PCS for HB 477

ORIGINAL

2017

1960	893.13(1)(e)1.	1st	state, county, or municipal park or publicly owned recreational facility or community center.  Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
1961	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
1962	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
1963	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.

PCS for HB 477

ORIGINAL

2017

1964	893.135 (1) (c) 1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
1965	893.135 (1) (c) 2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
1966	893.135 (1) (c) 2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
1967	893.135 (1) (c) 3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
1968	893.135 (1) (c) 3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
1969	<u>893.135</u> <u>(1) (c) 4.b. (I)</u>	<u>1st</u>	<u>Trafficking in fentanyl, 4</u> <u>grams or more, less than 14</u> <u>grams.</u>
1970			

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PCS for HB 477

ORIGINAL

2017

1971	<u>893.135(1)(d)1.a.</u> <del>893.135(1)(d)1.</del>	1st	Trafficking in phencyclidine, <del>more than</del> 28 grams <u>or more</u> , less than 200 grams.
1972	893.135(1)(e)1.	1st	Trafficking in methaqualone, <del>more than</del> 200 grams <u>or more</u> , less than 5 kilograms.
1973	893.135(1)(f)1.	1st	Trafficking in amphetamine, <del>more than</del> 14 grams <u>or more</u> , less than 28 grams.
1974	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
1975	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
1976	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.

PCS for HB 477

ORIGINAL

2017

1977	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
1978	<u>893.135(1) (m) 2.a.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.</u>
1979	<u>893.135(1) (m) 2.b.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.</u>
1980	<u>893.135(1) (n) 2.a.</u>	<u>1st</u>	<u>Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.</u>
1981	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
1982	896.101(5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
	896.104(4) (a) 1.	3rd	Structuring transactions to

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PCS for HB 477

ORIGINAL

2017

1983	943.0435(4)(c)	2nd	evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
1984	943.0435(8)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
1985	943.0435(9)(a)	3rd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
1986	943.0435(13)	3rd	Sexual offender; failure to comply with reporting requirements.
1987	943.0435(14)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
			Sexual offender; failure to

PCS for HB 477

ORIGINAL

2017

			report and reregister; failure to respond to address verification; providing false registration information.
1988	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
1989	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1990	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1991	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
1992	985.4815(10)	3rd	Sexual offender; failure to

PCS for HB 477

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PCS for HB 477

ORIGINAL

2017

1993			submit to the taking of a digitized photograph.
	985.4815 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1994			
	985.4815 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
1995			
1996	(h)	LEVEL 8	
1997			
	Florida Statute	Felony Degree	Description
1998			
	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
1999			
	316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.



PCS for HB 477

ORIGINAL

2017

2000	327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
2001	499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
2002	499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
2003	560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
2004	560.125 (5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
2005	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less

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PCS for HB 477

ORIGINAL

2017

2006	777.03 (2) (a)	1st	<p>than \$100,000 by financial institutions.</p> <p>Accessory after the fact, capital felony.</p>
2007	782.04 (4)	2nd	<p>Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.</p>
2008	782.051 (2)	1st	<p>Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04 (3).</p>
2009	782.071 (1) (b)	1st	<p>Committing vehicular homicide and failing to render aid or give information.</p>
2010			

PCS for HB 477

ORIGINAL

2017

2011	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
2012	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
2013	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
2014	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
2015	787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.
	787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from

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PCS for HB 477

ORIGINAL

2017

2016	790.161(3)	1st	outside Florida to within the state. Discharging a destructive device which results in bodily harm or property damage.
2017	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
2018	794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
2019	794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.

PCS for HB 477

ORIGINAL

2017

2020

794.011(5)(d) 1st Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.

2021

794.08(3) 2nd Female genital mutilation, removal of a victim younger than 18 years of age from this state.

2022

800.04(4)(b) 2nd Lewd or lascivious battery.

2023

800.04(4)(c) 1st Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.

2024

806.01(1) 1st Maliciously damage dwelling or structure by fire or explosive, believing person in structure.

2025

810.02(2)(a) 1st, PBL Burglary with assault or

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PCS for HB 477

ORIGINAL

2017

			battery.
2026	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
2027	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
2028	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
2029	812.13(2)(b)	1st	Robbery with a weapon.
2030	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
2031	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
2032	817.535(3)(a)	2nd	Filing false lien or other

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PCS for HB 477

ORIGINAL

2017

2033	817.535(4)(a)1.	2nd	unauthorized document; property owner is a public officer or employee.
2034	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
2035	817.568(6)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
2036	817.611(2)(c)	1st	Fraudulent use of personal identification information of an individual under the age of 18.
2037	825.102(2)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
			Aggravated abuse of an elderly

PCS for HB 477

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PCS for HB 477

ORIGINAL

2017

2038			person or disabled adult.
	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
2039			
	825.103 (3) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
2040			
	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
2041			
	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
2042			
	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
2043			
	860.16	1st	Aircraft piracy.

PCS for HB 477

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PCS for HB 477

ORIGINAL

2017

2044	893.13 (1) (b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
2045	893.13 (2) (b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
2046	893.13 (6) (c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
2047	893.135(1) (a) 2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
2048	893.135 (1) (b) 1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
2049	893.135 (1) (c) 1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.

PCS for HB 477

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PCS for HB 477

ORIGINAL

2017

2050  
2051  
2052  
2053  
2054  
2055  
2056

893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
<u>893.135</u> <u>(1)(c)4.b.(II)</u>	<u>1st</u>	<u>Trafficking in fentanyl, 14 grams or more, less than 28 grams.</u>
893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, <del>more than</del> <u>200 grams or more</u> , less than 400 grams.
893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, <del>more than</del> <u>5 kilograms or more</u> , less than 25 kilograms.
893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, <del>more than</del> <u>28 grams or more</u> , less than 200 grams.

PCS for HB 477

ORIGINAL

2017

2057	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
2058	893.135 (1) (h) 1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
2059	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
2060	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
2061	<u>893.135 (1) (m) 2.c.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 1,000 grams or more, less than 30 kilograms.</u>
2062	<u>893.135 (1) (n) 2.b.</u>	<u>1st</u>	<u>Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.</u>

PCS for HB 477

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ORIGINAL

2017

2063	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
2064	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
2065	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
2066	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
2067	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration

PCS for HB 477

ORIGINAL

2017

requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.

2068

2069 (i) LEVEL 9

2070

Florida Statute	Felony Degree	Description
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2071

316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
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2072

327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
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2073

409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
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2074

499.0051 (8)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
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2075

560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or
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ORIGINAL

2017

2076	560.125 (5) (c)	1st	exceeding \$100,000 by money transmitter.
2077	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
2078	775.0844	1st	Aggravated white collar crime.
2079	782.04 (1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
2080	782.04 (3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.

PCS for HB 477

ORIGINAL

2017

2081

782.051(1) 1st Attempted felony murder while  
perpetrating or attempting to  
perpetrate a felony enumerated  
in s. 782.04(3).

2082

782.07(2) 1st Aggravated manslaughter of an  
elderly person or disabled  
adult.

2083

787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or  
reward or as a shield or  
hostage.

2084

787.01(1)(a)2. 1st,PBL Kidnapping with intent to  
commit or facilitate commission  
of any felony.

2085

787.01(1)(a)4. 1st,PBL Kidnapping with intent to  
interfere with performance of  
any governmental or political  
function.

2086

787.02(3)(a) 1st,PBL False imprisonment; child under  
age 13; perpetrator also

PCS for HB 477

ORIGINAL

2017

2087	787.06 (3) (c) 1.	1st	commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
2088	787.06 (3) (d)	1st	Human trafficking for labor and services of an unauthorized alien child.
2089	787.06 (3) (f) 1.	1st, PBL	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
2090	790.161	1st	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
2091	790.166 (2)	1st, PBL	Attempted capital destructive device offense.
			Possessing, selling, using, or



PCS for HB 477

ORIGINAL

2017

2092	794.011(2)	1st	attempting to use a weapon of mass destruction.
2093	794.011(2)	Life	Attempted sexual battery; victim less than 12 years of age.
2094	794.011(4) (a)	1st, PBL	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
2095	794.011(4) (b)	1st	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
2096	794.011(4) (c)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
			Sexual battery, certain circumstances; victim 12 years

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ORIGINAL

2017

2097	794.011(4)(d)	1st, PBL	of age or older; offender younger than 18 years.
2098	794.011(8)(b)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
2099	794.08(2)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
2100	800.04(5)(b)	Life	Female genital mutilation; victim younger than 18 years of age.
2101	812.13(2)(a)	1st, PBL	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
2102			Robbery with firearm or other deadly weapon.

PCS for HB 477

ORIGINAL

2017

2103	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.
2104	812.135(2)(b)	1st	Home-invasion robbery with weapon.
2105	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
2106	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
2107	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
	817.568(7)	2nd,	Fraudulent use of personal

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PCS for HB 477

ORIGINAL

2017

2108	827.03 (2) (a)	1st	PBL identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
2109	847.0145 (1)	1st	Aggravated child abuse.
2110	847.0145 (2)	1st	Selling, or otherwise transferring custody or control, of a minor.
2111	859.01	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
2112	893.135	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
			Attempted capital trafficking

PCS for HB 477

ORIGINAL

2017

offense.

2113

893.135 (1) (a) 3. 1st Trafficking in cannabis, more than 10,000 lbs.

2114

893.135 1st Trafficking in cocaine, more than 400 grams, less than 150 kilograms.  
(1) (b) 1.c.

2115

893.135 1st Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.  
(1) (c) 1.c.

2116

893.135 1st Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.  
(1) (c) 2.d.

2117

893.135 1st Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.  
(1) (c) 3.d.

2118

893.135 1st Trafficking in fentanyl, 28 grams or more.

(1) (c) 4.b. (III)

2119

PCS for HB 477

ORIGINAL

2017

2120	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, <del>more than</del> 400 grams <u>or more</u> .
2121	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, <del>more than</del> 25 kilograms <u>or more</u> .
2122	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, <del>more than</del> 200 grams <u>or more</u> .
2123	893.135 (1) (h) 1.c.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 10 kilograms or more.
2124	893.135 (1) (j) 1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
2125	893.135 (1) (k) 2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
2126	<u>893.135</u> <u>(1) (m) 2.d.</u>	<u>1st</u>	<u>Trafficking in synthetic</u> <u>cannabinoids, 30 kilograms or</u> <u>more.</u>
	<u>893.135 (1) (n) 2.c.</u>	<u>1st</u>	<u>Trafficking in n-benzyl</u> <u>phenethylamines, 200 grams or</u>

more.

2127

896.101(5)(c) 1st Money laundering, financial instruments totaling or exceeding \$100,000.

2128

896.104(4)(a)3. 1st Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.

2129

2130 Section 8. For the purpose of incorporating the amendment  
2131 made by this act to section 782.04, Florida Statutes, in a  
2132 reference thereto, paragraph (d) of subsection (1) of section  
2133 39.806, Florida Statutes, is reenacted to read:

2134 39.806 Grounds for termination of parental rights.—

2135 (1) Grounds for the termination of parental rights may be  
2136 established under any of the following circumstances:

2137 (d) When the parent of a child is incarcerated and either:

2138 1. The period of time for which the parent is expected to  
2139 be incarcerated will constitute a significant portion of the  
2140 child's minority. When determining whether the period of time is  
2141 significant, the court shall consider the child's age and the  
2142 child's need for a permanent and stable home. The period of time

2143 | begins on the date that the parent enters into incarceration;

2144 |         2. The incarcerated parent has been determined by the  
 2145 | court to be a violent career criminal as defined in s. 775.084,  
 2146 | a habitual violent felony offender as defined in s. 775.084, or  
 2147 | a sexual predator as defined in s. 775.21; has been convicted of  
 2148 | first degree or second degree murder in violation of s. 782.04  
 2149 | or a sexual battery that constitutes a capital, life, or first  
 2150 | degree felony violation of s. 794.011; or has been convicted of  
 2151 | an offense in another jurisdiction which is substantially  
 2152 | similar to one of the offenses listed in this paragraph. As used  
 2153 | in this section, the term "substantially similar offense" means  
 2154 | any offense that is substantially similar in elements and  
 2155 | penalties to one of those listed in this subparagraph, and that  
 2156 | is in violation of a law of any other jurisdiction, whether that  
 2157 | of another state, the District of Columbia, the United States or  
 2158 | any possession or territory thereof, or any foreign  
 2159 | jurisdiction; or

2160 |         3. The court determines by clear and convincing evidence  
 2161 | that continuing the parental relationship with the incarcerated  
 2162 | parent would be harmful to the child and, for this reason, that  
 2163 | termination of the parental rights of the incarcerated parent is  
 2164 | in the best interest of the child. When determining harm, the  
 2165 | court shall consider the following factors:

- 2166 |             a. The age of the child.
- 2167 |             b. The relationship between the child and the parent.



2168 c. The nature of the parent's current and past provision  
 2169 for the child's developmental, cognitive, psychological, and  
 2170 physical needs.

2171 d. The parent's history of criminal behavior, which may  
 2172 include the frequency of incarceration and the unavailability of  
 2173 the parent to the child due to incarceration.

2174 e. Any other factor the court deems relevant.

2175 Section 9. For the purpose of incorporating the amendment  
 2176 made by this act to section 782.04, Florida Statutes, in a  
 2177 reference thereto, paragraph (b) of subsection (4) of section  
 2178 63.089, Florida Statutes, is reenacted to read:

2179 63.089 Proceeding to terminate parental rights pending  
 2180 adoption; hearing; grounds; dismissal of petition; judgment.—

2181 (4) FINDING OF ABANDONMENT.—A finding of abandonment  
 2182 resulting in a termination of parental rights must be based upon  
 2183 clear and convincing evidence that a parent or person having  
 2184 legal custody has abandoned the child in accordance with the  
 2185 definition contained in s. 63.032. A finding of abandonment may  
 2186 also be based upon emotional abuse or a refusal to provide  
 2187 reasonable financial support, when able, to a birth mother  
 2188 during her pregnancy or on whether the person alleged to have  
 2189 abandoned the child, while being able, failed to establish  
 2190 contact with the child or accept responsibility for the child's  
 2191 welfare.

2192 (b) The child has been abandoned when the parent of a

2193 child is incarcerated on or after October 1, 2001, in a federal,  
 2194 state, or county correctional institution and:

2195 1. The period of time for which the parent has been or is  
 2196 expected to be incarcerated will constitute a significant  
 2197 portion of the child's minority. In determining whether the  
 2198 period of time is significant, the court shall consider the  
 2199 child's age and the child's need for a permanent and stable  
 2200 home. The period of time begins on the date that the parent  
 2201 enters into incarceration;

2202 2. The incarcerated parent has been determined by a court  
 2203 of competent jurisdiction to be a violent career criminal as  
 2204 defined in s. 775.084, a habitual violent felony offender as  
 2205 defined in s. 775.084, convicted of child abuse as defined in s.  
 2206 827.03, or a sexual predator as defined in s. 775.21; has been  
 2207 convicted of first degree or second degree murder in violation  
 2208 of s. 782.04 or a sexual battery that constitutes a capital,  
 2209 life, or first degree felony violation of s. 794.011; or has  
 2210 been convicted of a substantially similar offense in another  
 2211 jurisdiction. As used in this section, the term "substantially  
 2212 similar offense" means any offense that is substantially similar  
 2213 in elements and penalties to one of those listed in this  
 2214 subparagraph, and that is in violation of a law of any other  
 2215 jurisdiction, whether that of another state, the District of  
 2216 Columbia, the United States or any possession or territory  
 2217 thereof, or any foreign jurisdiction; or

2218           3. The court determines by clear and convincing evidence  
 2219 that continuing the parental relationship with the incarcerated  
 2220 parent would be harmful to the child and, for this reason,  
 2221 termination of the parental rights of the incarcerated parent is  
 2222 in the best interests of the child.

2223           Section 10. For the purpose of incorporating the amendment  
 2224 made by this act to section 782.04, Florida Statutes, in a  
 2225 reference thereto, subsection (10) of section 95.11, Florida  
 2226 Statutes, is reenacted to read:

2227           95.11 Limitations other than for the recovery of real  
 2228 property.—Actions other than for recovery of real property shall  
 2229 be commenced as follows:

2230           (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS  
 2231 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph  
 2232 (4) (d), an action for wrongful death seeking damages authorized  
 2233 under s. 768.21 brought against a natural person for an  
 2234 intentional tort resulting in death from acts described in s.  
 2235 782.04 or s. 782.07 may be commenced at any time. This  
 2236 subsection shall not be construed to require an arrest, the  
 2237 filing of formal criminal charges, or a conviction for a  
 2238 violation of s. 782.04 or s. 782.07 as a condition for filing a  
 2239 civil action.

2240           Section 11. For the purpose of incorporating the amendment  
 2241 made by this act to section 782.04, Florida Statutes, in  
 2242 references thereto, paragraph (b) of subsection (1) and

2243 paragraphs (a), (b), and (c) of subsection (3) of section  
 2244 775.082, Florida Statutes, are reenacted to read:

2245 775.082 Penalties; applicability of sentencing structures;  
 2246 mandatory minimum sentences for certain reoffenders previously  
 2247 released from prison.—

2248 (1)

2249 (b)1. A person who actually killed, intended to kill, or  
 2250 attempted to kill the victim and who is convicted under s.  
 2251 782.04 of a capital felony, or an offense that was reclassified  
 2252 as a capital felony, which was committed before the person  
 2253 attained 18 years of age shall be punished by a term of  
 2254 imprisonment for life if, after a sentencing hearing conducted  
 2255 by the court in accordance with s. 921.1401, the court finds  
 2256 that life imprisonment is an appropriate sentence. If the court  
 2257 finds that life imprisonment is not an appropriate sentence,  
 2258 such person shall be punished by a term of imprisonment of at  
 2259 least 40 years. A person sentenced pursuant to this subparagraph  
 2260 is entitled to a review of his or her sentence in accordance  
 2261 with s. 921.1402(2)(a).

2262 2. A person who did not actually kill, intend to kill, or  
 2263 attempt to kill the victim and who is convicted under s. 782.04  
 2264 of a capital felony, or an offense that was reclassified as a  
 2265 capital felony, which was committed before the person attained  
 2266 18 years of age may be punished by a term of imprisonment for  
 2267 life or by a term of years equal to life if, after a sentencing

2268 hearing conducted by the court in accordance with s. 921.1401,  
 2269 the court finds that life imprisonment is an appropriate  
 2270 sentence. A person who is sentenced to a term of imprisonment of  
 2271 more than 15 years is entitled to a review of his or her  
 2272 sentence in accordance with s. 921.1402(2)(c).

2273 3. The court shall make a written finding as to whether a  
 2274 person is eligible for a sentence review hearing under s.  
 2275 921.1402(2)(a) or (c). Such a finding shall be based upon  
 2276 whether the person actually killed, intended to kill, or  
 2277 attempted to kill the victim. The court may find that multiple  
 2278 defendants killed, intended to kill, or attempted to kill the  
 2279 victim.

2280 (3) A person who has been convicted of any other  
 2281 designated felony may be punished as follows:

2282 (a)1. For a life felony committed before October 1, 1983,  
 2283 by a term of imprisonment for life or for a term of at least 30  
 2284 years.

2285 2. For a life felony committed on or after October 1,  
 2286 1983, by a term of imprisonment for life or by a term of  
 2287 imprisonment not exceeding 40 years.

2288 3. Except as provided in subparagraph 4., for a life  
 2289 felony committed on or after July 1, 1995, by a term of  
 2290 imprisonment for life or by imprisonment for a term of years not  
 2291 exceeding life imprisonment.

2292 4.a. Except as provided in sub-subparagraph b., for a life

2293 felony committed on or after September 1, 2005, which is a  
 2294 violation of s. 800.04(5)(b), by:

2295 (I) A term of imprisonment for life; or

2296 (II) A split sentence that is a term of at least 25 years'  
 2297 imprisonment and not exceeding life imprisonment, followed by  
 2298 probation or community control for the remainder of the person's  
 2299 natural life, as provided in s. 948.012(4).

2300 b. For a life felony committed on or after July 1, 2008,  
 2301 which is a person's second or subsequent violation of s.  
 2302 800.04(5)(b), by a term of imprisonment for life.

2303 5. Notwithstanding subparagraphs 1.-4., a person who is  
 2304 convicted under s. 782.04 of an offense that was reclassified as  
 2305 a life felony which was committed before the person attained 18  
 2306 years of age may be punished by a term of imprisonment for life  
 2307 or by a term of years equal to life imprisonment if the judge  
 2308 conducts a sentencing hearing in accordance with s. 921.1401 and  
 2309 finds that life imprisonment or a term of years equal to life  
 2310 imprisonment is an appropriate sentence.

2311 a. A person who actually killed, intended to kill, or  
 2312 attempted to kill the victim and is sentenced to a term of  
 2313 imprisonment of more than 25 years is entitled to a review of  
 2314 his or her sentence in accordance with s. 921.1402(2)(b).

2315 b. A person who did not actually kill, intend to kill, or  
 2316 attempt to kill the victim and is sentenced to a term of  
 2317 imprisonment of more than 15 years is entitled to a review of

2318 his or her sentence in accordance with s. 921.1402(2)(c).

2319 c. The court shall make a written finding as to whether a  
 2320 person is eligible for a sentence review hearing under s.  
 2321 921.1402(2)(b) or (c). Such a finding shall be based upon  
 2322 whether the person actually killed, intended to kill, or  
 2323 attempted to kill the victim. The court may find that multiple  
 2324 defendants killed, intended to kill, or attempted to kill the  
 2325 victim.

2326 6. For a life felony committed on or after October 1,  
 2327 2014, which is a violation of s. 787.06(3)(g), by a term of  
 2328 imprisonment for life.

2329 (b)1. For a felony of the first degree, by a term of  
 2330 imprisonment not exceeding 30 years or, when specifically  
 2331 provided by statute, by imprisonment for a term of years not  
 2332 exceeding life imprisonment.

2333 2. Notwithstanding subparagraph 1., a person convicted  
 2334 under s. 782.04 of a first degree felony punishable by a term of  
 2335 years not exceeding life imprisonment, or an offense that was  
 2336 reclassified as a first degree felony punishable by a term of  
 2337 years not exceeding life, which was committed before the person  
 2338 attained 18 years of age may be punished by a term of years  
 2339 equal to life imprisonment if the judge conducts a sentencing  
 2340 hearing in accordance with s. 921.1401 and finds that a term of  
 2341 years equal to life imprisonment is an appropriate sentence.

2342 a. A person who actually killed, intended to kill, or

2343 attempted to kill the victim and is sentenced to a term of  
 2344 imprisonment of more than 25 years is entitled to a review of  
 2345 his or her sentence in accordance with s. 921.1402(2)(b).

2346 b. A person who did not actually kill, intend to kill, or  
 2347 attempt to kill the victim and is sentenced to a term of  
 2348 imprisonment of more than 15 years is entitled to a review of  
 2349 his or her sentence in accordance with s. 921.1402(2)(c).

2350 c. The court shall make a written finding as to whether a  
 2351 person is eligible for a sentence review hearing under s.  
 2352 921.1402(2)(b) or (c). Such a finding shall be based upon  
 2353 whether the person actually killed, intended to kill, or  
 2354 attempted to kill the victim. The court may find that multiple  
 2355 defendants killed, intended to kill, or attempted to kill the  
 2356 victim.

2357 (c) Notwithstanding paragraphs (a) and (b), a person  
 2358 convicted of an offense that is not included in s. 782.04 but  
 2359 that is an offense that is a life felony or is punishable by a  
 2360 term of imprisonment for life or by a term of years not  
 2361 exceeding life imprisonment, or an offense that was reclassified  
 2362 as a life felony or an offense punishable by a term of  
 2363 imprisonment for life or by a term of years not exceeding life  
 2364 imprisonment, which was committed before the person attained 18  
 2365 years of age may be punished by a term of imprisonment for life  
 2366 or a term of years equal to life imprisonment if the judge  
 2367 conducts a sentencing hearing in accordance with s. 921.1401 and



2368 finds that life imprisonment or a term of years equal to life  
 2369 imprisonment is an appropriate sentence. A person who is  
 2370 sentenced to a term of imprisonment of more than 20 years is  
 2371 entitled to a review of his or her sentence in accordance with  
 2372 s. 921.1402(2)(d).

2373 Section 12. For the purpose of incorporating the amendment  
 2374 made by this act to section 782.04, Florida Statutes, in  
 2375 references thereto, subsections (1) and (2) of section 775.0823,  
 2376 Florida Statutes, are reenacted to read:

2377 775.0823 Violent offenses committed against law  
 2378 enforcement officers, correctional officers, state attorneys,  
 2379 assistant state attorneys, justices, or judges.—The Legislature  
 2380 does hereby provide for an increase and certainty of penalty for  
 2381 any person convicted of a violent offense against any law  
 2382 enforcement or correctional officer, as defined in s. 943.10(1),  
 2383 (2), (3), (6), (7), (8), or (9); against any state attorney  
 2384 elected pursuant to s. 27.01 or assistant state attorney  
 2385 appointed under s. 27.181; or against any justice or judge of a  
 2386 court described in Art. V of the State Constitution, which  
 2387 offense arises out of or in the scope of the officer's duty as a  
 2388 law enforcement or correctional officer, the state attorney's or  
 2389 assistant state attorney's duty as a prosecutor or investigator,  
 2390 or the justice's or judge's duty as a judicial officer, as  
 2391 follows:

2392 (1) For murder in the first degree as described in s.

2393 782.04(1), if the death sentence is not imposed, a sentence of  
 2394 imprisonment for life without eligibility for release.

2395 (2) For attempted murder in the first degree as described  
 2396 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,  
 2397 or s. 775.084.

2398  
 2399 Notwithstanding the provisions of s. 948.01, with respect to any  
 2400 person who is found to have violated this section, adjudication  
 2401 of guilt or imposition of sentence shall not be suspended,  
 2402 deferred, or withheld.

2403 Section 13. For the purpose of incorporating the amendment  
 2404 made by this act to section 782.04, Florida Statutes, in a  
 2405 reference thereto, subsection (1) of section 921.16, Florida  
 2406 Statutes, is reenacted to read:

2407 921.16 When sentences to be concurrent and when  
 2408 consecutive.—

2409 (1) A defendant convicted of two or more offenses charged  
 2410 in the same indictment, information, or affidavit or in  
 2411 consolidated indictments, informations, or affidavits shall  
 2412 serve the sentences of imprisonment concurrently unless the  
 2413 court directs that two or more of the sentences be served  
 2414 consecutively. Sentences of imprisonment for offenses not  
 2415 charged in the same indictment, information, or affidavit shall  
 2416 be served consecutively unless the court directs that two or  
 2417 more of the sentences be served concurrently. Any sentence for

2418 sexual battery as defined in chapter 794 or murder as defined in  
 2419 s. 782.04 must be imposed consecutively to any other sentence  
 2420 for sexual battery or murder which arose out of a separate  
 2421 criminal episode or transaction.

2422 Section 14. For the purpose of incorporating the amendment  
 2423 made by this act to section 782.04, Florida Statutes, in a  
 2424 reference thereto, paragraph (c) of subsection (8) of section  
 2425 948.06, Florida Statutes, is reenacted to read:

2426 948.06 Violation of probation or community control;  
 2427 revocation; modification; continuance; failure to pay  
 2428 restitution or cost of supervision.—

2429 (8)

2430 (c) For purposes of this section, the term "qualifying  
 2431 offense" means any of the following:

2432 1. Kidnapping or attempted kidnapping under s. 787.01,  
 2433 false imprisonment of a child under the age of 13 under s.  
 2434 787.02(3), or luring or enticing a child under s. 787.025(2)(b)  
 2435 or (c).

2436 2. Murder or attempted murder under s. 782.04, attempted  
 2437 felony murder under s. 782.051, or manslaughter under s. 782.07.

2438 3. Aggravated battery or attempted aggravated battery  
 2439 under s. 784.045.

2440 4. Sexual battery or attempted sexual battery under s.  
 2441 794.011(2), (3), (4), or (8)(b) or (c).

2442 5. Lewd or lascivious battery or attempted lewd or

2443 lascivious battery under s. 800.04(4), lewd or lascivious  
 2444 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious  
 2445 conduct under s. 800.04(6)(b), lewd or lascivious exhibition  
 2446 under s. 800.04(7)(b), or lewd or lascivious exhibition on  
 2447 computer under s. 847.0135(5)(b).

2448 6. Robbery or attempted robbery under s. 812.13,  
 2449 carjacking or attempted carjacking under s. 812.133, or home  
 2450 invasion robbery or attempted home invasion robbery under s.  
 2451 812.135.

2452 7. Lewd or lascivious offense upon or in the presence of  
 2453 an elderly or disabled person or attempted lewd or lascivious  
 2454 offense upon or in the presence of an elderly or disabled person  
 2455 under s. 825.1025.

2456 8. Sexual performance by a child or attempted sexual  
 2457 performance by a child under s. 827.071.

2458 9. Computer pornography under s. 847.0135(2) or (3),  
 2459 transmission of child pornography under s. 847.0137, or selling  
 2460 or buying of minors under s. 847.0145.

2461 10. Poisoning food or water under s. 859.01.

2462 11. Abuse of a dead human body under s. 872.06.

2463 12. Any burglary offense or attempted burglary offense  
 2464 that is either a first degree felony or second degree felony  
 2465 under s. 810.02(2) or (3).

2466 13. Arson or attempted arson under s. 806.01(1).

2467 14. Aggravated assault under s. 784.021.

2468 15. Aggravated stalking under s. 784.048(3), (4), (5), or  
 2469 (7).

2470 16. Aircraft piracy under s. 860.16.

2471 17. Unlawful throwing, placing, or discharging of a  
 2472 destructive device or bomb under s. 790.161(2), (3), or (4).

2473 18. Treason under s. 876.32.

2474 19. Any offense committed in another jurisdiction which  
 2475 would be an offense listed in this paragraph if that offense had  
 2476 been committed in this state.

2477 Section 15. For the purpose of incorporating the amendment  
 2478 made by this act to section 782.04, Florida Statutes, in a  
 2479 reference thereto, paragraph (a) of subsection (1) of section  
 2480 948.062, Florida Statutes, is reenacted to read:

2481 948.062 Reviewing and reporting serious offenses committed  
 2482 by offenders placed on probation or community control.-

2483 (1) The department shall review the circumstances related  
 2484 to an offender placed on probation or community control who has  
 2485 been arrested while on supervision for the following offenses:

2486 (a) Any murder as provided in s. 782.04;

2487 Section 16. For the purpose of incorporating the amendment  
 2488 made by this act to section 782.04, Florida Statutes, in a  
 2489 reference thereto, paragraph (b) of subsection (3) of section  
 2490 985.265, Florida Statutes, is reenacted to read:

2491 985.265 Detention transfer and release; education; adult  
 2492 jails.-

2493 (3)

2494 (b) When a juvenile is released from secure detention or

2495 transferred to nonsecure detention, detention staff shall

2496 immediately notify the appropriate law enforcement agency,

2497 school personnel, and victim if the juvenile is charged with

2498 committing any of the following offenses or attempting to commit

2499 any of the following offenses:

2500 1. Murder, under s. 782.04;

2501 2. Sexual battery, under chapter 794;

2502 3. Stalking, under s. 784.048; or

2503 4. Domestic violence, as defined in s. 741.28.

2504 Section 17. For the purpose of incorporating the amendment

2505 made by this act to section 782.04, Florida Statutes, in a

2506 reference thereto, paragraph (d) of subsection (1) of section

2507 1012.315, Florida Statutes, is reenacted to read:

2508 1012.315 Disqualification from employment.—A person is

2509 ineligible for educator certification, and instructional

2510 personnel and school administrators, as defined in s. 1012.01,

2511 are ineligible for employment in any position that requires

2512 direct contact with students in a district school system,

2513 charter school, or private school that accepts scholarship

2514 students under s. 1002.39 or s. 1002.395, if the person,

2515 instructional personnel, or school administrator has been

2516 convicted of:

2517 (1) Any felony offense prohibited under any of the

2518 following statutes:

2519 (d) Section 782.04, relating to murder.

2520 Section 18. For the purpose of incorporating the amendment  
 2521 made by this act to section 782.04, Florida Statutes, in a  
 2522 reference thereto, paragraph (g) of subsection (2) of section  
 2523 1012.467, Florida Statutes, is reenacted to read:

2524 1012.467 Noninstructional contractors who are permitted  
 2525 access to school grounds when students are present; background  
 2526 screening requirements.—

2527 (2)

2528 (g) A noninstructional contractor for whom a criminal  
 2529 history check is required under this section may not have been  
 2530 convicted of any of the following offenses designated in the  
 2531 Florida Statutes, any similar offense in another jurisdiction,  
 2532 or any similar offense committed in this state which has been  
 2533 redesignated from a former provision of the Florida Statutes to  
 2534 one of the following offenses:

2535 1. Any offense listed in s. 943.0435(1)(h)1., relating to  
 2536 the registration of an individual as a sexual offender.

2537 2. Section 393.135, relating to sexual misconduct with  
 2538 certain developmentally disabled clients and the reporting of  
 2539 such sexual misconduct.

2540 3. Section 394.4593, relating to sexual misconduct with  
 2541 certain mental health patients and the reporting of such sexual  
 2542 misconduct.

PCS for HB 477

ORIGINAL

2017

- 2543 4. Section 775.30, relating to terrorism.  
2544 5. Section 782.04, relating to murder.  
2545 6. Section 787.01, relating to kidnapping.  
2546 7. Any offense under chapter 800, relating to lewdness and  
2547 indecent exposure.  
2548 8. Section 826.04, relating to incest.  
2549 9. Section 827.03, relating to child abuse, aggravated  
2550 child abuse, or neglect of a child.  
2551 Section 19. This act shall take effect October 1, 2017.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 779 Weapons and Firearms  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** SB 646 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		White <i>TW</i>	White <i>TW</i>

### SUMMARY ANALYSIS

Florida law generally prohibits the open carrying of firearms and certain weapons. Section 790.053, F.S., makes it a second degree misdemeanor for a person to openly carry on or about his or her person any firearm or electric weapon or device. This section does not apply to a person who has a license to carry concealed weapons or concealed firearms (licensee), if the licensee briefly and openly displays the firearm to the ordinary sight of another person, unless "the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense."

The bill amends s. 790.053, F.S., to change the penalties that apply to an open carry violation by a licensee. Under the bill, a licensee commits:

- A noncriminal violation with a penalty of:
  - \$25, payable to the clerk of the court, for a first violation; or
  - \$500, payable to the clerk of court, for a second violation.
- A misdemeanor of the second degree for a third or subsequent violation.

A person who is not a licensee continues to be subject to current law's second degree misdemeanor penalty for open carry.

The bill also moves the exception in s. 790.053, F.S., relating to a brief and open display of a firearm by a licensee, to s. 790.06(1), F.S., where it will state:

A person licensed to carry a concealed firearm under this section whose firearm is temporarily and openly displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a noncriminal or criminal violation of s. 790.053.

Removal of current law's text relating to the intentional display of a firearm in an angry or threatening manner is clarifying language and does not appear to have any substantive effect given that such behavior will constitute criminal assault unless it is a justifiable use of force.

The bill does not appear to have a fiscal impact on state government. The bill may increase local government revenues and decrease local government expenditures. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill takes effect on July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Florida's Regulations Relating to the Open and Concealed Carry of Weapons and Firearms

Generally, in Florida, an individual is authorized to own, possess, and lawfully use a firearm and other weapon<sup>1</sup> without a license if the individual is not statutorily prohibited from possessing a firearm or weapon<sup>2</sup> and such possession and use occurs in a lawful manner and location.<sup>3</sup>

##### *Open Carry*

Florida law prohibits the open carrying of firearms and certain weapons unless an exception applies. Section 790.053, F.S., makes it a second degree misdemeanor<sup>4</sup> for a person to openly carry on or about his or her person any firearm or electric weapon or device. This section does not apply to a person who has a license to carry concealed weapons or concealed firearms (licensee),<sup>5</sup> if the licensee briefly and openly displays the firearm to the ordinary sight of another person, unless "the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense."<sup>6, 7</sup>

According to data from the Florida Department of Law Enforcement for calendar years 2006 through 2015, the average number of arrests for the second degree misdemeanor violation of s. 790.053, F.S., was 157.5 arrests annually with a low of 113 arrests in CY 2013 and a high of 210 arrests in CY 2008.<sup>8</sup>

##### *Concealed Carry*

In order to lawfully carry a concealed weapon or concealed firearm, a person, unless exempted, must obtain a license from the Department of Agriculture and Consumer Services (licensee).<sup>9</sup> Currently, there are approximately 1.7 million licensees in this state.<sup>10</sup>

If a person is unlicensed, s. 790.01, F.S., specifies that it is a:

- A first degree misdemeanor<sup>11</sup> for the person to carry a concealed weapon<sup>12</sup> or electric weapon or device<sup>13</sup> on or about his or her person.<sup>14</sup>

<sup>1</sup> Section 790.001(13), F.S., defines "weapon" as "any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife."

<sup>2</sup> There are numerous prohibitions in statute specifying individuals who may not lawfully possess a gun. *See, e.g.*, ss. 790.22 and 790.23, F.S., (prohibiting the possession of firearms and certain weapons by minors, convicted felons, and delinquents, except under specified circumstances).

<sup>3</sup> *See* s. 790.25, F.S.

<sup>4</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>5</sup> The term "concealed weapons or concealed firearms" is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun ...." s. 790.06(1), F.S.

<sup>6</sup> s. 790.053(1), F.S.

<sup>7</sup> Section 790.053(2), F.S., also specifies that a person may openly carry for purposes of lawful self-defense a self-defense chemical spray and a nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

<sup>8</sup> E-mail from Rachel Truxell, Florida Department of Law Enforcement, May 4, 2016 (on file with House of Representatives, Criminal Justice Subcommittee).

<sup>9</sup> s. 790.06, F.S.

<sup>10</sup> As of February 28, 2017, 1,721,862 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last visited March 2, 2017).

<sup>11</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>12</sup> Section 790.001(3)(a), F.S., defines the term "concealed weapon" as "any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person." The weapons listed in this definition require licensure to carry them in a concealed manner.

<sup>13</sup> Section 790.001(14), F.S., defines the term "electric weapon or device" as "any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury."

- A third degree felony<sup>15</sup> to carry a concealed firearm.<sup>16, 17, 18</sup>

These prohibitions do not apply to:

- A person who carries a concealed weapon, or a person who may lawfully possess a firearm and who carries a concealed firearm, on or about his or her person while in the act of evacuating during certain mandatory evacuation orders.
- A person who carries for purposes of lawful self-defense in a concealed manner:
  - A self-defense chemical spray.<sup>19</sup>
  - A nonlethal stun gun or dart-firing stun gun<sup>20</sup> or other nonlethal electric weapon or device that is designed solely for defensive purposes.<sup>21</sup>

*Exemptions from Open Carry Prohibitions and Licensure Requirements:* Section 790.25(3), F.S., provides that certain persons under specified circumstances are exempt from the requirements for a license to carry concealed weapons or concealed firearms in s. 790.06, F.S., and the limitations on open carrying in s. 790.053, F.S. These persons and circumstances include:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization.
- Citizens of this state subject to duty under certain sections of law if on duty or when training or preparing themselves for military duty.
- Persons carrying out or training for emergency management duties under chapter 252, F.S.
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state.
- Officers or employees of the state or United States duly authorized to carry a concealed weapon.
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.
- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits.
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition.

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<sup>14</sup> s. 790.01(1), F.S.

<sup>15</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>16</sup> Section 790.001(2), F.S., defines the term, "concealed firearm" as "any firearm, as defined in subsection (6), which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person."

<sup>17</sup> s. 790.01(2), F.S.

<sup>18</sup> The carrying of a concealed weapon in violation of s. 790.01, F.S., is statutorily designated as a breach of peace for which an officer may make a warrantless arrest if the officer has reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed. s. 790.02, F.S.

<sup>19</sup> Section 790.001(3)(b), F.S., defines the term "self-defense chemical spray" as "a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical."

<sup>20</sup> Section 790.001(15), F.S., defines the term "dart-firing stun gun" as "any device having one or more darts that are capable of delivering an electrical current."

<sup>21</sup> s. 790.01(3), F.S.

- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business.
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.
- A person firing weapons in a safe and secure indoor range for testing and target practice.
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession.
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business.
- A person possessing arms at his or her home or place of business.
- Investigators employed by the public defenders and capital collateral regional counsel of the state while carrying out official duties.<sup>22</sup>

### Effect of Bill

The bill amends s. 790.053, F.S., to change the penalties that apply to a violation of the prohibition against open carry by a licensee. Under the bill, a licensee commits:

- A noncriminal violation with a penalty of:
  - \$25, payable to the clerk of the court, for a first violation; or
  - \$500, payable to the clerk of court, for a second violation.
- A misdemeanor of the second degree for a third or subsequent violation.

If a person is not a licensee, the second degree misdemeanor penalty under current law for any violation of the prohibition continues to apply.

The bill also repeals the exception in s. 790.053, F.S., which provides that it is not a violation of the prohibition against open carry for a licensee to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense. This exception is moved to s. 790.06(1), F.S., where it more clearly states:

A person licensed to carry a concealed firearm under this section whose firearm is temporarily and openly displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a noncriminal or criminal violation of s. 790.053.

Removal of current law's text relating to the intentional display of a firearm in an angry or threatening manner is clarifying and does not appear to have any substantive effect given that such behavior will constitute criminal assault unless it is a justifiable use of force.<sup>23</sup>

The bill reenacts ss. 943.051(3)(b), 985.11(1)(b), and . 985.11(1)(b), F.S., to incorporate amendments made by the act to provisions of law which are cross-referenced in the reenacted sections.

The bill takes effect on July 1, 2017.

## B. SECTION DIRECTORY:

Section 1. Amends s. 790.053, F.S., relating to the open carrying of weapons.

<sup>22</sup> s. 790.25(3), F.S.

<sup>23</sup> See ss. 784.011 and 784.021, F.S.

Section 2. Amends s. 790.06, F.S., relating to license to carry concealed weapon or firearm.

Section 3. Reenacting s. 943.051(3)(b), F.S., relating to criminal justice information.

Section 4. Reenacting s. 985.11(1)(b), F.S., relating to fingerprinting and photographing.

Section 5. Providing an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: The bill does not appear to have any impact on state revenues.
2. Expenditures: The bill does not appear to have any impact on state expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: Clerks of court may receive revenue from the fines created by the bill for the first two violations of the open carry prohibition in s. 790.53, F.S., by a licensee.
2. Expenditures: The bill may reduce the need for jail beds because it decriminalizes the first two violations of the open carry prohibition in s. 790.53, F.S., by a licensee.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

### **D. FISCAL COMMENTS: None.**

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.
2. Other: None.

### **B. RULE-MAKING AUTHORITY: This bill does not appear to create the need for rulemaking or rulemaking authority.**

### **C. DRAFTING ISSUES OR OTHER COMMENTS: None.**

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A

1                                   A bill to be entitled  
 2           An act relating to weapons and firearms; amending s.  
 3           790.053, F.S.; deleting a statement of applicability  
 4           relating to violations of carrying a concealed weapon  
 5           or firearm; reducing the penalties applicable to a  
 6           person licensed to carry a concealed weapon or firearm  
 7           for a first or second violation of specified  
 8           provisions relating to openly carrying weapons; making  
 9           a fine payable to the clerk of the court; amending s.  
 10          790.06, F.S.; providing that a person licensed to  
 11          carry a concealed weapon or firearm does not violate  
 12          certain provisions if the firearm is temporarily and  
 13          openly displayed; reenacting ss. 943.051(3)(b) and  
 14          985.11(1)(b), F.S., both relating to fingerprinting of  
 15          a minor for violating specified provisions, to  
 16          incorporate the amendment made to s. 790.053, F.S., in  
 17          references thereto; providing an effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:

20  
 21           Section 1. Section 790.053, Florida Statutes, is amended  
 22   to read:

23           790.053 Open carrying of weapons.—

24           (1) Except as otherwise provided by law and in subsection

25   (2), it is unlawful for any person to openly carry on or about

26 his or her person any firearm or electric weapon or device. ~~It~~  
 27 ~~is not a violation of this section for a person licensed to~~  
 28 ~~carry a concealed firearm as provided in s. 790.06(1), and who~~  
 29 ~~is lawfully carrying a firearm in a concealed manner, to briefly~~  
 30 ~~and openly display the firearm to the ordinary sight of another~~  
 31 ~~person, unless the firearm is intentionally displayed in an~~  
 32 ~~angry or threatening manner, not in necessary self-defense.~~

33 (2) A person may openly carry, for purposes of lawful  
 34 self-defense:

35 (a) A self-defense chemical spray.

36 (b) A nonlethal stun gun or dart-firing stun gun or other  
 37 nonlethal electric weapon or device that is designed solely for  
 38 defensive purposes.

39 (3) (a) Any person violating this section who is not  
 40 licensed under s. 790.06 commits a misdemeanor of the second  
 41 degree, punishable as provided in s. 775.082 or s. 775.083.

42 (b) A person violating this section who is licensed under  
 43 s. 790.06 commits:

44 1. A noncriminal violation with a penalty of:

45 a. \$25, payable to the clerk of the court, for a first  
 46 violation; or

47 b. \$500, payable to the clerk of court, for a second  
 48 violation.

49 2. A misdemeanor of the second degree, punishable as  
 50 provided in s. 775.082 or s. 775.083, for a third or subsequent



51 violation.

52       Section 2. Subsection (1) of section 790.06, Florida  
53 Statutes, are amended to read:

54       790.06 License to carry concealed weapon or firearm.—

55       (1) The Department of Agriculture and Consumer Services is  
56 authorized to issue licenses to carry concealed weapons or  
57 concealed firearms to persons qualified as provided in this  
58 section. Each such license must bear a color photograph of the  
59 licensee. For the purposes of this section, concealed weapons or  
60 concealed firearms are defined as a handgun, electronic weapon  
61 or device, tear gas gun, knife, or billie, but the term does not  
62 include a machine gun as defined in s. 790.001(9). Such licenses  
63 shall be valid throughout the state for a period of 7 years from  
64 the date of issuance. Any person in compliance with the terms of  
65 such license may carry a concealed weapon or concealed firearm  
66 notwithstanding the provisions of s. 790.01. The licensee must  
67 carry the license, together with valid identification, at all  
68 times in which the licensee is in actual possession of a  
69 concealed weapon or firearm and must display both the license  
70 and proper identification upon demand by a law enforcement  
71 officer. A person licensed to carry a concealed firearm under  
72 this section whose firearm is temporarily and openly displayed  
73 to the ordinary sight of another person does not violate s.  
74 790.053 and may not be arrested or charged with a noncriminal or  
75 criminal violation of s. 790.053. Violations of the provisions

76 of this subsection shall constitute a noncriminal violation with  
 77 a penalty of \$25, payable to the clerk of the court.

78       Section 3. For the purpose of incorporating the amendment  
 79 made by this act to section 790.053, Florida Statutes, in a  
 80 reference thereto, paragraph (b) of subsection (3) of section  
 81 943.051, Florida Statutes, is reenacted to read:

82       943.051 Criminal justice information; collection and  
 83 storage; fingerprinting.—

84       (3)

85       (b) A minor who is charged with or found to have committed  
 86 the following offenses shall be fingerprinted and the  
 87 fingerprints shall be submitted electronically to the  
 88 department, unless the minor is issued a civil citation pursuant  
 89 to s. 985.12:

90       1. Assault, as defined in s. 784.011.

91       2. Battery, as defined in s. 784.03.

92       3. Carrying a concealed weapon, as defined in s.  
 93 790.01(1).

94       4. Unlawful use of destructive devices or bombs, as  
 95 defined in s. 790.1615(1).

96       5. Neglect of a child, as defined in s. 827.03(1)(e).

97       6. Assault or battery on a law enforcement officer, a  
 98 firefighter, or other specified officers, as defined in s.  
 99 784.07(2)(a) and (b).

100       7. Open carrying of a weapon, as defined in s. 790.053.

101           8. Exposure of sexual organs, as defined in s. 800.03.

102           9. Unlawful possession of a firearm, as defined in s.  
103 790.22(5).

104           10. Petit theft, as defined in s. 812.014(3).

105           11. Cruelty to animals, as defined in s. 828.12(1).

106           12. Arson, as defined in s. 806.031(1).

107           13. Unlawful possession or discharge of a weapon or  
108 firearm at a school-sponsored event or on school property, as  
109 provided in s. 790.115.

110           Section 4. For the purpose of incorporating the amendment  
111 made by this act to section 790.053, Florida Statutes, in a  
112 reference thereto, paragraph (b) of subsection (1) of section  
113 985.11, Florida Statutes, is reenacted to read:

114           985.11 Fingerprinting and photographing.—

115           (1)

116           (b) Unless the child is issued a civil citation or is  
117 participating in a similar diversion program pursuant to s.  
118 985.12, a child who is charged with or found to have committed  
119 one of the following offenses shall be fingerprinted, and the  
120 fingerprints shall be submitted to the Department of Law  
121 Enforcement as provided in s. 943.051(3)(b):

122           1. Assault, as defined in s. 784.011.

123           2. Battery, as defined in s. 784.03.

124           3. Carrying a concealed weapon, as defined in s.  
125 790.01(1).

- 126 4. Unlawful use of destructive devices or bombs, as
- 127 defined in s. 790.1615(1).
- 128 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 129 6. Assault on a law enforcement officer, a firefighter, or
- 130 other specified officers, as defined in s. 784.07(2)(a).
- 131 7. Open carrying of a weapon, as defined in s. 790.053.
- 132 8. Exposure of sexual organs, as defined in s. 800.03.
- 133 9. Unlawful possession of a firearm, as defined in s.
- 134 790.22(5).
- 135 10. Petit theft, as defined in s. 812.014.
- 136 11. Cruelty to animals, as defined in s. 828.12(1).
- 137 12. Arson, resulting in bodily harm to a firefighter, as
- 138 defined in s. 806.031(1).
- 139 13. Unlawful possession or discharge of a weapon or
- 140 firearm at a school-sponsored event or on school property as
- 141 defined in s. 790.115.

142

143 A law enforcement agency may fingerprint and photograph a child

144 taken into custody upon probable cause that such child has

145 committed any other violation of law, as the agency deems

146 appropriate. Such fingerprint records and photographs shall be

147 retained by the law enforcement agency in a separate file, and

148 these records and all copies thereof must be marked "Juvenile

149 Confidential." These records are not available for public

150 disclosure and inspection under s. 119.07(1) except as provided

151 in ss. 943.053 and 985.04(2), but shall be available to other  
152 law enforcement agencies, criminal justice agencies, state  
153 attorneys, the courts, the child, the parents or legal  
154 custodians of the child, their attorneys, and any other person  
155 authorized by the court to have access to such records. In  
156 addition, such records may be submitted to the Department of Law  
157 Enforcement for inclusion in the state criminal history records  
158 and used by criminal justice agencies for criminal justice  
159 purposes. These records may, in the discretion of the court, be  
160 open to inspection by anyone upon a showing of cause. The  
161 fingerprint and photograph records shall be produced in the  
162 court whenever directed by the court. Any photograph taken  
163 pursuant to this section may be shown by a law enforcement  
164 officer to any victim or witness of a crime for the purpose of  
165 identifying the person who committed such crime.

166 Section 5. This act shall take effect July 1, 2017.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 849 Weapons and Firearms  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Homburg <i>gh</i>	White <i>W</i>

### SUMMARY ANALYSIS

Currently, Florida law, subject to limited exceptions, prohibits a person, including a person who has a license to carry a concealed weapon or concealed firearm (licensee), from carrying a such weapon or firearm at a school. The term "school" means "any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic." The only person excepted from this prohibition is a law enforcement officer.

Florida law does not prohibit or address the carrying of a concealed weapon or concealed firearm by a licensee at a religious institution in this state. An owner of private property on which a religious institution is located may determine whether to authorize or prohibit concealed carry by licensees on the property. If prohibited, the private property owner can enforce the prohibition through trespass law.

The bill amends current law that prohibits licensees from carrying a concealed weapon or concealed firearm at a school. Under the bill, a licensee is not prohibited from carrying a concealed weapon or concealed firearm on private school property if a religious institution is located on the property; thereby, allowing the private property owner to determine whether to authorize or prohibit such carry by licensees on the property.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect on July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Law

###### Overview

A United States (US) citizen or resident who is 21 years of age or older may apply to the Department of Agriculture and Consumer Services for a concealed weapon or concealed firearm<sup>1</sup> license (CWL). To qualify for a CWL, the person must: be able to safely handle a weapon and firearm; not have been convicted of a felony, unless his or her firearm rights have been restored; not be dependent on alcohol or controlled substances; and satisfy other requirements.<sup>2</sup> A person who receives a CWL may carry a concealed weapon or firearm in this state, unless proscribed by state or federal statute.<sup>3</sup>

There are 1,707,116 CWL holders in Florida.<sup>4</sup> The age profile of these licensees is:

- 327,063 license holders are between the ages of 21-35;
- 439,805 license holders are between the ages of 36-50;
- 539,141 license holders are between the ages of 51-65; and
- 427,478 license holders are age 66 and older.<sup>5</sup>

###### Weapons and Firearms in Schools

###### *General Prohibitions*

Section 790.115, F.S., regulates the possession and discharge of weapons and firearms on school property. "School" is defined to mean "any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic."<sup>6</sup> The section does not apply to law enforcement officers.<sup>7, 8</sup>

Under this section, a person is prohibited from possessing any firearm,<sup>9</sup> electric weapon or device,<sup>10</sup> destructive device,<sup>11</sup> or other weapon,<sup>12</sup> including a razor blade or box cutter, except:

---

<sup>1</sup> The term "concealed weapons or concealed firearms" is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun ...." s. 790.06(1), F.S.

<sup>2</sup> s. 790.06(2), F.S. Further requirements for the applicant include demonstrating competence with a firearm, not having been adjudicated incapacitated within 5 years, not having been committed to a mental institution within 5 years, not having had adjudication withheld on a felony or domestic battery charge within 3 years, not having an injunction for domestic or repeat violence in effect against them, and not being prohibited from owning a firearm under another provision of Florida or federal law.

<sup>3</sup> s. 790.06(12)(a)15., F.S.

<sup>4</sup> DACS, *Number of Licensees by Type as of February 28, 2017*,

[http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last visited on March 1, 2017).

<sup>5</sup> DACS, *Concealed Weapon or Firearm License Holder Profile as of February 28, 2017*,

[http://www.freshfromflorida.com/content/download/7500/118857/cw\\_holders.pdf](http://www.freshfromflorida.com/content/download/7500/118857/cw_holders.pdf) (last visited on March 1, 2017).

<sup>6</sup> s. 790.115(2)(a)3., F.S.

<sup>7</sup> This applies to law enforcement officers as defined in s. 943.10(1)-(4),(6)-(9), or( 14), F.S.

<sup>8</sup> s. 790.115(3), F.S.

<sup>9</sup> "Firearm" means" any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime." s. 790.001(6), F.S.

<sup>10</sup> The term "electric weapon or device" means "any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury." s. 790.001(14), F.S.

<sup>11</sup> The term "destructive device" is defined in part to mean, "any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas ...." s. 790.001(4), F.S. The remainder of the definition specifies more included items, as well as exclusions.



- As authorized in support of school-sanctioned activities, at a school-sponsored event, or on the property of any school, school bus, or school bus stop; or
- That a person may carry a firearm:
  - In a case to a firearms program, class, or function if approved in advance by the principal or chief administrative officer;
  - In a case to a career center having a firearms training range; or
  - In a vehicle pursuant unless a school district adopts written and published policies that waive this exception for purposes of student and campus parking privileges.<sup>13</sup>

A person who violates this provision commits:

- A third degree felony, unless the person is a CWL holder in which case the offense is a second degree misdemeanor.<sup>14</sup>
- A second degree felony<sup>15</sup> if the person discharged a firearm during the violation. This penalty applies to persons with or without a CWL.<sup>16</sup>

The section also makes it third degree felony<sup>17</sup> for a person to exhibit any weapon, firearm, or dangerous device<sup>18</sup> in the presence of another person in a rude, careless, angry, or threatening manner during school hours or during the time of a school sanctioned school activity.<sup>19, 20</sup>

#### *Prohibitions Applicable to CWL Holders*

Pursuant to s. 790.06(12)(a)10., 11., and 13, F.S., a CWL holder is not authorized to carry a concealed weapon or firearm, either openly or concealed, into:

- An elementary or secondary school facility or administration building;
- A career center; or
- A college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a specified type of stun gun or nonlethal electric weapon.

A violation of the aforementioned prohibitions by a CWL holder constitutes a second degree misdemeanor.<sup>21</sup>

#### Weapons and Firearms in Religious Institutions

Florida law does not prohibit or otherwise address the carrying of weapons or firearms in religious institutions. An owner of private property on which a religious institution is located may determine whether to authorize or prohibit concealed carry by CWL holders. If prohibited, the private property owner can enforce the prohibition through trespass<sup>22</sup> law, which provides that a person commits a:

<sup>12</sup> “Weapon” means “ any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.” s. 790.001(13), F.S.

<sup>13</sup> s. 790.115(2)(a), F.S.

<sup>14</sup> s. 790.115(2)(a), (b), and (e), F.S.

<sup>15</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

<sup>16</sup> s. 790.115(2)(d) and (e), F.S.

<sup>17</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

<sup>18</sup> For the purpose of subsection. 790.115(1), F.S. this includes any sword, sword cane, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade, box cutter, or common pocketknife.

<sup>19</sup> This prohibition applies on the grounds or facilities of any school, school bus, or school bus stop, or within 1,000 feet of the real property that comprises a public or private elementary, middle, or secondary school. s. 790.115(1), F.S.

<sup>20</sup> This prohibition does not apply if the exhibition of the weapon takes place on private real property if the owner of the property invited the person on the property.

<sup>21</sup> s. 790.06(12)(d), F.S.

<sup>22</sup> Trespass occurs when a person: (a) without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance; or (b) having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so. s. 810.08(1), F.S.

- Third degree felony if he or she trespasses in a structure or conveyance while armed with a firearm or other dangerous weapon or firearm.<sup>23</sup>
- Third degree felony if he or she trespasses on school property<sup>24</sup> while in possession of a weapon or firearm.<sup>25</sup>

### Federal Law

The Gun Free School Zones Act of 1990 (Act) prohibits the possession of a firearm in a school zone.<sup>26</sup> A school zone is defined as any area on or within 1,000 feet of a public, parochial, or private school.<sup>27</sup> There is an exception, however, for persons licensed to carry a firearm by the state in which the school zone is located.<sup>28</sup> Licensees are not prohibited under the Act from carrying within a school zone, unless prohibited by state law.

### **Effect of the Bill**

The bill amends s. 790.115(3), F.S., to provide that the section and s. 790.06(12)(a)10., 11., and 13. do not prohibit a CWL holder from carrying a concealed weapon or concealed firearm on private school property if a religious institution is located on the property. As discussed above, “school” in this context means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.

The bill defines “religious institution” as:

- A church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on and includes those bona fide religious groups that do not maintain specific places of worship; and
- A separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that is not primarily supported by funds solicited outside its own membership or congregation.<sup>29</sup>

Although the bill removes the statutory prohibitions against concealed carry by CWP holders on private school property where a religious institution is located, the private property owner, in his or her discretion, can prohibit such carry through trespass law.

The bill provides an effective date of July 1, 2017.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 790.115, F.S., relating to possessing or discharging weapons or firearms on school grounds.

Section 2. Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: The bill does not appear to have any impact on state government revenues.

<sup>23</sup> s. 810.08(2)(c), F.S.

<sup>24</sup> “School property” is defined to mean “the grounds or facility of any kindergarten, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.” s. 810.095(2), F.S.

<sup>25</sup> s. 810.095(1), F.S.

<sup>26</sup> Crime Control Act of 1990, PL 101-647, 18 U.S.C. §922(q)(2)(A).

<sup>27</sup> 18 U.S.C. §921(a)(25).

<sup>28</sup> 18 U.S.C. §922(q)(2)(B)(ii).

<sup>29</sup> ss. 496.404 and 775.0861,, F.S.

2. Expenditures: The bill does not appear to have any impact on state government expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill does not appear to have any impact on local government revenues.

2. Expenditures: The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS: None.**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other: None.

**B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.**

**C. DRAFTING ISSUES OR OTHER COMMENTS: None.**

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A

1                                   A bill to be entitled  
 2           An act relating to concealed weapons and firearms on  
 3           private school property; amending s. 790.115, F.S.;  
 4           providing that persons licensed to carry a concealed  
 5           weapon and concealed firearm are not prohibited by  
 6           specified laws from such carry on certain private  
 7           school property; providing an effective date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11           Section 1. Subsection (3) of subsection 790.115, Florida  
 12           Statutes, is amended to read:

13           790.115 Possessing or discharging weapons or firearms at a  
 14           school-sponsored event or on school property prohibited;  
 15           penalties; exceptions.—

16           (3) (a) This section does not apply to any law enforcement  
 17           officer as defined in s. 943.10(1), (2), (3), (4), (6), (7),  
 18           (8), (9), or (14).



19           (b) This section and s. 790.06(12)(a)10., 11., and 13. do  
 20           not prohibit a person who is licensed under s. 790.06 from  
 21           carrying a concealed weapon or concealed firearm on private  
 22           school property if a religious institution, as defined in s.  
 23           775.0861, is located on the property.

24           Section 2. This act shall take effect on July 1, 2017.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 857 Criminal History Records  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/CS/SB 118

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Merlin 	White 

### SUMMARY ANALYSIS

A person's photograph is customarily taken when he or she is arrested. In Florida, as in most states, this photograph (often referred to as a "mug shot") is a public record. Most county and municipal law enforcement agencies post the arrest booking photographs on their respective websites. In recent years, a trend has developed where companies scour the public records of a state and post the photographs on their private websites. While mug shot websites often keep arrest booking photographs online even if the person was found not guilty or the charges were dropped, many of these websites generate a profit by removing the photograph for a fee (often a very expensive one).

The bill prohibits any person or entity that disseminates arrest booking photographs from soliciting or accepting a fee to remove the photographs. Within ten calendar days of receiving a written request by the person in the photograph or his or her legal representative, the publisher of the photograph must remove the photograph without charge.

If the publisher does not remove the photograph, the person whose arrest booking photograph was published or otherwise disseminated may bring a civil action to have the court issue an injunction. The court may also impose a civil penalty of \$1,000 per day for noncompliance with the injunction and must award reasonable attorney fees and court costs related to issuing and enforcing the injunction. Any money recovered for the civil penalties must be deposited into the General Revenue Fund.

Refusal to remove an arrest booking photograph after a written request constitutes an unfair or deceptive trade practice and subjects the publisher to additional penalties under the Florida Deceptive and Unfair Trade Practices Act.

The bill enables a person to seek expunction of a criminal history record associated with a judgment of acquittal or a not guilty verdict. Currently, the criminal history records of cases disposed of by a judgement of acquittal or in a trial are ineligible for expunction, regardless of the verdict in the trial. The bill also allows a person to seek expunction of a criminal history record if he or she has not been adjudicated guilty for a misdemeanor offense or been adjudicated delinquent for committing certain misdemeanors in the past ten years. Currently, a person cannot seek the expunction of a criminal history record if he or she has ever been adjudicated of a misdemeanor or adjudicated delinquent for certain misdemeanor.

The bill could have a positive impact on the General Revenue Fund. The provisions of the bill related to expunction will have minimal fiscal impact on the Florida Department of Law Enforcement (FDLE) and an indeterminate impact on the court system. Please see "FISCAL ANALYSIS AND ECONOMIC IMPACT STATEMENT," *infra*.

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### Disclosure of Criminal Record Information

In Florida, it is well-established that all “materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge” are public records and open for public inspection, unless a specific exemption applies.<sup>1</sup>

Criminal record information may be obtained and published by non-governmental publishers. This information includes booking photographs, arrest reports, charging documents, sentencing orders, and criminal history information.<sup>2</sup> Like all other records prepared by Florida government agencies, criminal record information is subject to public disclosure unless specifically exempted.<sup>3</sup>

###### Arrest Record Information

Public record information pertaining to a person’s arrest for the alleged commission of a crime includes the arrest report and booking photograph (commonly known as a “mugshot”). With few exceptions, arrest record information (including booking photographs) must be disclosed pursuant to a public records request.<sup>4</sup>

Arrest record information is requested by many persons and entities, including members of the public, traditional news companies, companies that provide criminal history or criminal record information for a service or subscriber fee (e.g., so that a private employer may determine if a job applicant has a criminal history), and companies that are often referred to as “mugshot” companies.

Mugshot companies operate commercial websites that repost booking photographs. Such companies often keep these photographs online even if the person was found not guilty or the charges were dropped;<sup>5</sup> however, many of these websites will remove the photograph for a fee (often a very expensive one).<sup>6</sup> There are also third-party websites that offer to remove photographs from private mugshot websites for a fee.<sup>7</sup> The fees of one of these third party websites range from \$399 to remove one

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<sup>1</sup> Office of the Attorney General (Florida), *Public Records: A Guide for Law Enforcement Agencies* (2012 Edition), at p. 1. and endnote 1 (citing *Shevin v. Byron, Harless, Schaffer, Reid and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980)) and endnote 2 (citing *Wait v. Fla. Power & Light Co.*, 372 So. 2d 420 (Fla. 1979)), available at [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-935PV5/\\$file/2012LEGuide.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-935PV5/$file/2012LEGuide.pdf) (last visited on Mar. 11, 2017).

<sup>2</sup> The Florida Department of Law Enforcement is the central repository of criminal history information for the State of Florida. For a fee, a search of Florida criminal history information regarding a person may be performed. Excluded from the search is sealed or expunged information. Florida Department of Law Enforcement, Criminal History Information, *Search Florida’s Criminal Histories*, available at <https://web.fdle.state.fl.us/search/app/default> (last visited on Mar. 11, 2017).

<sup>3</sup> Office of the Attorney General, *Public Records: A Guide for Law Enforcement Agencies*, at p. 15 and endnote 67 (citing *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994)).

<sup>4</sup> 94-90 Fla. Op. Att’y Gen. (1994) (footnotes omitted), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/83A1D5004064269D852562210063168E> (last visited on Mar. 11, 2017).

<sup>5</sup> Steve Osunsami, *Mug Shot Websites: Profiting Off People In Booking Photos?*, ABC NEWS (March 7, 2013), available at <http://abcnews.go.com/Technology/mug-shot-websites-profiting-off-people-booking-photos/story?id=18669703> (last viewed Mar. 11, 2017).

<sup>6</sup> David Segal, *Mugged by a Mug Shot Online*, THE NEW YORK TIMES (Oct. 5, 2013), available at [http://www.nytimes.com/2013/10/06/business/mugged-by-a-mug-shot-online.html?pagewanted=all&\\_r=2&](http://www.nytimes.com/2013/10/06/business/mugged-by-a-mug-shot-online.html?pagewanted=all&_r=2&) (last viewed Mar. 11, 2017).

<sup>7</sup> Laura C. Morel, *Pinellas County Sheriff’s Office to stop posting online mug shots*, TAMPA BAY TIMES (“Morel Report”) (Jan. 9, 2014), available at <http://www.tampabay.com/news/publicsafety/crime/pinellas-county-sheriffs-office-to-remove-online-mugshots/2160316> (last visited Mar. 11, 2017); NAT’L CONFERENCE OF STATE LEGISLATURES, *Mug Shots and Booking Photo Websites* (“NCSL Mugshot Overview”), available at <http://www.ncsl.org/research/telecommunications-and-information-technology/mug-shots-and-booking-photo-websites.aspx#WY> (last visited Mar. 11, 2017).

photograph to \$1799 to remove five photographs.<sup>8</sup> The expense is compounded, however, when a photograph is posted on multiple websites, with each charging their own fee for removal.<sup>9</sup> There have also been reported incidents of people paying the fees and their photographs not being removed.<sup>10</sup> The companies make a profit by charging a fee to remove the image. Photos posted on one site may also be reposted to other sites, causing continuing harm to the reputation of the individual. Florida law does not specifically prohibit this practice.<sup>11</sup>

### Laws and Legislation of Other States

According to the National Conference of State Legislatures (NCSL), several states have passed laws that say public records cannot be used for commercial purposes. Thirteen states have enacted legislation designed to prohibit commercial website operators from posting mugshot photos on a website and charging a removal fee.<sup>12</sup>

An American Bar Association article suggests that there is no legal solution to this problem, and instead, the solution will develop through private sector activity.<sup>13</sup> For example, Google has adjusted its algorithms so that the mugshot companies will not appear as prominently in the search results. In addition, some credit card companies such as MasterCard, American Express, and Discover are cutting ties with these types of websites.<sup>14</sup>

### Other Actions

In 2014, the Pinellas County Sheriff's Office announced that it would no longer post booking photographs on its website. The names, addresses, and initial charges of those arrested are still available on the website. The agency still provides access to the mugshots to other law enforcement agencies and the media, but those entities must request access to those photographs. Members of the public may also submit requests for mugshots.<sup>15</sup>

The Lee County Sheriff's Office website indicates that it will remove a booking photograph once notified the arrest record information is sealed or expunged.<sup>16</sup>

### Case Law

Persons having their booking photographs posted by commercial entities have sought relief based on various causes of action. These include claims for an invasion of privacy based on false light,<sup>17</sup> invasion of privacy based on unauthorized appropriation of name or likeness, defamation by slander, and unjust enrichment.

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<sup>8</sup> Morel Report, *supra* note 7.

<sup>9</sup> Osunsami, *supra* note 5.

<sup>10</sup> Andrew Knapp, *South Carolina attorneys, lawmakers aim to disrupt business of publishing jail mug shots*, THE POST AND COURIER (Nov. 17, 2013), available at <http://www.postandcourier.com/article/20131117/PC1610/131119492> (last viewed Mar. 11, 2017).

<sup>11</sup> NCSL Mugshot Overview, *supra* note 7.

<sup>12</sup> *Id.* The thirteen states are California, Colorado, Georgia, Illinois, Kentucky, Maryland, Missouri, Oregon, South Carolina, Texas, Utah, Virginia, and Wyoming.

<sup>13</sup> Stephanie Francis Ward, *Hoist Your Mug: Websites Will Post Your Name and Photo; Others Will Charge You to Remove Them*, ABA Journal, Aug. 1, 2012, available at [http://www.abajournal.com/magazine/article/hoist\\_your\\_mug\\_websites\\_will\\_post\\_your\\_name\\_and\\_photo\\_others\\_will\\_charge\\_you](http://www.abajournal.com/magazine/article/hoist_your_mug_websites_will_post_your_name_and_photo_others_will_charge_you) (last visited on Mar. 11, 2017).

<sup>14</sup> NCSL Mugshot Overview, *supra* note 7.

<sup>15</sup> Stephen Thompson, *Pinellas Sheriff Limiting Access to Mugshots Online*, The Tampa Tribune, Jan. 10, 2014, available at <http://tbo.com/pinellas-county/pinellas-sheriff-targeting-websites-limits-access-to-mug-shots-20140109/> (last visited on Mar 11, 2017).

<sup>16</sup> Lee County Sheriff's Office, *FAQ, How can I have my arrest photo or information removed from the Lee County Sheriff's Office website?*, Oct. 22, 2015, available at <http://www.sheriffleefl.org/main/index.php?r=faqs/index&cat=1&id=524> (last visited on Mar. 11, 2017).

<sup>17</sup> A claim of false light is a type of a claim of invasion of privacy based in tort. For example, to prevail in a false light claim in Pennsylvania, a defendant must establish that a highly offensive false statement was publicized by a defendant with knowledge or in reckless disregard of its falsity. *Santillo v. Reedel*, 430 Pa. Super. 290, 295-296 (Pa. Super. Ct.1993).



In 2008, the Florida Supreme Court indicated that Florida does not recognize tort claims based on false light, "because we conclude that false light is largely duplicative of existing torts, but without the attendant protections of the First Amendment."<sup>18</sup> The Court specifically noted that the key elements of a false claim are nearly identical to the elements required in a defamation case.<sup>19</sup> Florida does recognize defamation claims.<sup>20</sup>

### Right of Publicity

Section 540.08(1), F.S., prohibits a person from publishing, printing, displaying, or otherwise publicly using for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the person's express written or oral consent to such use. There are exceptions for:

- Publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes;
- The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property where such person has consented to the use on or in connection with the initial sale or distribution; and
- Any photograph of a person solely as a member of the public and where such person is not named or otherwise identified in or in connection with the use of such photograph.<sup>21</sup>

When necessary consent is not obtained, the person whose name, portrait, photograph, or other likeness is used may bring an action to enjoin the unauthorized publication, printing, display or other public use, and to recover damages for any loss or injury sustained, including an amount which would have been a reasonable royalty, and punitive or exemplary damages.<sup>22</sup>

In 2014, a Florida federal district court denied the defendant's motion to dismiss a cause of action alleging a violation of s. 540.08, F.S., for publishing the plaintiff's booking photograph without her consent and advertising "unpublishing services" that required the payment of a fee to remove the photograph.<sup>23</sup> In a later proceeding, the court denied the plaintiff's Motion to Certify Class (to allow the case to proceed as a class action) without prejudice.<sup>24</sup> The case did not have a trial on the merits of the cases so it is unknown whether the plaintiff would have succeeded on her claim.

### The Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

#### *History and Purpose of FDUTPA*

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.<sup>25</sup> The FDUTPA is based on federal law.<sup>26</sup> The state attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.<sup>27</sup> The Office of the State Attorney may enforce

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<sup>18</sup> *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1100 (Fla. 2008).

<sup>19</sup> *Id.* at 1105-06.

<sup>20</sup> *Id.* at 1111-12. See ch. 770, F.S.

<sup>21</sup> s. 540.08(4), F.S.

<sup>22</sup> s. 540.08(2), F.S.

<sup>23</sup> *Bilotta v. Citizen Info. Assocs., LLC*, 2014 U.S. Dist. LEXIS 3229 (M.D. Fla. Jan. 10, 2014).

<sup>24</sup> *Bilotta v. Citizen Info. Assocs., LLC*, 2014 U.S. Dist. LEXIS 68495 (M.D. Fla. May 19, 2014).

<sup>25</sup> Chapter 73-124, L.O.F., and s. 501.202, F.S.

<sup>26</sup> D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. Miami L. Rev. 1083 (Summer 2011).

<sup>27</sup> s. 501.207(1)(c) and (2), F.S.; see s. 501.203(2), F.S. (defining "enforcing authority" and referring to the office of the state attorney if a violation occurs in or affects the judicial circuit under the office's jurisdiction; or the Department of Legal Affairs if the violation occurs in more than one circuit; or if the office of the state attorney defers to the department in writing; or fails to act within a

violations of the FDUTPA if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.<sup>28</sup> Consumers may also file suit through private actions.<sup>29</sup>

#### *Remedies under the FDUTPA*

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to \$10,000 per willful violation.<sup>30</sup>

Remedies for private parties are limited to a:

- Declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.<sup>31</sup>

#### Expunction of Criminal Records

A court may order a criminal record to be expunged.<sup>32</sup> A person seeking to have a criminal record expunged must first obtain a valid certificate of eligibility from FDLE. To do so, the person must provide FDLE:

- A written, certified statement from the appropriate state attorney or statewide prosecutor that:
  - An indictment, information, or other charging document was not filed or issued in the case.
  - An indictment, information, or other charging document, if filed or issued in the case, was dismissed or dropped by the state attorney or the court, and that none of the charges resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.
  - The applicant does not have a criminal history record relating to certain delineated violations.<sup>33</sup>
- A \$75 processing fee, unless the fee is waived.
- A certified copy of the disposition of the charge.<sup>34</sup>

The person also must not:

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specified period.); *see also* David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLORIDA BAR JOURNAL 52, Dec. 2002 (analyzing the merits of FDUTPA and the potential for deterrence of anticompetitive conduct in Florida), *available at* [http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division\\*](http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division*) (last visited on Mar. 11, 2017).

<sup>28</sup> s. 501.203(2), F.S.

<sup>29</sup> s. 501.211, F.S.

<sup>30</sup> ss. 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. s. 501.2105, F.S.

<sup>31</sup> s. 501.211(1) and (2), F.S.

<sup>32</sup> “Expunction of a criminal history record” is defined in s. 943.045(16), F.S.

<sup>33</sup> These violations include sexual misconduct, luring or enticing a child, sexual battery, lewd or lascivious offenses, voyeurism, violations of the Florida Communications Fraud Act, sexual performance by a child, offenses by public officers or employees, acts in connection with obscenity and minors, pornography, traveling to meet a minor, selling or buying of minors, drug trafficking, a pretrial detention violation, and any violation specified as a predicate offense for registration as a sexual predator or sexual offender. s. 943.0585(2)(a)3., F.S.

<sup>34</sup> s. 943.0585(2)(a)-(c), F.S.

- Before the date the application for a certificate of eligibility is filed, have been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.<sup>35</sup>
- Have been adjudicated guilty or delinquent of committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.
- Be under court supervision for the arrest or crime to which the petition to expunge pertains.
- Have secured a prior sealing or expunction other than the required 10-year sealing for the offense sought to be expunged.<sup>36</sup>

Additionally, the person must have had the record sealed for at least 10 years by court order. The requirement for the record to have been sealed for 10 years does not apply if a plea was not entered or all charges related to the arrest or offense to which the petition to expunge pertains were dismissed before trial.<sup>37</sup>

#### Effect of an Expunction of a Criminal History Record

If the court grants a petition to expunge, several entities are required to forward copies of the expunction order to relevant persons or entities. The clerk of the court must provide the expunction order to the state attorney or statewide prosecutor, the arresting agency, and any entity that previously received the criminal history record from the court. The arresting agency must provide the expunction order to any entity to which the agency previously disseminated the criminal history record information. Finally, FDLE must provide the expunction order to the Federal Bureau of Investigation.<sup>38</sup>

Any criminal justice agency that has a record that is expunged must physically destroy or obliterate the record. FDLE, however, must maintain the record. The record is protected as confidential and exempt from disclosure requirements under the public records laws.<sup>39</sup>

A person who has had a record expunged may deny or fail to report the arrests expunged, unless the person is:

- Seeking appointment as a guardian, a position with a criminal justice agency, a license by the Division of Insurance Agent and Agent Services of the Department of Financial Services, or a position with an agency which is responsible for the protection of vulnerable persons, including children, disabled persons, and elderly persons;
- A defendant in a criminal prosecution;
- Petitioning for an expunction of a criminal history record, or of an offense as a victim of human trafficking, or a sealing of a criminal history record; or
- Applying for admission to The Florida Bar.<sup>40</sup>

#### **Effect of the Bill**

##### Arrest Booking Photographs

The bill prohibits any person or entity that disseminates arrest booking photographs from soliciting or accepting a fee to remove the photographs. Within ten calendar days of receiving a written request by the person in the photograph or his or her legal representative, the publisher of the photograph must remove the photograph without charge.

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<sup>35</sup> These crimes include assault; battery; carrying a concealed weapon; unlawful use of destructive devices or bombs; neglect of a child; assault or battery on a law enforcement officer, firefighter, or certain other officers; open carry of a weapon; exposure of sexual organs; unlawful possession of a firearm; petit theft; cruelty to animals; arson; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or school property. s. 943.051(3)(b), F.S.

<sup>36</sup> s. 943.0585(2)(d)-(g), F.S.

<sup>37</sup> s. 943.0585(2)(h), F.S.

<sup>38</sup> s. 943.0585(3), F.S.

<sup>39</sup> s. 943.0585(4), F.S.

<sup>40</sup> s. 943.0585(4)(a), F.S.

If the publisher does not remove the photograph, the person whose arrest booking photograph was published or otherwise disseminated may bring a civil action to have the court issue an injunction. The court may impose a civil penalty of \$1,000 per day for noncompliance with the injunction. The court must also award reasonable attorney fees and court costs related to the issuance and enforcement of the injunction. Any money recovered for the civil penalties must be deposited into the General Revenue Fund.

Refusal to remove an arrest booking photograph after a written request constitutes an unfair or deceptive trade practice and subjects the publisher to additional penalties under the FDUTPA.

The bill states that the provisions discussed above do not apply to a person or entity that publishes or disseminates information relating to arrest booking photographs, unless the person or entity solicits or accepts a fee to remove the information.

#### Eligibility for Expunction

The bill enables a person to seek expunction of a criminal history record associated with a judgment of acquittal<sup>41</sup> or a not guilty verdict. Currently, the criminal history records of cases disposed of by a judgement of acquittal or in a trial are ineligible for expunction, regardless of the verdict in the trial.

The bill also allows a person to seek expunction of a criminal history record if he or she has not been adjudicated guilty for a misdemeanor offense or been adjudicated delinquent for committing a misdemeanor specified in s. 943.051(3)(b), F.S., in the past ten years. Currently, a person cannot seek the expunction of a criminal history record if he or she has ever been adjudicated of a misdemeanor or adjudicated delinquent for a misdemeanor specified in s. 943.051(3)(b), F.S.

The bill is effective July 1, 2017.

#### B. SECTION DIRECTORY:

Section 1. Creates an undesignated section of law.

Section 2. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 3. Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill allows a court to impose a civil penalty of \$1,000 per day on the publisher for noncompliance with an injunction requiring the removal of a posted photograph. If a court orders this civil penalty, the funds would go to the General Revenue Fund.
2. Expenditures: The bill's amendments to the expunction statute will require FDLE to update technical changes to the statute table. FDLE estimates these changes can be accomplished with existing staff and will have a minimal fiscal impact.<sup>42</sup>

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<sup>41</sup> A judgment of acquittal may occur after the state concludes its case if the evidence in the light most favorable to the state is insufficient for conviction. BLACK'S LAW DICTIONARY (6th ed. 1990).

<sup>42</sup> PCS for HB 857 is identical to CS/CS for SB 118. FDLE analyzed the bill, and the same agency analysis is applicable here. *See 2017 FDLE Legislative Bill Analysis for SB 118*, Mar. 1, 2017 (on file with the House Criminal Justice Subcommittee).

The Office of the State Courts Administrator expects an increase in judicial workload because more people will be eligible for expunction of their criminal history records. However, the fiscal impact of these changes is indeterminate due to the unavailability of data needed to determine the increase in judicial workload.<sup>43</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** The bill may reduce costs for people who have their booking photographs published and want the photographs removed because the bill prohibits publishers of the photographs from charging removal fees. The bill also authorizes a civil cause of action, with an entitlement to reasonable attorney fees and costs, against those who, after a written request, fail to remove the photographs.

**D. FISCAL COMMENTS:** None.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.
2. Other: Requiring private entities to remove booking arrest photographs may result in a constitutional challenge based on the First Amendment to the extent that the bill regulates protected speech. However, the absence of a sufficiently analogous case on point makes the potential outcome of a First Amendment challenge speculative.<sup>44</sup>

**B. RULE-MAKING AUTHORITY:** The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:** None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A.

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<sup>43</sup> Similarly, the Office of the State Courts Administrator analyzed the Senate version of the bill, but the same analysis is applicable here. See *2017 Judicial Impact Statement for SB 118*, Jan. 23, 2017 (on file with the House Criminal Justice Subcommittee).

<sup>44</sup> For comparison, see *Fla. Star v. B.J.F.*, 491 U.S. 524, 526 (1989) (holding that a newspaper was not liable for disclosing a victim's identity obtained from a police report released by law enforcement in violation of law, and further that the matter was of public concern and that imposing damages on the newspaper violated the First Amendment); *Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001) (holding that if a publisher lawfully obtains the information in question, the speech is protected by the First Amendment provided it is a matter of public concern, even if the source recorded it unlawfully).

1                                   A bill to be entitled  
 2           An act relating to criminal history records;  
 3           prohibiting a person or entity engaged in publishing  
 4           or disseminating arrest booking photographs from  
 5           soliciting or accepting a fee or other payment to  
 6           remove the photograph; requiring a person or entity,  
 7           within a specified timeframe, to remove an arrest  
 8           booking photograph after receipt of a written request;  
 9           authorizing a person to bring a civil action to enjoin  
 10          such publishing of a photograph; authorizing a court  
 11          to impose a civil penalty and award attorney fees and  
 12          court costs; providing applicability; amending s.  
 13          943.0585, F.S.; revising the elements that must be  
 14          attested to by a petitioner in a statement submitted  
 15          in support of the expunction of criminal history  
 16          records; revising the circumstances under which the  
 17          Department of Law Enforcement must issue a certificate  
 18          of eligibility for expunction of a criminal history  
 19          record; providing an effective date.

20  
 21   Be It Enacted by the Legislature of the State of Florida:

22  
 23           Section 1.   (1) Any person or entity engaged in the  
 24           business of publishing or otherwise disseminating arrest booking  
 25           photographs of persons who have previously been arrested through

26 a publicly accessible print or electronic medium may not solicit  
27 or accept a fee or other form of payment to remove the  
28 photographs.

29 (2) Within 10 calendar days of receipt of a written  
30 request for removal of a booking photograph from a person whose  
31 booking photograph is published or otherwise disseminated, or  
32 from his or her legal representative, the person or entity who  
33 published or otherwise disseminated the photograph shall remove  
34 the photograph without charge.

35 (3) The person whose arrest booking photograph was  
36 published or otherwise disseminated in the publication or  
37 electronic medium may bring a civil action to enjoin the  
38 continued publication or dissemination of the photograph if the  
39 photograph is not removed within 10 calendar days after receipt  
40 of the written request for removal. The court may impose a civil  
41 penalty of \$1,000 per day for noncompliance with an injunction  
42 and shall award reasonable attorney fees and court costs related  
43 to the issuance and enforcement of the injunction. Monies  
44 recovered for civil penalties under this section shall be  
45 deposited into the General Revenue Fund.

46 (4) Refusal to remove an arrest booking photograph after  
47 written request has been made constitutes an unfair or deceptive  
48 trade practice in accordance with part II of chapter 501.

49 (5) This section does not apply to any person or entity  
50 that publishes or disseminates information relating to arrest

51 booking photographs unless the person or entity solicits or  
 52 accepts payment to remove the photographs.

53       Section 2. Paragraph (b) of subsection (1) and paragraphs  
 54 (a) and (d) of subsection (2) of section 943.0585, Florida  
 55 Statutes, are amended to read:

56       943.0585 Court-ordered expunction of criminal history  
 57 records.—The courts of this state have jurisdiction over their  
 58 own procedures, including the maintenance, expunction, and  
 59 correction of judicial records containing criminal history  
 60 information to the extent such procedures are not inconsistent  
 61 with the conditions, responsibilities, and duties established by  
 62 this section. Any court of competent jurisdiction may order a  
 63 criminal justice agency to expunge the criminal history record  
 64 of a minor or an adult who complies with the requirements of  
 65 this section. The court shall not order a criminal justice  
 66 agency to expunge a criminal history record until the person  
 67 seeking to expunge a criminal history record has applied for and  
 68 received a certificate of eligibility for expunction pursuant to  
 69 subsection (2) or subsection (5). A criminal history record that  
 70 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,  
 71 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,  
 72 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,  
 73 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in  
 74 s. 907.041, or any violation specified as a predicate offense  
 75 for registration as a sexual predator pursuant to s. 775.21,



76 without regard to whether that offense alone is sufficient to  
 77 require such registration, or for registration as a sexual  
 78 offender pursuant to s. 943.0435, may not be expunged, without  
 79 regard to whether adjudication was withheld, if the defendant  
 80 was found guilty of or pled guilty or nolo contendere to the  
 81 offense, or if the defendant, as a minor, was found to have  
 82 committed, or pled guilty or nolo contendere to committing, the  
 83 offense as a delinquent act. The court may only order expunction  
 84 of a criminal history record pertaining to one arrest or one  
 85 incident of alleged criminal activity, except as provided in  
 86 this section. The court may, at its sole discretion, order the  
 87 expunction of a criminal history record pertaining to more than  
 88 one arrest if the additional arrests directly relate to the  
 89 original arrest. If the court intends to order the expunction of  
 90 records pertaining to such additional arrests, such intent must  
 91 be specified in the order. A criminal justice agency may not  
 92 expunge any record pertaining to such additional arrests if the  
 93 order to expunge does not articulate the intention of the court  
 94 to expunge a record pertaining to more than one arrest. This  
 95 section does not prevent the court from ordering the expunction  
 96 of only a portion of a criminal history record pertaining to one  
 97 arrest or one incident of alleged criminal activity.  
 98 Notwithstanding any law to the contrary, a criminal justice  
 99 agency may comply with laws, court orders, and official requests  
 100 of other jurisdictions relating to expunction, correction, or

101 confidential handling of criminal history records or information  
 102 derived therefrom. This section does not confer any right to the  
 103 expunction of any criminal history record, and any request for  
 104 expunction of a criminal history record may be denied at the  
 105 sole discretion of the court.

106 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each  
 107 petition to a court to expunge a criminal history record is  
 108 complete only when accompanied by:

109 (b) The petitioner's sworn statement attesting that the  
 110 petitioner:

111 1. Has never, before ~~prior~~ to the date on which the  
 112 petition is filed, been adjudicated guilty of a felony ~~criminal~~  
 113 offense or comparable ordinance violation, or been adjudicated  
 114 delinquent for committing any felony ~~or a misdemeanor~~ specified  
 115 in ~~s. 943.051(3)(b)~~.

116 2. Has not been adjudicated guilty of a misdemeanor  
 117 offense or been adjudicated delinquent for committing a  
 118 misdemeanor specified in s. 943.051(3)(b) in the previous 10  
 119 years.

120 ~~3.2.~~ Has not been adjudicated guilty of, or adjudicated  
 121 delinquent for committing, any of the acts stemming from the  
 122 arrest or alleged criminal activity to which the petition  
 123 pertains.

124 ~~4.3.~~ Has never secured a prior sealing or expunction of a  
 125 criminal history record under this section, s. 943.059, former

126 s. 893.14, former s. 901.33, or former s. 943.058, unless  
 127 expunction is sought of a criminal history record previously  
 128 sealed for 10 years pursuant to paragraph (2)(h) and the record  
 129 is otherwise eligible for expunction.

130 ~~5.4.~~ Is eligible for such an expunction to the best of his  
 131 or her knowledge or belief and does not have any other petition  
 132 to expunge or any petition to seal pending before any court.  
 133

134 Any person who knowingly provides false information on such  
 135 sworn statement to the court commits a felony of the third  
 136 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 137 775.084.

138 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to  
 139 petitioning the court to expunge a criminal history record, a  
 140 person seeking to expunge a criminal history record shall apply  
 141 to the department for a certificate of eligibility for  
 142 expunction. The department shall, by rule adopted pursuant to  
 143 chapter 120, establish procedures pertaining to the application  
 144 for and issuance of certificates of eligibility for expunction.  
 145 A certificate of eligibility for expunction is valid for 12  
 146 months after the date stamped on the certificate when issued by  
 147 the department. After that time, the petitioner must reapply to  
 148 the department for a new certificate of eligibility. Eligibility  
 149 for a renewed certification of eligibility must be based on the  
 150 status of the applicant and the law in effect at the time of the

151 renewal application. The department shall issue a certificate of  
 152 eligibility for expunction to a person who is the subject of a  
 153 criminal history record if that person:

154 (a) Has obtained, and submitted to the department, a  
 155 written, certified statement from the appropriate state attorney  
 156 or statewide prosecutor which indicates:

157 1. That an indictment, information, or other charging  
 158 document was not filed or issued in the case.

159 2. That an indictment, information, or other charging  
 160 document, if filed or issued in the case, was dismissed or nolle  
 161 prosequi by the state attorney or statewide prosecutor, or was  
 162 dismissed by a court of competent jurisdiction, that a judgment  
 163 of acquittal was rendered by a judge, or that a verdict of not  
 164 guilty was rendered by a judge or jury ~~and that none of the~~  
 165 ~~charges related to the arrest or alleged criminal activity to~~  
 166 ~~which the petition to expunge pertains resulted in a trial,~~  
 167 ~~without regard to whether the outcome of the trial was other~~  
 168 ~~than an adjudication of guilt.~~

169 3. That the criminal history record does not relate to a  
 170 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
 171 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,  
 172 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,  
 173 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,  
 174 or any violation specified as a predicate offense for  
 175 registration as a sexual predator pursuant to s. 775.21, without

176 regard to whether that offense alone is sufficient to require  
 177 such registration, or for registration as a sexual offender  
 178 pursuant to s. 943.0435, where the defendant was found guilty  
 179 of, or pled guilty or nolo contendere to any such offense, or  
 180 that the defendant, as a minor, was found to have committed, or  
 181 pled guilty or nolo contendere to committing, such an offense as  
 182 a delinquent act, without regard to whether adjudication was  
 183 withheld.

184 (d)1. Has never, before ~~prior to~~ the date on which the  
 185 application for a certificate of eligibility is filed, been  
 186 adjudicated guilty of a felony ~~criminal~~ offense or comparable  
 187 ordinance violation, or been adjudicated delinquent for  
 188 committing any felony ~~or a misdemeanor specified in s.~~  
 189 ~~943.051(3)(b).~~

190 2. Has not been adjudicated guilty of a misdemeanor  
 191 offense or been adjudicated delinquent for committing a  
 192 misdemeanor specified in s. 943.051(3)(b) in the previous 10  
 193 years.

194 Section 3. This act shall take effect July 1, 2017.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 871 Animal Abuser Registration  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** SB 1628 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Hall <i>WH</i>	White <i>W</i>

### SUMMARY ANALYSIS

In recent years, some animal advocates have argued for the adoption of animal abuser registries that would allow the public to identify persons convicted of crimes against animals. Tennessee and numerous localities have adopted an animal abuse offender registry.

Florida law does not currently provide for an animal abuser registry. However, Florida does require other offenders, convicted of specified offenses, to register with law enforcement. Under current law, sexual offenders, sexual predators, career offenders, and convicted felons are subject to mandatory registration requirements. These registration requirements allow law enforcement to track offenders as well as to provide the public notification that such offenders are present in their communities.

The PCS creates s. 943.0425, F.S., requiring the Florida Department of Law Enforcement (FDLE) to create a publicly accessible registry list of persons convicted of certain animal abuse offenses. Related to the development and function of the registry, the bill provides that FDLE must do the following:

- Post to its website a publicly access registry list of convicted animal abusers on or after Jan. 1, 2018;
- Include a booking photograph of the convicted animal abuser, as well as the person's full name, and any other identification information necessary to properly identify such persons;
- Maintain the animal abuser's name and identifying information for two years upon a first time conviction, and for five years upon a second or subsequent conviction;
- Remove the name of any person who's animal abuse offense has been sealed or expunged;
- Send letters annually to the leading registered breeders informing them of the existence of the registry and encouraging them to urge their members to not provide animals to those persons listed on the registry;
- Send notice, each year, to pet dealers, animal shelters, humane organizations, and certain animal control agencies informing them of the existence of the registry and of newly added offenders.

The PCS defines "animal abuser" to mean a person convicted of one of the following animal abuse offenses:

- A felony conviction for animal cruelty, pursuant to s. 828.12, F.S.;
- A felony conviction for fighting or baiting animals, pursuant to s. 828.122, F.S.; or
- Any conviction for sexual activities involving animals, pursuant to s. 828.126, F.S.

The PCS authorizes a sentencing court to prohibit an offender convicted of animal cruelty or sexual activities involving animals from owning, possessing, maintaining, having custody of, residing with, or caring for any animal as a condition of the offender's probation.

The PCS is expected to have a fiscal impact on FDLE as it requires the department to develop and maintain the registry as well as send out annual notifications of the existence of the registry. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The PCS provides an effective date of October 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### *Animal Abuse Registries*

In recent years, multiple jurisdictions have passed legislation creating animal abuse registries. The state of Tennessee maintains an animal abuse registry that is publicly accessible through the Tennessee Bureau of Investigation's website.<sup>1</sup> The registry requires an offender convicted of a felony level specified animal abuse offense to register and provides a booking photograph as well as the name, date of birth, and address for each offender.<sup>2</sup> The information is maintained for two years following a first time conviction and five years following any subsequent conviction, at which time it is removed, provided that the person is not convicted of another animal abuse offense during that period.<sup>3</sup>

Several localities throughout the country have adopted similar animal abuse offender registries. In New York, Rockland,<sup>4</sup> Nassau,<sup>5</sup> and Suffolk Counties,<sup>6</sup> as well as New York City<sup>7</sup> maintain registries. While most offender registries are accessible online to the public, New York City's registry only allows users to subscribe who are animal control officers, an animal rescue group, veterinarian, or an employee of an animal shelter, humane society, or pet shop.<sup>8</sup>

In Florida, Hillsborough County passed an ordinance in 2016 requiring convicted animal abuse offenders to self-register within 10 days of their conviction or release from incarceration. The ordinance prohibits registered offenders from obtaining certain animals from any animal shelter or pet seller, and from owning, possessing, or residing in the same household as an animal while on the registry. An offender remains on the county's registry for three years for a misdemeanor conviction, five years for a felony conviction, and 10 years for a second or subsequent conviction of either misdemeanor or felony abuse.<sup>9</sup>

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<sup>1</sup> TENNESSEE BUREAU OF INVESTIGATION, *Tennessee Animal Abuse Registry*, <https://www.tn.gov/tbi/topic/tennessee-animal-abuse-registry> (last visited March 11, 2017).

<sup>2</sup> There are currently seven offenders on the Tennessee Animal Abuse Registry. *Id.*

<sup>3</sup> TENN. CODE ANN. § 40-39-403 (2016).

<sup>4</sup> There are currently three offenders on the county's registry which is publicly accessible through the Rockland County Sheriff's Office website. The available information includes the offender's booking photograph, name, and address. ROCKLAND COUNTY SHERIFF'S OFFICE, *Animal Abuse Registry*, [http://www.rocklandcountysheriffoffice.com/animal\\_abuse\\_registry.html](http://www.rocklandcountysheriffoffice.com/animal_abuse_registry.html) (last visited March 11, 2017).

<sup>5</sup> The Nassau County Animal Abuse Registry is hosted by the Nassau County Society for the Prevention of Cruelty to Animals and is publicly available online. The registry currently lists four offenders and provides a booking photograph, name, and address for each offender. NASSAU COUNTY SPCA, *Nassau County Animal Abuse Registry*, <http://nassaucountyspca.org/nassaucountyanimalabuserregistry.cfm> (last visited March 11, 2017).

<sup>6</sup> Suffolk County's registry is publicly available online and provides a booking photograph, name, address, and other identifying information for each offender. There are currently four offenders listed on the registry. SUFFOLK COUNTY POLICE DEPARTMENT, *Animal Abuse Registry*, <http://scpd.suffolkcounty.gov/aaregistry.htm> (last visited March 11, 2017).

<sup>7</sup> New York City's 2014 Animal Abuse Registration Act requires anyone living in New York City, who is at least 18 years old at the time of conviction for an animal abuse crime to register through the City Health Department. The registration period lasts for five years after sentencing or release from incarceration and a failure to register can result in up to one year in jail, a fine of \$1,000, or both. CITY OF NEW YORK, *Animal Abuse Registry*, <http://www1.nyc.gov/nyc-resources/service/5142/animal-abuse-registry> (last visited March 11, 2017).

<sup>8</sup> NYC HEALTH, *Online Service Registration*, <https://a816-healthpsi.nyc.gov/OnlineRegistration/dohmh/DOHMHService.action> (last visited March 11, 2017).

<sup>9</sup> The ordinance also prohibits animal-related businesses from transferring animals to a person registered as an animal abuser. A violation may be punishable by warning, fine, or 60 days imprisonment depending on any history of violation. HILLSBOROUGH COUNTY ORDINANCE No. 16-18 (2016).



### *Animal Abuse Offenses*

Florida currently prohibits crimes against animals by proscribing offenses at both the misdemeanor and felony level. Section 828.12, F.S., prohibits a person from committing cruelty to animals. A person who unnecessarily commits any of the following offenses against an animal commits a first degree misdemeanor:<sup>10</sup>

- Overloads, overdrives, torments, or deprives of necessary sustenance or shelter;
- Mutilates, or kills any animal, or causes the same to be done; or
- Carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner.

The law prohibits aggravated animal cruelty when a person intentionally commits an act to an animal, or fails to act if the person is the owner having custody and control of the animal, which results in one of the following:

- The cruel death of the animal;
- The excessive or repeated infliction of unnecessary pain or suffering; or
- Causes both to be done.

A person guilty of aggravated animal cruelty commits a third degree felony which s. 828.12, F.S., provides is punishable by up to five years imprisonment and a \$10,000 fine.<sup>11</sup> If it is determined that a person guilty of this offense, knowingly and intentionally tortured or tormented and he or she injured, mutilated, or killed the animal, he or she must be ordered to pay a fine of \$2,500 and undergo psychological counseling or complete an anger management treatment program.<sup>12</sup> If a person is later convicted of a subsequent offense, he or she must be ordered to pay a fine of \$5,000 and serve a minimum mandatory sentence of 6 months in jail without eligibility for gain time.<sup>13</sup>

Florida law also prohibits a person from engaging in animal fighting<sup>14</sup> or animal baiting<sup>15</sup>. Related to animal fighting or baiting, s. 828.122, F.S., prohibits a person from doing any of the following:

- Baiting, breeding, training, transporting, selling, owning, possessing, or using any wild or domestic animal for the purpose of animal fighting or animal baiting;
- Owning, possessing, or selling equipment for any activity previously described;
- Owning, leasing, managing, operating, or having control of any property kept or used for any activity previously described;
- Promoting, staging, advertising, or charging any admission fee to a fight or baiting between two or more animals;
- Performing any service or act to facilitate animal fighting or baiting;<sup>16</sup>
- Removing or facilitating the removal of any animal impounded for a violation of this section without prior authorization by the court;
- Betting or wagering any money or other valuable consideration on the fighting or baiting of animals; or
- Attending the fighting or baiting of animals.

A person who commits any of these prohibited acts commits a third degree felony.<sup>17</sup> If a court finds probable cause to believe that animal fighting or baiting has occurred, it may order the seizure of any

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<sup>10</sup> A first degree misdemeanor is punishable by up to a year in the county jail and for this offense a fine of not more than \$5,000. s. 775.082, F.S.

<sup>11</sup> s. 828.12(2), F.S.

<sup>12</sup> s. 828.12(2)(a), F.S.

<sup>13</sup> s. 828.12(2)(b), F.S.

<sup>14</sup> "Animal fighting" is defined to mean "fighting between roosters" or other birds or between dogs, bears, or other animals." s. 828.122(2)(a), F.S.

<sup>15</sup> "Baiting" is defined to mean "to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in, fights with or among other animals." s. 828.122(2)(b), F.S.

<sup>16</sup> Including, but not limited to, providing security, refereeing, or handling or transporting animals or being a stakeholder of any money wagered on animal fighting or baiting. s. 828.12(3)(e), F.S.

<sup>17</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

animals and equipment used for that purpose.<sup>18</sup> Additionally, the court may prohibit a person convicted of animal fighting or baiting from owning or keeping any animals within the species that were the subject of the conviction for a period of time.<sup>19</sup>

Furthermore, a person is prohibited from performing sexual conduct<sup>20</sup> or having sexual contact<sup>21</sup> involving animals. Section 828.126, F.S., creates a first degree misdemeanor<sup>22</sup> offense when a person knowingly:

- Engages in any sexual conduct or sexual contact with an animal;
- Causes, aids, or abets another person to engage in sexual conduct or sexual contact with an animal;
- Permits any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or
- Knowingly organizes, promotes, conducts, advertises, aids, abets, participates as an observer, or performs any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for commercial or recreational purpose.

### *Florida Offender Registries*

Florida law requires offenders convicted of certain crimes to register their information with law enforcement. The purpose of such registration requirements are to aid law enforcement in tracking offenders and to provide notification to the public and community of the presence of these offenders. The following persons are required by law to register with law enforcement:

- Sexual offenders<sup>23</sup> pursuant to s. 943.0435, F.S.;
- Sexual predators<sup>24</sup> pursuant to s. 775.21, F.S.;
- Career offenders<sup>25</sup> pursuant to s. 775.261, F.S.; and
- Convicted felons<sup>26</sup> pursuant to s. 775.13, F.S.

Florida does not currently require registration for offenders convicted of animal abuse related offenses.

### **Effect of the Bill**

The bill creates s. 943.0425, F.S., to create a publicly accessible registry list on the Florida Department of Law Enforcement (FDLE) website of persons convicted of certain animal abuse offenses. In establishing criteria for the registry and its requirements, the bill provides definitions as follows:

- “Abuser” or “animal abuser” means a person who has been convicted in Florida of committing an animal abuse offense.
- “Animal” means a dog;<sup>27</sup> a cat;<sup>28</sup> a pet normally maintained in or near the household of its owner; a domesticated animal; previously captured wildlife; an exotic animal; or any other pet, including, but not limited to, a rabbit, chick, duck, or potbellied pig.<sup>29</sup>

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<sup>18</sup> s. 828.122(4), F.S.

<sup>19</sup> s. 828.122(8), F.S.

<sup>20</sup> “Sexual conduct” is defined to mean “any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.” s. 828.126(1)(a), F.S.

<sup>21</sup> “Sexual contact” is defined to mean “any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person.” s. 828.126(1)(b), F.S.

<sup>22</sup> A first degree misdemeanor is punishable by up to one year in the county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>23</sup> See s. 943.0435(1)(h)1., F.S.

<sup>24</sup> See s. 775.21(4), F.S.

<sup>25</sup> A “career offender” means “any person who is designated as a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender under s. 775.084 or as a prison release reoffender under s. 775.082(9).” s. 775.261(2)(a), F.S.

<sup>26</sup> For registration requirements under this section, the term “convicted” means, a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld for a felony offense. s. 775.13(1), F.S.

<sup>27</sup> Of the species *canis familiaris*.

<sup>28</sup> Of the species *Felis catus*.

- “Animal abuse offense” means a conviction of a person who is not a child<sup>30</sup> for a felony violation of animal cruelty under s. 828.12, F.S. or animal fighting under s. 828.122, F.S.; or any violation of involving sexual activities with animals under s. 828.126, F.S.
- “Conviction” has the same meaning as defined in s. 775.21, F.S.<sup>31</sup>
- “Pet dealer” includes a pet dealer as defined in s. 828.29, F.S.,<sup>32</sup> or an animal shelter, humane organization, or animal control agency operated by a human organization that receives funds from the state or from a political subdivision of the state and that, in the ordinary course of business, engages in the sale or adoption of animals.
- “Registered breed association” means an association formed and perpetuated for the maintenance of records of purebreeding of animal species for a specific breed whose characteristics are set forth in constitutions, bylaws, or other rules of the association.

The bill requires the FDLE to post to its website a publicly accessible registry list of each person convicted of an animal abuse offense on or after January 1, 2018. The registry list is required to include a booking photograph of the convicted animal abuser, as well as the person’s full name, and any other identifying information that FDLE determines is necessary to properly identify such persons. The registry list is prohibited from containing an abuser’s social security number, driver’s license number, or any other state or federal identification number. In order to accurately maintain and update the registry, a the clerk of court must forward a copy of the judgement and date of birth of each person convicted of an animal abuse offense to FDLE within 30 days of the date of the judgement.

The bill requires the FDLE to remove the name and information of any person from the registry when the criminal record of the offense which made them eligible for the registry is expunged or sealed. Additionally, the bill provides for removal of an animal abuser’s name and identifying information from the registry list after a specified period of time assuming that person is not convicted of a subsequent animal abuse offense. The bill requires FDLE to maintain an animal abuser’s name and identifying information for the specified time periods:

- Two years after the date of conviction for a first-time conviction for an animal abuse offense.
- Five years after the date of the most recent conviction for a subsequent conviction for an animal abuse offense.

Beginning in 2019, the bill requires FDLE to send annual letters to the leading registered breed associations for animals covered under this act to inform them of the existence of the registry list and to encourage them to urge their members to not give or sell animals to persons listed on the registry. FDLE will also be required to send notice of the existence of an animal abuser registry and of newly added offenders to the registry, each year, to the following entities:

- All pet dealers, animal shelters, and human organizations in the state; and
- All animal control agencies operated by a humane organization that receives funds from the state or from a political subdivision of the state that, in the ordinary course of business, engages in the sale or adoption of animals.

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<sup>29</sup> The bill specifies the term “animal” does not include: an equine, an animal that is being raised primarily for use as food or fiber for human utilization or consumption, including, but not limited to, cattle, sheep, swine, goats, and poultry; a wild vertebrate; or a mollusk, crustacean, or fish.

<sup>30</sup> “Child” is defined to mean “any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years.” s. 985.03(7), F.S.

<sup>31</sup> “Conviction” is defined to mean “a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.” s. 775.21(2)(e), F.S.

<sup>32</sup> “Pet dealer” is defined to mean “any person, firm, partnership, corporation, or other association which, in the ordinary course of business, engages in the sale or more than two litters, or 20 dogs or cats, per year, whichever is greater, to the public. This definition includes breeders of animals who sell such animals directly to a consumer.” s. 828.29(13), F.S.

Finally, the bill amends ss. 828.12 and 828.126, F.S., relating to cruelty to animals and sexual activity with animals, respectively, to authorize a sentencing court to prohibit a person who has violated either of these laws from owning, possessing, maintaining, having custody of, residing with, or caring for any animal as a condition of his or her probation.

The bill provides an effective date of October 1, 2017.

**B. SECTION DIRECTORY:**

Section 1: Creating s. 943.0425, F.S., relating to animal abuser registration.

Section 2: Amending s. 828.12, F.S., relating to cruelty to animals.

Section 3: Amending s. 828.126, F.S., relating to sexual activities involving animals.

Section 4: Providing an effective date of October 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: This bill does not appear to have any impact of state government revenues.
2. Expenditures: The bill is expected to have a fiscal impact on FDLE as it requires the department to develop and maintain the registry, as well as send out annual notifications of the existence of the registry. Fiscal impact data has not yet been received for the department.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS: None.**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.
2. Other: None.

**B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.**

**C. DRAFTING ISSUES OR OTHER COMMENTS: None.**

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1                                   A bill to be entitled  
 2           An act relating to animal abusers; creating s.  
 3           943.0425, F.S.; providing definitions; requiring the  
 4           Department of Law Enforcement to post a publicly  
 5           accessible registry list on its website of persons  
 6           convicted of specified animal abuse offenses after a  
 7           specified date; requiring the clerk of the court in  
 8           each county to forward certain notice of a conviction  
 9           for an animal abuse offense to the department within a  
 10          specified time; providing requirements for the  
 11          registry list; specifying the time period for a  
 12          listing; providing for removal of listing if a record  
 13          of a conviction is expunged or sealed; requiring the  
 14          department to send an annual animal abuse registry  
 15          notice to specified entities; amending ss. 828.12 and  
 16          828.126, F.S.; authorizing courts to prevent persons  
 17          convicted of certain animal cruelty or sexual activity  
 18          with an animal violations to be prohibited from having  
 19          certain responsibilities for or association with an  
 20          animal as a condition of probation; providing an  
 21          effective date.

22  
 23   Be It Enacted by the Legislature of the State of Florida:

24  
 25          Section 1.   943.0425 Animal abuser registration.-

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

27 (a) "Abuser" or "animal abuser" means a person who has  
 28 been convicted in this state of committing an animal abuse  
 29 offense.

30 (b) "Animal" means a dog of the species *Canis familiaris*;  
 31 a cat of the species *Felis catus*; a pet normally maintained in  
 32 or near the household of its owner; a domesticated animal;  
 33 previously captured wildlife; an exotic animal; or any other  
 34 pet, including, but not limited to, a rabbit, chick, duck, or  
 35 potbellied pig. The term does not include an equine; an animal  
 36 that is being raised primarily for use as food or fiber for  
 37 human utilization or consumption, including, but not limited to,  
 38 cattle, sheep, swine, goats, and poultry; a wild vertebrate; or  
 39 a mollusk, crustacean, or fish.

40 (c) "Animal abuse offense" means a conviction of a person,  
 41 who was not a child as defined in 985.03 at the time that the  
 42 offense was committed, for:

43 1. A felony violation of s. 828.12, relating to cruelty to  
 44 animals, or s. 828.122, relating to fighting or baiting animals;  
 45 or

46 2. Any violation of s. 828.126, relating to sexual  
 47 activities involving animals.

48 (d) "Conviction" has the same meaning as provided in s.  
 49 775.21.

50 (e) "Pet dealer" means:

51 1. A pet dealer as defined in s. 828.29; or

52 2. An animal shelter, humane organization, or animal  
53 control agency operated by a humane organization that receives  
54 funds from the state or from a political subdivision of the  
55 state and that, in the ordinary course of business, engages in  
56 the sale or adoption of animals.

57 (f) "Registered breed association" means an association  
58 formed and perpetuated for the maintenance of records of  
59 purebreeding of animal species for a specific breed whose  
60 characteristics are set forth in constitutions, bylaws, or other  
61 rules of the association.

62 (2)(a) Beginning January 1, 2018, the department shall  
63 post a publicly accessible registry list on its website of each  
64 person convicted of an animal abuse offense on or after that  
65 date.

66 (b)1. The registry list must include a photograph of the  
67 convicted animal abuser taken as part of the booking process,  
68 the animal abuser's full legal name, and other identifying data  
69 the department determines is necessary to properly identify the  
70 animal abuser and to exclude innocent persons.

71 2. The registry list may not include the abuser's social  
72 security number, driver license number, or any other state or  
73 federal identification number.

74 (c) The clerk of the court in each county shall forward a  
75 copy of the judgment and date of birth of each person convicted



76 of an animal abuse offense to the department within 30 calendar  
 77 days after the date of judgment.

78 (d) Upon a person's first conviction for an animal abuse  
 79 offense, the department shall maintain the person's name and  
 80 other identifying information described in paragraph (b) on the  
 81 registry list for 2 years after the date of conviction, after  
 82 which time the department shall remove the person's name and  
 83 identifying information from the list if the person is not  
 84 convicted of another animal abuse offense during that 2-year  
 85 period.

86 (e) Upon a person's subsequent conviction for an animal  
 87 abuse offense, the department shall maintain the person's name  
 88 and other identifying information described in paragraph (b) on  
 89 the registry list for 5 years after the date of the most recent  
 90 conviction, after which time the department shall remove the  
 91 person's name and identifying information from the list if the  
 92 person is not convicted of another animal abuse offense during  
 93 that 5-year period.

94 (f) Beginning in 2019, the department shall annually send  
 95 letters to the leading registered breed associations for animals  
 96 covered by this section to inform them of the registry list and  
 97 to encourage them to urge their members to not provide animals  
 98 to persons on the registry.

99 (3) The department shall remove a person's name and  
 100 identifying information from the registry list if the record of

101 the offense for which the person is subject to inclusion in the  
 102 registry list is expunged or sealed pursuant to this chapter.

103 (4) The department shall send a notice, as specified in  
 104 subsection (5), on a yearly basis to:

105 (a) All pet dealers, animal shelters, and humane  
 106 organizations in the state; and

107 (b) All animal control agencies operated by a humane  
 108 organization that receives funds from the state or from a  
 109 political subdivision of the state that, in the ordinary course  
 110 of business, engages in the sale or adoption of animals.

111 (5) The annual notice sent to the entities specified in  
 112 subsection (4) shall notify such entities:

113 (a) That an animal abuser registry exists that is  
 114 maintained by the department; and

115 (b) Of newly added offenders to the registry.

116 Section 2. Subsection (2) of section 828.12, Florida  
 117 Statutes, is amended to read:

118 828.12 Cruelty to animals.—

119 (2) A person who intentionally commits an act to any  
 120 animal, or a person who owns or has the custody or control of  
 121 any animal and fails to act, which results in the cruel death,  
 122 or excessive or repeated infliction of unnecessary pain or  
 123 suffering, or causes the same to be done, commits aggravated  
 124 animal cruelty, a felony of the third degree, punishable as  
 125 provided in s. 775.082 or by a fine of not more than \$10,000, or

PCS for 871

ORIGINAL

2017

126 both.

127 (a) A person convicted of a violation of this subsection,  
 128 where the finder of fact determines that the violation includes  
 129 the knowing and intentional torture or torment of an animal that  
 130 injures, mutilates, or kills the animal, shall be ordered to pay  
 131 a minimum mandatory fine of \$2,500 and undergo psychological  
 132 counseling or complete an anger management treatment program.

133 (b) A person convicted of a second or subsequent violation  
 134 of this subsection shall be required to pay a minimum mandatory  
 135 fine of \$5,000 and serve a minimum mandatory period of  
 136 incarceration of 6 months. In addition, the person shall be  
 137 released only upon expiration of sentence, is not eligible for  
 138 parole, control release, or any form of early release, and must  
 139 serve 100 percent of the court-imposed sentence. Any plea of  
 140 nolo contendere shall be considered a conviction for purposes of  
 141 this subsection.

142 (c) As a condition of probation, a court may prohibit  
 143 person who violates this subsection from owning, possessing,  
 144 maintaining, having custody of, residing with, or caring for any  
 145 animal.

146 Section 3. Section 828.126, Florida Statutes, is amended  
 147 to read:

148 828.126 Sexual activities involving animals.—

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

150 (a) "Sexual conduct" means any touching or fondling by a

151 person, either directly or through clothing, of the sex organs  
 152 or anus of an animal or any transfer or transmission of semen by  
 153 the person upon any part of the animal for the purpose of sexual  
 154 gratification or arousal of the person.

155 (b) "Sexual contact" means any contact, however slight,  
 156 between the mouth, sex organ, or anus of a person and the sex  
 157 organ or anus of an animal, or any penetration, however slight,  
 158 of any part of the body of the person into the sex organ or anus  
 159 of an animal, or any penetration of the sex organ or anus of the  
 160 person into the mouth of the animal, for the purpose of sexual  
 161 gratification or sexual arousal of the person.

162 (2) A person may not:

163 (a) Knowingly engage in any sexual conduct or sexual  
 164 contact with an animal;

165 (b) Knowingly cause, aid, or abet another person to engage  
 166 in any sexual conduct or sexual contact with an animal;

167 (c) Knowingly permit any sexual conduct or sexual contact  
 168 with an animal to be conducted on any premises under his or her  
 169 charge or control; or

170 (d) Knowingly organize, promote, conduct, advertise, aid,  
 171 abet, participate in as an observer, or perform any service in  
 172 the furtherance of an act involving any sexual conduct or sexual  
 173 contact with an animal for a commercial or recreational purpose.

174 (3) A person who violates this section commits a  
 175 misdemeanor of the first degree, punishable as provided in s.

PCS for 871

ORIGINAL

2017

176 775.082 or s. 775.083.

177 (4) As a condition of probation, a court may prohibit  
 178 person who violates this section from owning, possessing,  
 179 maintaining, having custody of, residing with, or caring for any  
 180 animal.

181 (5)~~(4)~~ This section does not apply to accepted animal  
 182 husbandry practices, conformation judging practices, or accepted  
 183 veterinary medical practices.

184 Section 4. This act shall take effect October 1, 2017.

