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# **Justice Appropriations Subcommittee**

Tuesday, February 14, 2012

8:30 a.m.

404 House Office Building

## **MEETING PACKET**

**Dean Cannon**  
Speaker

**Richard Glorioso**  
Chair



# The Florida House of Representatives

## Justice Appropriations Subcommittee

**Dean Cannon**  
Speaker

**Richard Glorioso**  
Chair

### AGENDA

Tuesday, February 14, 2012  
8:30 a.m.  
404 House Office Building

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. **Consideration of the following bill(s):**
  - CS/HB 37 Knowingly and Willfully Giving False Information to a Law Enforcement Officer by Criminal Justice Subcommittee, Diaz, Plakon
  - CS/CS/HB 177 Inmate Reentry by Rulemaking & Regulation Subcommittee, Criminal Justice Subcommittee, Porth
  - CS/HB 367 Restraint of Incarcerated Pregnant Women by Criminal Justice Subcommittee, Reed
  - CS/HB 497 Juvenile Expunction by Criminal Justice Subcommittee, Porth
  - HB 963 Dispute Resolution by Harrison
  - CS/HB 1115 Teacher Protection by Civil Justice Subcommittee, Brandes, Grant
  - CS/HB 1173 Criminal Gang Prevention by Criminal Justice Subcommittee, Ingram
  - CS/HB 1187 Sentencing Child Abusers by Criminal Justice Subcommittee, Perry
  - CS/HB 1285 Criminal Conduct by Criminal Justice Subcommittee, Schwartz
  - CS/HB 1323 Metal Theft by Criminal Justice Subcommittee, Drake
  - HB 1385 Child Pornography by Trujillo
  - HB 7047 Sex Offenses by Criminal Justice Subcommittee, Harrell, Glorioso
- IV. Closing Remarks and Adjournment

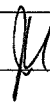
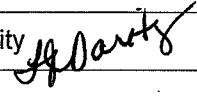


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 37 Knowingly and Willfully Giving False Information to a Law Enforcement Officer

**SPONSOR(S):** Criminal Justice Subcommittee; Diaz; Plakon and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 858

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 837.055, F.S., currently makes it a first degree misdemeanor to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.

The bill increases the penalty to a third degree felony if a person knowingly and willfully provides false information with the intent to mislead or impede a law enforcement officer in a missing person investigation involving a child 16 years of age or younger, and such child suffers great bodily harm, permanent disability, permanent disfigurement, or death.

On December 14, 2011, the Criminal Justice Impact Conference determined that the bill will have an insignificant prison bed impact on the Department of Corrections. The bill increases the criminal penalty for a violation of s. 837.055, F.S., from a first degree misdemeanor to a third degree felony. As a result, the bill may have an insignificant positive jail bed impact on local governments.

The bill is effective October 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Senate Select Committee on Protecting Florida's Children**

On August 10, 2011, in the wake of the Casey Anthony verdict, Florida Senate President Haridopolos created the Senate Select Committee on Protecting Florida's Children.<sup>1</sup> The committee was charged with examining the various policy options to further advance the protection of children and determine whether changes to current law were needed. The committee identified and examined the relevant laws on child abuse and providing false information in missing children investigations. Particular attention was given to ss. 827.03<sup>2</sup> and 837.055, F.S., and their relationship to the circumstances in the Anthony case.<sup>3</sup>

After reviewing these laws and receiving testimony from child abuse officials, law enforcement entities, prosecutors, and defense counsel, the committee recommended the creation of a third degree felony offense for persons who knowingly and willfully provide false information to law enforcement with the intent to mislead or impede a missing child investigation when the child is 16 years of age or younger and suffers great bodily harm or death.<sup>4</sup>

#### **Providing False Information to Law Enforcement during an Investigation**

Section 837.055, F.S., provides it is a first degree misdemeanor<sup>5</sup> to knowingly and willfully give false information to a law enforcement office who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.

#### *Effect of the Bill*

The bill implements the recommendation of the Senate Select Committee on Protecting Florida's Children by amending s. 837.055, F.S., to make it a third degree<sup>6</sup> felony for persons to knowingly and willfully provide false information with the intent to mislead or impede a law enforcement officer in a missing person investigation involving a child 16 years of age or younger, when such child suffers great bodily harm, permanent disability, permanent disfigurement, or death.

### B. SECTION DIRECTORY:

Section 1. Amends s. 837.055, F.S., relating to false information to law enforcement during an investigation.

Section 2. Provides an effective date of October 1, 2012.

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<sup>1</sup> Caylee Anthony was almost three years old when last seen alive on June 16th, 2008 at the Anthony residence. She was reported missing by her grandmother on July 15, 2008. Casey Anthony, the mother of Caylee, was indicted on charges of first degree murder, aggravated child abuse, aggravated manslaughter of a child, and providing false information to law enforcement and she pled not guilty. Caylee's skeletal remains were located in a wooded area near the family residence on December 11, 2008. On July 5, 2011, the jury found Casey Anthony not guilty of murder, aggravated child abuse, and aggravated manslaughter of a child, but guilty of four counts of providing false information to a law enforcement officer. Anthony received a sentence of one year in jail and a \$1,000 fine for each count.

<sup>2</sup> Section 827.03, F.S., relates to abuse, aggravated abuse, and neglect of a child; penalties.

<sup>3</sup> See Select Committee on Protecting Florida's Children. <http://www.flsenate.gov/Committees/Show/SPFC> (last visited January 24, 2012).

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

<sup>5</sup> Punishable by up to 1 year imprisonment and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>6</sup> Punishable by up to 5 year imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

## 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:

On December 14, 2011, the Criminal Justice Impact Conference determined that the bill will have an insignificant prison bed impact on the Department of Corrections.<sup>7</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 increases the criminal penalty for a violation of s. 837.055, F.S., from a first degree misdemeanor to a third degree felony. As a result, the bill may have an insignificant positive jail bed impact on local governments.

### 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>7</sup> "2012 Session Bills and Links to Backup Materials." Office of Economic & Demographic Research.  
[http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC\\_12.xls](http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC_12.xls) (last visited on January 18, 2012).  
STORAGE NAME: h0037b.JUAS.DOCX  
DATE: 2/3/2012

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

On January 25, 2012, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Creates a third-degree felony offense for persons to knowingly and willfully provide false information with the intent to mislead or impede a law enforcement officer in a missing person investigation involving a child 16 years of age or younger, when such child suffers great bodily harm, permanent disability, permanent disfigurement, or death.
- Provides an effective date of October 1, 2012.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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A bill to be entitled  
 An act relating to knowingly and willfully giving  
 false information to a law enforcement officer;  
 amending s. 837.055, F.S.; providing that it is a  
 third-degree felony for a person to knowingly and  
 willfully give false information to a law enforcement  
 officer conducting a missing person investigation  
 involving a child 16 years of age or younger with the  
 intent to mislead the officer or impede the  
 investigation if the child suffers great bodily harm,  
 permanent disability, permanent disfigurement, or  
 death; providing criminal penalties; providing an  
 effective date.

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

Section 1. Section 837.055, Florida Statutes, is amended  
 to read:

837.055 False information to law enforcement during  
 investigation.—

(1) Whoever knowingly and willfully gives false  
 information to a law enforcement officer who is conducting a  
 missing person investigation or a felony criminal investigation  
 with the intent to mislead the officer or impede the  
 investigation commits a misdemeanor of the first degree,  
 punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever knowingly and willfully gives false  
information to a law enforcement officer who is conducting a



CS/HB 37

2012

29 | missing person investigation involving a child 16 years of age  
30 | or younger with the intent to mislead the officer or impede the  
31 | investigation, and the child who is the subject of the  
32 | investigation suffers great bodily harm, permanent disability,  
33 | permanent disfigurement, or death, commits 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. This act shall take effect October 1, 2012.

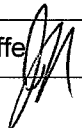
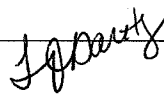


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 177 Inmate Reentry

**SPONSOR(S):** Rulemaking & Regulation Subcommittee, Criminal Justice Subcommittee, Porth and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 3 N, As CS	Krol	Cunningham
2) Rulemaking & Regulation Subcommittee	14 Y, 1 N, As CS	Rubottom	Rubottom
3) Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 
4) Judiciary Committee			

### SUMMARY ANALYSIS

This bill creates a new law requiring the Department of Corrections (DOC) to develop and administer a nonviolent offender reentry program designed to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same deterrent effect, rehabilitate the offender, and reduce recidivism.

The reentry program must include:

- Prison-based substance abuse treatment,
- General education development and adult basic education courses,
- Vocational training,
- Training in decision-making and personal development, and
- Other rehabilitation programs.

The bill requires DOC to screen offenders committed to the department for eligibility criteria to participate in the program. In order to be eligible, an offender must:

- Be a nonviolent offender, which the bill defines as an offender who has been convicted of a third-degree felony offense that is not a forcible felony and has not been convicted of any of a number of specified offenses ;
- Have served at least one-half of his or her original sentence; and
- Be identified as having a need for substance abuse treatment.

When selecting an offender for the reentry program, the bill requires DOC to consider the offender's criminal history, public safety and cost implications, and the possible rehabilitative benefits that substance abuse treatment, educational programming, vocational training, and other rehabilitative programming might have on the offender.

If a nonviolent offender meets the eligibility criteria, is selected by DOC, and if space is available in the reentry program, DOC then requests the sentencing court to approve the offender's participation in the reentry program. The state attorney is notified of the request and may file written objections or provide supplemental information to assist the court. The court must explain in writing the factors it considered in approving the inmate's participation.

If approved for participation in the program, the bill requires that the inmate serve at least six months in the reentry program. If the performance is satisfactory, the bill authorizes the court to issue an order modifying the sentence imposed and place the inmate on drug offender probation. If the offender violates the conditions of drug offender probation, the bill authorizes the court to revoke probation and impose any sentence that it might have originally imposed. A modified sentence may not be less than the minimum required by law at the time of the commission of the offense for which the offender was convicted.

The Criminal Justice Impact Conference met on February 9, 2012, and found the bill to have an indeterminate fiscal impact because the impact of this bill is dependent upon judicial discretion and the varied costs of different levels of incarceration and substance abuse treatment. See "Fiscal Comments." The bill provides an effective date of October 1, 2012.

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

STORAGE NAME: h0177d.JUAS.DOCX

DATE: 2/7/2012

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **The Department of Corrections Reentry Programming**

Currently, the Department of Corrections (DOC), subject to available funding, provides the following reentry programming to inmates:

- Substance abuse treatment;
- Educational and academic programs;
- Career and technical education; and
- Faith and character-based programs.<sup>1</sup>

Also, DOC is statutorily mandated<sup>2</sup> to provide inmates who are within 12 months of their release with the 100-Hour Transition Training Program. This program offers inmates training in the following:

- Job readiness and life management skills, including goal setting;
- Problem solving and decision making;
- Communication;
- Values clarification;
- Living a healthy lifestyle;
- Family issues;
- Seeking and keeping a job;
- Continuing education;
- Community reentry; and
- Legal responsibilities.<sup>3</sup>

#### **Drug Offender Probation**

DOC is required to develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which provides for supervision of offenders in accordance with a specific treatment plan.<sup>4</sup> To be eligible, a defendant must:

- Be a chronic substance abuser;
- Have committed a violation of s. 893.13(2)(a)<sup>5</sup> or (6)(a),<sup>6</sup> F.S., or other nonviolent felony;<sup>7,8</sup> and
- Have a Criminal Punishment Code score sheet total of 60 sentence points or fewer.<sup>9</sup>

The program may include the use of graduated sanctions consistent with the conditions imposed by the court, such as random drug testing.<sup>10</sup> Probationers in this program are subject to probation revocation if

<sup>1</sup> "Recidivism Reduction Strategic Plan." Fiscal Year 2009-2014. Department of Corrections.

<http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (last visited on October 10, 2011).

<sup>2</sup> Section 944.7065, F.S.

<sup>3</sup> *Supra* "Recidivism Reduction Strategic Plan."

<sup>4</sup> Section 948.20(2), F.S.

<sup>5</sup> Section 893.13(2)(a), F.S., states that it is unlawful for any person to purchase, possess with intent to purchase, a controlled substance and provides varying penalties based on the type and quantity of such controlled substance.

<sup>6</sup> Section 893.13(6)(a), F.S., states that it is unlawful for any person to be in actual or constructive possession of a controlled substance if such controlled substance was unlawfully obtained from a practitioner or pursuant to an invalid prescription or order of a practitioner. Any person who violates this provision commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

<sup>7</sup> As used in this section, the term "nonviolent felony" means a third degree felony violation under ch. 810, F.S., or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

<sup>8</sup> If such nonviolent felony is committed on or after July 1, 2009.

<sup>9</sup> Section 948.20(1), F.S.

they violate any conditions of their probation.<sup>11</sup> This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.<sup>12</sup> In Fiscal Year 2010-11, 10,099 offenders were on drug offender probation.<sup>13</sup>

### **Effect of the Bill**

The bill requires DOC to develop and administer a nonviolent offender reentry program in a secure area within an adult institution or adjacent to an adult institution. This program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same deterrent effect, rehabilitate the offender, and reduce recidivism.

The reentry program must include:

- Prison-based substance abuse treatment,
- General education development and adult basic education courses,
- Vocational training,
- Training in decision-making and personal development, and
- Other rehabilitation programs.

### **Eligibility**

The bill requires DOC to screen offenders committed to the department for eligibility criteria to participate in the program. In order to be eligible, an offender must:

- Be a nonviolent offender, which the bill defines as an offender who has been convicted of a third-degree felony offense that is not a forcible felony<sup>14</sup> and is not the subject of an active domestic violence injunction and has never been convicted of:
  - any forcible felony;
  - any offense that requires a person to register as a sexual offender;<sup>15</sup>
  - any violation listed in s. 775.082(9)(a)1.r., F.S.;<sup>16</sup>
  - any obscenity offense involving a minor or depiction of a minor;<sup>17</sup>
  - any child abuse or neglect offense in ch. 827, F.S.;
  - any capital, first or second degree felony;
- Have served at least one-half of his or her original sentence; and
- Be identified as having a need for substance abuse treatment.

### **DOC Screening and Selection of Participants**

When selecting an offender for the reentry program, the bill requires DOC to consider:

- The offender's history of disciplinary reports;
- The offender's criminal history, with particular scrutiny of any charges for offenses for which a conviction would exclude the offender from eligibility;
- The severity of the offender's addiction;
- The offender's history of criminal behavior related to substance abuse;

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<sup>10</sup> Section 948.20(2), F.S.

<sup>11</sup> Section 948.06(2)(a), F.S.

<sup>12</sup> Section 948.06(2)(e), F.S.

<sup>13</sup> Department of Corrections, Community Supervision Admissions, 2010-2011 Agency Statistics, [http://www.dc.state.fl.us/pub/annual/1011/stats/csa\\_prior.html](http://www.dc.state.fl.us/pub/annual/1011/stats/csa_prior.html) (last visited on October 10, 2011).

<sup>14</sup> As defined in s. 776.08, F.S.

<sup>15</sup> Pursuant to s. 943.0435, F.S.

<sup>16</sup> These include any violation of s. 790.07, F.S., (criminal offenses involving possession of weapons), s. 800.04, F.S., (lewd and lascivious offenses against children under 16), s. 827.03, F.S., (child abuse and neglect), s. 827.071, F.S., (sexual performance by a child), or s. 847.0135(5), F.S., (exposing minors to lewd and lascivious conduct online)..

<sup>17</sup> Specifically, offenses in chapter 847, F.S.

- Whether the offender has participated or requested to participate in any General Educational Development or other educational, technical, work, vocational, or self-rehabilitation program;
- The results of any risk assessment of the offender;
- The outcome of all past participation of the offender in substance abuse treatment programs;
- The possible rehabilitative benefits that substance abuse treatment, educational programming, vocational training, and other rehabilitative programming might have on the offender; and
- The likelihood that participation in the program will produce the same deterrent effect, protect the public, save taxpayer dollars and prevent or delay recidivism to an equal or greater extent than completion of the sentence previously imposed.

The bill does not give specific guidance to the DOC as to how to weigh these considerations or how much discretion the DOC may exercise to not select an eligible offender. But the DOC does exercise a degree of discretion regularly in making classifications and assignments of inmates and in authorizing their participation in various voluntary programs. Furthermore, the DOC must summarize its evaluation of the selection considerations in its written request for approval of the sentencing court.

If a nonviolent offender meets the eligibility criteria, is selected by DOC, and if space is available in the reentry program, DOC is authorized to request the sentencing court to approve the offender's participation in the reentry program.

DOC must also notify the state attorney that the offender is being considered for placement in the reentry program. The state attorney has 15 days to file any objection with the sentencing court and may provide supplemental information that may assist the court.

The state attorney, however, has no right to a hearing on any objection that may be filed.

#### Sentencing Court Approval of Placement

The bill requires the sentencing court to notify DOC in writing of the court's decision to approve or disapprove the requested placement of the nonviolent offender into the reentry program within 30 days after the court receives DOC's request to place the offender in the reentry program. The bill provides that the court's failure to notify DOC of the decision within the 30-day period constitutes disapproval of the offender's placement in the reentry program. When approving or disapproving the placement, the bill requires the court to consider any relevant facts, including the factors considered by the DOC in selecting the inmate for the program as well as:

- the original sentencing report and any evidence admitted in a previous sentencing proceeding;
- the offender's record of arrests without conviction for crimes;
- any other evidence of allegations of unlawful conduct or the use of violence by the offender;
- the offender's family ties, length of residence in the community, employment history, and mental condition;
- the likelihood that participation in the program will produce the same deterrent effect, rehabilitate the offender, and prevent or delay recidivism to an equal or greater extent than completion of the sentence previously imposed; and
- the likelihood that the offender will engage again in a criminal course of conduct.

The bill also requires the sentencing court to make a record of the factors relied on in making its decisions.

#### Treatment/Reentry Program Elements

If approved for participation in the program, the bill requires that the nonviolent offender serve at least six months in the reentry program. Any portion of his or her sentence served before placement in the reentry program does not count as progress toward program completion.

The bill requires a nonviolent offender who has been admitted to the reentry program to:

- Undergo a full substance abuse assessment to determine his or her substance abuse treatment needs.
- Have an educational assessment, using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education.
- Enroll in an adult education program to improve academic skills to earn a high school diploma if one has not already been obtained.

The bill requires that assessments of the offender's vocational skills and future career education be provided to the offender as needed and that a periodic reevaluation be made in order to assess the progress of each offender.

#### Unmanageable Participants, Suspension and Termination

If a nonviolent offender in the program becomes unmanageable, the bill authorizes DOC to revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with DOC rule. The offender must be readmitted to the reentry program after completing the ordered discipline.<sup>18</sup> The bill does not make clear whether the offender must restart the reentry program after discipline, or only complete the remainder of the program from the point at which their participation was suspended. DOC can terminate the offender from the reentry program only if:

- The offender commits or threatens to commit a violent act;
- DOC determines that the offender is unable to participate in the reentry program due to the offender's medical condition;
- The offender's sentence is modified or expires;
- DOC reassigns the offender's classification status; or
- DOC determines that removing the offender from the reentry program is in the best interest of the offender or the security of the institution.

#### Sentence Modification upon Satisfactory Completion of Program

The bill requires DOC to submit a report to the sentencing court at least 30 days before the offender is scheduled to complete the reentry program. The report must describe the offender's performance in the reentry program. If the performance is satisfactory, the bill requires the court to hold a hearing and consider modification of the sentence imposed. The court is specifically authorized to place the offender on drug offender probation<sup>19</sup> subject to the offender's successful completion of the remainder of the reentry program.<sup>20</sup> The bill therefore allows the offender be released from custody and placed on drug offender probation, upon a finding that the offender satisfactorily completed the six month program. If the nonviolent offender violates the conditions of drug offender probation, the bill authorizes the court to revoke probation and impose any sentence that it might have originally imposed.<sup>21</sup>

#### Additional Provisions

The bill also requires DOC to:

- Implement the reentry program to the fullest extent feasible within available resources.
- Submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the extent of implementation of the reentry program and

<sup>18</sup> The bill specifies that any period of time during which the offender is unable to participate in the reentry program shall be excluded from the specified time requirements in the reentry program.

<sup>19</sup> The bill provides that if an offender being released intends to reside in a county that has established a postadjudicatory drug court program as described in s. 397.334, F.S., the sentencing court may require the offender to successfully complete the postadjudicatory drug court program as a condition of drug offender probation.

<sup>20</sup> The bill provides that the term of drug offender probation may include placement in a community residential or nonresidential substance abuse treatment facility under the jurisdiction of the department or the Department of Children and Family Services or any public or private entity providing such services. The bill does not provide for the source of payment for such services.

<sup>21</sup> See discussion at p. 7 under "Constitutional Issues".

outlining future goals and any recommendation DOC has for future legislative action. The reporting provision does not require any particular accounting of participation or success.

- Develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and report the recidivism rate in its annual report of the program.
- Adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the reentry program.

The bill permits DOC to:

- Enter into performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the services for the reentry program.
- Establish a system of incentives within the reentry program which DOC may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.
- Establish rules of conduct to which nonviolent offenders in the reentry program would be subject, including sanctions which DOC may impose for noncompliance.

The bill provides that no nonviolent offender has the right to placement in the reentry program or placement or early release under supervision of any type. The bill denies a nonviolent offender a cause of action against the department, a court, or the state attorney related to the reentry program. The bill further provides that the provision denying a cause of action is non-severable from the rest of the section and if the provision is found to be unenforceable the entire law will stand repealed.

#### B. SECTION DIRECTORY:

Section 1. Creates the nonviolent reentry program.

Section 2. Provides an effective date of October 1, 2012.

## 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:

See "Fiscal Comments."

#### 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:

The Criminal Justice Impact Conference met on February 9, 2012, and found the bill to have an indeterminate fiscal impact. The bill creates a new section of statute requiring the Department of Corrections to develop and administer a nonviolent offender reentry program. This program is intended



to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism. According to DOC, 337 inmates would be eligible for this program in the 2012-2013 fiscal year.

The bill provides that an inmate must serve at least half of his or her original sentence before being eligible for the reentry program. The DOC currently provides reentry programs and the bill specifies that DOC must place eligible inmates into the reentry program if "space is available," and subsection (9) of the bill provides DOC will implement the reentry program within available resources, therefore the reentry program requirement of the bill will not have a fiscal impact on the department.

The bill further provides that an inmate who satisfactorily completes the reentry program will then be placed on drug offender probation, and provides that the term of drug offender probation may include residential or nonresidential substance abuse treatment. The fiscal impact of this bill is dependent upon the cost of incarcerating inmates if they were not in the program provided in this bill, compared to the cost of probation and substance abuse treatment provided in this bill. Fiscal Year 2010-2011 average adult male per diem is \$42.46, and the average per diem for all types of facilities and inmates is \$53.46. The average per diem for a non-secure residential substance abuse bed is \$48.32, and \$52.41 for a secure residential bed, and outpatient group therapy is approximately \$20.66 per week. If offenders are assigned by the court to just drug offender probation or probation and group therapy, this bill will likely have a positive fiscal impact on DOC. However, if the offender is assigned by the court to a residential substance abuse program and that offender would have been housed in an adult male facility, the fiscal impact on the department could be negative.

The fiscal impact of this bill is dependent upon judicial discretion and the varied costs of different levels of incarceration and substance abuse treatment and is therefore indeterminate.

### 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:

The bill does not violate the Savings Clause, Art. X, s. 9, Fl. Const., because it does not authorize the imposition of a lower sentence than the minimum sentence required by law at the time of the commission of the offense.

It might create a double jeopardy problem if a new sentence authorized upon revocation of probation under the bill, were to be more severe than the original sentence prior to a modification under the bill.

The provision that no rights or cause of action may arise from the bill might be questioned under some views of Florida's "access to courts" doctrine.

#### B. RULE-MAKING AUTHORITY:

The bill authorizes DOC to adopt rules pursuant to ch. 120, F.S., to govern operation of the nonviolent offender reentry program. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>22</sup> Rulemaking authority is delegated by the Legislature<sup>23</sup>

<sup>22</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So.2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>23</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1<sup>st</sup> DCA 2000).

through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"<sup>24</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>25</sup> To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.<sup>26</sup> The grant of rulemaking authority itself need not be detailed.<sup>27</sup> The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>28</sup>

The bill makes nonviolent offenders in the reentry program subject to rules of conduct established by DOC. Existing rules govern inmate conduct and sanctions for violations.<sup>29</sup> The bill does not state whether these existing rules are sufficient to govern the conduct of nonviolent inmates in the program or whether DOC is to create additional rules governing the conduct of this subset of inmates. If new rulemaking is contemplated, the current language in the bill could provide more specific guidance for DOC to define personal conduct which complies with the statute.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 944.275, F.S., provides that all prisoners must serve a minimum of 85 percent of the sentence imposed. This bill provides a new mechanism for a judge to resentence someone to less than the original sentence.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 18, 2011, the Criminal Justice Subcommittee approved one amendment and reported the bill favorably as a committee substitute. The amendment clarified that in addition to meeting the eligibility criteria, an inmate must be selected by the Department of Corrections before being allowed to participate in the reentry program.

On January 24, the Rulemaking & Regulation Subcommittee adopted a strike-all amendment that added significantly to the eligibility criteria, the DOC selection considerations, requires written court approval for participation, leaves participation to the informed judgment of the DOC and the court, and leaves the sentence modification to the judgment of the court. The amendment also provided for the State Attorney to provide additional information to assist the court and it made the "no cause of action" provision non-severable.

The analysis is drafted to the committee substitute as passed by the Rulemaking & Regulation Subcommittee.

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<sup>24</sup> Section 120.52(17), F.S.

<sup>25</sup> Section 120.54(1)(a), F.S.

<sup>26</sup> Sections 120.52(8) and 120.536(1), F.S.

<sup>27</sup> *Supra Save the Manatee Club, Inc.*, at 599.

<sup>28</sup> *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So.2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

<sup>29</sup> Rule 33-601.314, F.A.C.

1                   A bill to be entitled  
2           An act relating to inmate reentry; defining the terms  
3           "department" and "nonviolent offender"; directing the  
4           Department of Corrections to develop and administer a  
5           reentry program for nonviolent offenders which is  
6           intended to divert nonviolent offenders from long  
7           periods of incarceration; requiring that the program  
8           include intensive substance abuse treatment and  
9           rehabilitative programming; providing for the minimum  
10          length of service in the program; providing that any  
11          portion of a sentence before placement in the program  
12          does not count as progress toward program completion;  
13          specifying eligibility criteria for a nonviolent  
14          offender to be placed into the reentry program;  
15          directing the court to screen and select eligible  
16          offenders for the program based on specified  
17          considerations; directing the department to notify the  
18          nonviolent offender's sentencing court to obtain  
19          approval before the nonviolent offender is placed into  
20          the reentry program; requiring the department to  
21          notify the state attorney; authorizing the state  
22          attorney to file objections to placing the offender  
23          into the reentry program within a specified period;  
24          requiring the sentencing court to notify the  
25          department of the court's decision to approve or  
26          disapprove the requested placement within a specified

27 | period; providing that failure of the court to timely  
 28 | notify the department of the court's decision  
 29 | constitutes disapproval of the requested placement;  
 30 | requiring the nonviolent offender to undergo an  
 31 | education assessment and a full substance abuse  
 32 | assessment if admitted into the reentry program;  
 33 | requiring the offender to be enrolled in an adult  
 34 | education program in specified circumstances;  
 35 | requiring that assessments of vocational skills and  
 36 | future career education be provided to the offender;  
 37 | requiring that certain reevaluation be made  
 38 | periodically; providing that the nonviolent offender  
 39 | is subject to the disciplinary rules of the  
 40 | department; specifying the reasons for which the  
 41 | offender may be terminated from the reentry program;  
 42 | requiring that the department submit a report to the  
 43 | sentencing court at least 30 days before the  
 44 | nonviolent offender is scheduled to complete the  
 45 | reentry program; setting forth the issues to be  
 46 | addressed in the report; requiring the sentencing  
 47 | court to hold a hearing to consider modifying the  
 48 | sentence imposed and authorizing the court to place  
 49 | the nonviolent offender on drug offender probation if  
 50 | the nonviolent offender's performance is satisfactory;  
 51 | authorizing the court to revoke probation and impose  
 52 | the original sentence in specified circumstances;

53 | authorizing the court to require the offender to  
 54 | complete a postadjudicatory drug court program in  
 55 | specified circumstances; directing the department to  
 56 | implement the reentry program using available  
 57 | resources; requiring the department to submit an  
 58 | annual report to the Governor and Legislature  
 59 | detailing the extent of implementation of the reentry  
 60 | program, specifying information to be provided and  
 61 | outlining future goals and recommendations;  
 62 | authorizing the department to enter into contracts  
 63 | with qualified individuals, agencies, or corporations  
 64 | for services for the reentry program; authorizing the  
 65 | department to impose administrative or protective  
 66 | confinement as necessary; authorizing the department  
 67 | to establish a system of incentives within the reentry  
 68 | program which the department may use to promote  
 69 | participation in rehabilitative programs and the  
 70 | orderly operation of institutions and facilities;  
 71 | providing that the section does not create a right to  
 72 | placement in the reentry program or any right to  
 73 | placement or early release under supervision of any  
 74 | type; providing that the section does not create a  
 75 | cause of action related to the program; providing that  
 76 | specified provisions are not severable; directing the  
 77 | department to develop a system for tracking  
 78 | recidivism, including, but not limited to, rearrests

79 and recommitment of nonviolent offenders who  
 80 successfully complete the reentry program, and to  
 81 report on recidivism in its annual report of the  
 82 program; directing the department to adopt rules;  
 83 providing an effective date.

84

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

86

87 Section 1. Nonviolent offender reentry program.-

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

89 (a) "Department" means the Department of Corrections.

90 (b) "Nonviolent offender" means an offender:

91 1. Whose primary offense is a felony of the third degree;

92 2. Who has never been convicted of a forcible felony as

93 defined in s. 776.08, Florida Statutes;

94 3. Who has never been convicted of an offense listed in s.

95 775.082(9)(a)1.r., Florida Statutes, without regard to prior

96 incarceration or release;

97 4. Who has never been convicted of an offense described in

98 chapter 847, Florida Statutes, involving a minor or a depiction

99 of a minor;

100 5. Who has never been convicted of an offense described in

101 chapter 827, Florida Statutes;

102 6. Who has never been convicted of any offense described

103 in s. 784.07, s. 784.074, s. 784.075, s. 784.076, s. 784.08, s.

104 784.083, or s. 784.085, Florida Statutes;

105 7. Who has never been convicted of any offense involving  
 106 the possession or use of a firearm;

107 8. Who has never been convicted of a capital felony or a  
 108 felony of the first or second degree;

109 9. Who has never been convicted of any offense that  
 110 requires a person to register as a sexual offender pursuant to  
 111 s. 943.0435, Florida Statutes; and

112 10. Who is not the subject of a domestic violence  
 113 injunction currently in force.

114 (2) (a) The department shall develop and administer a  
 115 reentry program for nonviolent offenders. The reentry program  
 116 must include prison-based substance abuse treatment, general  
 117 education development and adult basic education courses,  
 118 vocational training, training in decisionmaking and personal  
 119 development, and other rehabilitation programs.

120 (b) The reentry program is intended to divert nonviolent  
 121 offenders from long periods of incarceration when a reduced  
 122 period of incarceration supplemented by participation in  
 123 intensive substance abuse treatment and rehabilitative  
 124 programming could produce the same deterrent effect, protect the  
 125 public, rehabilitate the offender, and reduce recidivism.

126 (c) The nonviolent offender shall serve at least 6 months  
 127 in the reentry program. The offender may not count any portion  
 128 of his or her sentence served before placement in the reentry  
 129 program as progress toward program completion.

130 (d) A reentry program may be operated in a secure area in

131 | or adjacent to an adult institution.

132 |       (3) The department shall screen offenders committed to the  
 133 | department for eligibility criteria to participate in the  
 134 | reentry program. In order to be eligible, an offender must be a  
 135 | nonviolent offender, must have served at least one-half of his  
 136 | or her original sentence, and must have been identified as  
 137 | having a need for substance abuse treatment.

138 |       (4) The department shall select eligible offenders for the  
 139 | reentry program. When selecting participants for the reentry  
 140 | program, the department shall be guided in its selection by its  
 141 | evaluation of the following considerations:

142 |           (a) The offender's history of disciplinary reports.

143 |           (b) The offender's criminal history, with particular  
 144 | scrutiny of any charges for offenses listed in paragraph (1)(b).

145 |           (c) The severity of the offender's addiction.

146 |           (d) The offender's history of criminal behavior related to  
 147 | substance abuse.

148 |           (e) Whether the offender has participated or requested to  
 149 | participate in any General Educational Development or other  
 150 | educational, technical, work, vocational, or self-rehabilitation  
 151 | program.

152 |           (f) The results of any risk assessment of the offender.

153 |           (g) The outcome of all past participation of the offender  
 154 | in substance abuse treatment programs.

155 |           (h) The possible rehabilitative benefits that substance  
 156 | abuse treatment, educational programming, vocational training,



157 and other rehabilitative programming might have on the offender.

158 (i) The likelihood that participation in the program will  
 159 produce the same deterrent effect, protect the public, save  
 160 taxpayer dollars, and prevent or delay recidivism to an equal or  
 161 greater extent than completion of the sentence previously  
 162 imposed.

163 (5) (a) If an offender volunteers to participate in the  
 164 reentry program, meets the eligibility criteria, is selected by  
 165 the department based on the considerations in subsection (4),  
 166 and space is available in the reentry program, the department  
 167 may request the sentencing court to approve the offender's  
 168 participation in the reentry program. The request shall be made  
 169 in writing and shall include a brief summation of the  
 170 department's evaluation under subsection (4) and a recital of  
 171 the documents or other information upon which the evaluation is  
 172 based. All documents may be delivered to the sentencing court  
 173 electronically.

174 (b)1. The department shall notify the state attorney that  
 175 the offender is being considered for placement in the reentry  
 176 program. The notice must include a copy of all documents  
 177 provided with the request to the court. The notice and all  
 178 documents may be delivered to the state attorney electronically  
 179 and may take the form of a copy of an electronic delivery to the  
 180 sentencing court.

181 2. The notice must also state that the state attorney may  
 182 notify the sentencing court in writing of any objection the

183 state attorney might have if the nonviolent offender is placed  
184 in the reentry program. The state attorney must notify the  
185 sentencing court of his or her objections within 15 days after  
186 receiving the notice. Whether or not an objection is raised, the  
187 state attorney may provide to the sentencing court any  
188 information supplemental or contrary to the information provided  
189 by the department that may assist the court in its  
190 determination.

191 (c) When approving a nonviolent offender for participation  
192 in the reentry program, the sentencing court may consider any  
193 facts the court considers relevant, including, but not limited  
194 to, the criteria listed in subsection (4); the original  
195 sentencing report and any evidence admitted in a previous  
196 sentencing proceeding; the offender's record of arrests without  
197 conviction for crimes; any other evidence of allegations of  
198 unlawful conduct or the use of violence by the offender; the  
199 offender's family ties, length of residence in the community,  
200 employment history, and mental condition; the likelihood that  
201 participation in the program will produce the same deterrent  
202 effect, rehabilitate the offender, and prevent or delay  
203 recidivism to an equal or greater extent than completion of the  
204 sentence previously imposed; and the likelihood that the  
205 offender will engage again in a criminal course of conduct.

206 (d) The sentencing court shall notify the department in  
207 writing of the court's decision to approve or disapprove the  
208 requested placement of the nonviolent offender no later than 30

209 days after the court receives the department's request to place  
 210 the offender in the reentry program. If the court approves, the  
 211 notification shall list the factors upon which the court relied  
 212 in approving the placement. Failure to notify the department of  
 213 the court's decision within the 30-day period constitutes  
 214 disapproval to place the offender into the reentry program.

215 (6) After the nonviolent offender is admitted into the  
 216 reentry program, he or she shall undergo a full substance abuse  
 217 assessment to determine his or her substance abuse treatment  
 218 needs. The offender shall also have an educational assessment,  
 219 which shall be accomplished using the Test of Adult Basic  
 220 Education or any other testing instrument approved by the  
 221 Department of Education. Each offender who has not obtained a  
 222 high school diploma shall be enrolled in an adult education  
 223 program designed to aid the offender in improving his or her  
 224 academic skills and earn a high school diploma. Further  
 225 assessments of the offender's vocational skills and future  
 226 career education shall be provided to the offender as needed. A  
 227 periodic reevaluation shall be made in order to assess the  
 228 progress of each offender.

229 (7) (a) If a nonviolent offender in the reentry program  
 230 becomes unmanageable, the department may revoke the offender's  
 231 gain-time and place the offender in disciplinary confinement in  
 232 accordance with department rule. Except as provided in paragraph  
 233 (b), the offender shall be readmitted to the reentry program  
 234 after completing the ordered discipline. Any period of time

235 during which the offender is unable to participate in the  
 236 reentry program shall be excluded from the specified time  
 237 requirements in the reentry program.

238 (b) The department may terminate an offender from the  
 239 reentry program if:

240 1. The offender commits or threatens to commit a violent  
 241 act;

242 2. The department determines that the offender is unable  
 243 to participate in the reentry program due to the offender's  
 244 medical condition;

245 3. The offender's sentence is modified or expires;

246 4. The department reassigns the offender's classification  
 247 status; or

248 5. The department determines that removing the offender  
 249 from the reentry program is in the best interest of the offender  
 250 or the security of the institution.

251 (8) (a) The department shall submit a report to the  
 252 sentencing court at least 30 days before the nonviolent offender  
 253 is scheduled to complete the reentry program. The report must  
 254 describe the offender's performance in the reentry program and  
 255 certify whether the performance is satisfactory. If the  
 256 performance is satisfactory to the department, the court shall  
 257 hold a hearing to determine:

258 1. Whether the offender's performance in the reentry  
 259 program is satisfactory to the court.

260 2. Whether the public safety will be compromised by a

261 modification of sentence.

262 3. Any appropriate modification of sentence which shall  
 263 not be less than the minimum punishment required by law at the  
 264 time of the commission of the offense or offenses for which the  
 265 offender was sentenced.

266 (b) After consideration of all information available to  
 267 the court, the court may issue an order modifying the sentence  
 268 imposed and may place the offender on drug offender probation,  
 269 as defined in s. 948.001, Florida Statutes, subject to the  
 270 department's certification of the offender's successful  
 271 completion of the remainder of the reentry program. The term of  
 272 drug offender probation may include placement in a community  
 273 residential or nonresidential substance abuse treatment facility  
 274 under the jurisdiction of the department or the Department of  
 275 Children and Family Services or any public or private entity  
 276 providing such services. The order shall include findings  
 277 showing that the requirements for resentencing under this  
 278 section are satisfied and that the public safety will not be  
 279 compromised. If the nonviolent offender violates the conditions  
 280 of drug offender probation, the court may revoke probation and  
 281 impose any sentence that it might have originally imposed.

282 (c) If an offender being released pursuant to paragraph  
 283 (b) intends to reside in a county that has established a  
 284 postadjudicatory drug court program as described in s. 397.334,  
 285 Florida Statutes, the sentencing court may require the offender  
 286 to successfully complete the postadjudicatory drug court program

287 | as a condition of drug offender probation after considering the  
 288 | county program's record of helping offenders avoid recidivism.  
 289 | The original sentencing court shall relinquish jurisdiction of  
 290 | the offender's case to the postadjudicatory drug court program  
 291 | until the offender is no longer active in the program, the case  
 292 | is returned to the sentencing court due to the offender's  
 293 | termination from the program for failure to comply with the  
 294 | terms thereof, or the offender's sentence is completed. If  
 295 | transferred to a postadjudicatory drug court program, the  
 296 | offender shall comply with all conditions and orders of the  
 297 | program.

298 |       (9) The department shall implement the reentry program to  
 299 | the fullest extent feasible within available resources.

300 |       (10) The department shall submit an annual report to the  
 301 | Governor, the President of the Senate, and the Speaker of the  
 302 | House of Representatives detailing the extent of implementation  
 303 | of the reentry program, the number of participants selected,  
 304 | approved, and who have successfully completed the program, a  
 305 | reasonable estimate or description of the additional public  
 306 | costs incurred and any public funds saved with respect to each  
 307 | participant, a brief description of each sentence modification,  
 308 | and a brief description of the subsequent criminal history, if  
 309 | any, of each participant following any modification of sentence  
 310 | under this section. The report shall also outline future goals  
 311 | and any recommendation the department has for future legislative  
 312 | action.

313       (11) The department may enter into performance-based  
 314 contracts with qualified individuals, agencies, or corporations  
 315 for the provision of any or all of the services for the reentry  
 316 program provided that no offender may be released from the  
 317 custody of the department under this section except pursuant to  
 318 a judicial order modifying a sentence.

319       (12) A nonviolent offender in the reentry program is  
 320 subject to rules of conduct established by the department and  
 321 may have sanctions imposed, including loss of privileges,  
 322 restrictions, disciplinary confinement, alteration of release  
 323 plans, or other program modifications in keeping with the nature  
 324 and gravity of the program violation. Administrative or  
 325 protective confinement, as necessary, may be imposed.

326       (13) This section does not create or confer any right to  
 327 any inmate to placement in the reentry program or any right to  
 328 placement or early release under supervision of any type. No  
 329 inmate may have a cause of action under this section against the  
 330 department, a court, or the state attorney related to the  
 331 reentry program. Nothing in this subsection is severable from  
 332 the remaining provisions of this section. If this subsection is  
 333 determined by any state or federal court to be not fully  
 334 enforceable, this section shall stand repealed in its entirety.

335       (14) The department may establish a system of incentives  
 336 within the reentry program which the department may use to  
 337 promote participation in rehabilitative programs and the orderly  
 338 operation of institutions and facilities.

339        (15) The department shall develop a system for tracking  
 340        recidivism, including, but not limited to, rearrests and  
 341        recommitment of nonviolent offenders who successfully complete  
 342        the reentry program, and shall report the recidivism rate in its  
 343        annual report of the program.

344        (16) The department shall adopt rules pursuant to ss.  
 345        120.536(1) and 120.54, Florida Statutes, as are necessary to  
 346        administer the reentry program.

347        Section 2. This act shall take effect October 1, 2012.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 367 Restraint of Incarcerated Pregnant Women

**SPONSOR(S):** Criminal Justice Subcommittee; Reed and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Krol	Cunningham
2) Rulemaking & Regulation Subcommittee	15 Y, 0 N	Rubottom	Rubottom
3) Justice Appropriations Subcommittee		Toms <i>ST</i>	Jones Darity <i>Hardy</i>
4) Judiciary Committee			

### SUMMARY ANALYSIS

The bill prohibits the use of restraints on a prisoner who is known to be pregnant during labor, delivery, and postpartum recovery unless the corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance.

The bill specifies that even if there are extraordinary circumstances:

- (1) The corrections officer, correctional institution employee, or other officer accompanying the pregnant prisoner must remove all restraints if removal is requested by the treating doctor, nurse, or other health care professional; and
- (2) The use of leg, ankle, and waist restraints is completely prohibited during labor and delivery.

The bill requires a corrections official to make written findings within 10 days after the use of restraints as to extraordinary circumstances that dictated the use of restraints. The correctional institution must maintain this documentation on file and make it available for public inspection for at least 5 years.

The bill also establishes additional requirements regarding restraint of pregnant prisoners during the last trimester of pregnancy. These additional requirements can also apply at any time during pregnancy if requested by the treating doctor, nurse, or other health care professional.

The bill allows a prisoner who is restrained in violation of this section to file a grievance with the correctional institution within one year after the incident.

The bill authorizes the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ) to adopt rules to administer the new law.

There is an unknown fiscal associated with an unquantified workload increase. See "FISCAL SECTION".

The bill is effective July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

On October 10, 2010, the National Commission on Correctional Health Care Board of Directors adopted the following Position Statement on Restraint of Pregnant Inmates:

Restraint is potentially harmful to the expectant mother and fetus, especially in the third trimester as well as during labor and delivery. Restraint of pregnant inmates during labor and delivery should not be used. The application of restraints during all other pre-and postpartum periods should be restricted as much as possible and, when used, done so with consultation from medical staff. For the most successful outcome of a pregnancy, cooperation among custody staff, medical staff, and the patient is required.<sup>1</sup>

#### **Federal Policies**

In October 2008, the Federal Bureau of Prisons revised its policy regarding the shackling of pregnant women in their custody.<sup>2</sup> The policy states:

Restraints should not be used when compelling medical reasons dictate, including when a pregnant prisoner is in labor, is delivering her baby, or is in immediate post-delivery recuperation... If a pregnant prisoner is restrained, the restraints used must be the least restrictive necessary to ensure safety and security. Any restraints used must not physically constrict the direct area of the pregnancy.<sup>3</sup>

In addition to this policy, Section 232 of the Second Chance Act requires the Attorney General to report to Congress on the use of physical restraints on pregnant prisoners by agencies within the Department of Justice (DOJ).<sup>4</sup> As an agency within DOJ, the Bureau of Prisons is required to report data regarding the use of restraints to the Attorney General.

Immigration and Customs Enforcement (ICE) allows restraints to be used on pregnant detainees. Specifically, ICE standards require medical staff to determine precautions required to protect the fetus, including:

- Safest method of restraint,
- Presence of a medical professional, and
- Medical necessity of restraining the detainee.<sup>5</sup>

The Second Chance Act also requires ICE to report on its use of restraints to the Department of Justice.<sup>6</sup>

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<sup>1</sup> Position Paper on Restraint of Pregnant Inmates, adopted by the National Commission on Correctional Health Care Board of Directors (October 10, 2010), [http://www.ncchc.org/resources/statements/restraint\\_pregnant\\_inmates.html](http://www.ncchc.org/resources/statements/restraint_pregnant_inmates.html) (last visited January 11, 2012).

<sup>2</sup> "Escorted Trips, Program Statement." Fed. Bureau of Prisons, No. 5538.05, 2008. [http://www.bop.gov/policy/progstat/5538\\_005.pdf](http://www.bop.gov/policy/progstat/5538_005.pdf) (last visited January 11, 2012).

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

<sup>4</sup> The Second Chance Act, Pub. L. No. 110-199, 122 Stat. 657. 2008. (requiring agencies to report on the use of restraints during "pregnancy, labor, delivery of a child, or post-delivery recuperation" and "the reasons for the use of the physical restraints, the length of time that the physical restraints were used, and the security concerns that justified the use of the physical restraints").

<sup>5</sup> "ICE/DRO Detention Standard, Use of Force and Restraints." § 5.F1, [http://www.ice.gov/doclib/dro/detention-standards/pdf/use\\_of\\_force\\_and\\_restraints.pdf](http://www.ice.gov/doclib/dro/detention-standards/pdf/use_of_force_and_restraints.pdf) (last visited January 11, 2012).

<sup>6</sup> *Supra*, the Second Chance Act.

## Other States' Laws

According to a 2010 study, 10 states<sup>7</sup> have laws prohibiting the use of restraints on pregnant prisoners.<sup>8</sup>

## The Department of Juvenile Justice

The Department of Juvenile Justice, through administrative rule, currently limits the use of mechanical restraints on pregnant youth: "If handcuffs are used on pregnant youth, they shall be cuffed in front. Leg restraints, waist chains, and the restraint belt shall not be used on pregnant youth."<sup>9</sup>

While this rule does not address the removal of restraints during labor and delivery, current practice is to remove the restraints during labor and delivery and any time a health care professional treating the youth requests the removal.<sup>10</sup>

## County and Municipal Jails

The Florida Model Jail Standards contain the following provision related to the shackling of inmates:

Shackles or other personal restraints may be used within the secured areas of the facility. This standard should apply to inmates in transit or to inmates whose behavior presents an immediate danger to themselves, other inmates, or staff. Such inmates may be temporarily restrained by such devices only upon orders of the Officer-in-Charge or designee. Restraints shall never be used as punishment.<sup>11</sup>

These standards currently have no provisions related to the shackling of pregnant inmates, however, the standards direct local jails' written policies and defined procedures to require that pregnant inmates receive advice on appropriate levels of safety precautions.<sup>12</sup>

## The Department of Corrections

The Department of Corrections is responsible for the health care of inmates in its custody<sup>13</sup> and treats approximately 80 pregnant inmates per year.<sup>14</sup> Each pregnant inmate is referred to an OB/GYN physician to provide prenatal care and to follow her throughout her pregnancy. Inmates receive an extra nutritional meal each day, prenatal counseling, vitamins, and exams.<sup>15</sup>

DOC has an established procedure that limits the use of restraints on pregnant inmates.<sup>16</sup> Key components include:

- After it is learned that an inmate is pregnant (and during her postpartum period), her hands are not restrained behind her back and leg irons are not used. The use of waist chains or black boxes is also prohibited when there is any danger that they will cause harm to the inmate or fetus. The inmate's hands can be handcuffed in front of her body during transport and at the medical facility if required by security conditions due to her custody level and behavior. The shift supervisor's approval is required to remove handcuffs for medical reasons, except that approval is not required in an emergency situation.
- Unarmed escort officers are required to maintain close supervision of a pregnant inmate and to provide a "custodial touch" when necessary to prevent falls.

<sup>7</sup> California, Colorado, Illinois, New Mexico, New York, Pennsylvania, Texas, Vermont, Washington, and West Virginia.

<sup>8</sup> "Mothers Behind Bars: A state-by-state report card and analysis of federal policies on conditions of confinement for pregnant and parenting women and the effect on their children." National Women's Law Center. October 2010.

<sup>9</sup> 63H-1.005(10), F.A.C.

<sup>10</sup> Department of Juvenile Justice 2012 Analysis of HB 367.

<sup>11</sup> "Chapter 11 Security and Control." 11.11. Florida Model Jail Standards. Effective 8/30/11.

<http://www.flsheriffs.org/uploads/FMJS%2008-30-11rev.doc> (last visited January 11, 2012).

<sup>12</sup> *Ibid.* "Chapter 7 Medical." 7.25 - Prenatal Care.

<sup>13</sup> Section 945.6034, F.S.

<sup>14</sup> Department of Corrections 2012 Analysis of HB 367.

<sup>15</sup> *Id.*

<sup>16</sup> Department of Corrections Procedure 602.024 (The Utilization of Restraints on Inmates During Prenatal and Postpartum Periods.)

- An inmate in labor is not restrained, but after delivery she may be restrained to the bed with normal procedures (tethered to the bed by one ankle) for the remainder of her hospital stay. A correctional officer is stationed in the room with the inmate to be sure that she has access to the bathroom or can perform other needs that require movement.<sup>17</sup>

From 2001 to the present, there have been no formal inmate medical grievances submitted regarding the application of restraints during pregnancy.<sup>18</sup>

### **Effect of the Bill**

The bill contains the following whereas clauses:

- Whereas, restraining a pregnant prisoner can pose undue health risks and increase the potential for physical harm to the woman and her pregnancy;
- Whereas, the vast majority of female prisoners in this state are nonviolent offenders;
- Whereas, the impact of such harm to a pregnant woman can negatively affect her pregnancy;
- Whereas, freedom from physical restraints is especially critical during labor, delivery, and postpartum recovery after delivery as women often need to move around during labor and recovery, including moving their legs as part of the birthing process;
- Whereas, restraints on a pregnant woman can interfere with the medical staff's ability to appropriately assist in childbirth or to conduct sudden emergency procedures; and
- Whereas, the Federal Bureau of Prisons, the United States Marshals Service, the American Correctional Association, the American College of Obstetricians and Gynecologists, and the American Public Health Association all oppose restraining women during labor, delivery, and postpartum recovery because it is unnecessary and dangerous to a woman's health and well-being.

The bill creates the following definitions:

- "Corrections official" as "the official who is responsible for oversight of a correctional institution, or his or her designee."
- "Correctional institution" as "any facility under the authority of DOC or DJJ, a county and municipal detention facility, or a detention facility operated by a private entity."
- "Department" as "the Department of Corrections."
- "Labor" as "the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix."
- "Postpartum recovery" as "the period immediately following delivery, including recovery period when a woman is in the hospital or infirmary following birth." The duration of postpartum recovery is determined by the physician.
- "Prisoner" as "any person incarcerated or detained in any correctional institution who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, community control, pretrial release, or a diversionary program. For the purposes of this section, the term includes any woman detained under the immigration laws of the United States at any correctional institution."
- "Restraints" as "any physical restraint or mechanical device used to control the movement of a prisoner's body or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, chubb cuffs, leg irons, belly chains, a security or tether chain, or a convex shield."

The bill prohibits the use of restraints on a prisoner who is known to be pregnant during labor, delivery, and postpartum recovery unless the corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance. The bill defines "extraordinary circumstance" as an instance when:

- (1) The prisoner presents a substantial flight risk; or

<sup>17</sup> *Id.* Department of Corrections 2012 Analysis of HB 367.

<sup>18</sup> Department of Corrections 2012 Analysis of HB 367.

- (2) There is an extraordinary medical or security circumstance that dictates the use of restraints for the safety and security of the prisoner, correctional institution or medical facility staff, other prisoners, or the public.

The bill specifies that even if there are extraordinary circumstances:

- (1) The corrections officer, correctional institution employee, or other officer accompanying the pregnant prisoner must remove all restraints if removal is requested by the treating doctor, nurse, or other health care professional; and
- (2) The use of leg, ankle, and waist restraints is completely prohibited during labor and delivery.

If restraints are used on a pregnant prisoner during labor, delivery, and postpartum recovery, the bill requires that:

- The type of restraint applied and the application of the restraint be done in the least restrictive manner necessary.
- The corrections official make written findings within 10 days after the use of restraints as to extraordinary circumstances that dictated the use of restraints.
- The correctional institution maintain this documentation on file and make it available for public inspection for at least 5 years.

The bill establishes additional requirements regarding restraint of pregnant prisoners during the last trimester of pregnancy. These additional requirements also apply at any time during pregnancy if requested by the treating doctor, nurse, or other health care professional. These requirements are:

- Waist restraints that directly constrict the area of pregnancy cannot be used.
- Any wrist restraints must be applied so that the pregnant prisoner can protect herself in the event of a forward fall (handcuff must be in front).
- Leg and ankle restraints that restrain the legs close together cannot be used when the prisoner is required to walk or stand.

The bill also requires that any restraint of a prisoner known to be pregnant (at any stage of pregnancy) must be done in the least restrictive manner necessary in order to mitigate the possibility of adverse clinical consequences.

In addition to maintaining findings as to the extraordinary circumstances that required use of restraint during labor and delivery, the bill requires the secretaries of DOC and DJJ and the official responsible for any local correctional facility to, where an exception was made to allow restraint or where the restraint requirements have been violated during the previous year, submit an annual written report to the Governor with an account of every such instance. The bill provides that these reports will be made available to the public.

The bill authorizes DOC and DJJ to adopt rules to administer the new law.

The bill requires each correctional institution to inform female prisoners of the rules when they are admitted to the institution, include the policies and practices in the prisoner handbook, and post the policies and practices in appropriate places within the institution, including common housing areas and medical care facilities.

The bill allows a prisoner who is restrained in violation of this section to file a grievance with the correctional institution within one year after the incident and does not prevent her from filing a complaint under any other relevant provision of federal or state law.

## B. SECTION DIRECTORY:

Section 1. Creates a new section of statute relating to shackling of incarcerated pregnant women.

Section 2. Provides an effective date of July 1, 2012.

## 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:

See "fiscal comments" section.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

See "fiscal comments" section.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will create additional staff workload for private prison facilities and private DJJ residential facility providers to update procedures and training materials; document the use of restraints; maintain documentation for five years and make it available for public inspection; and prepare any needed annual reports.

### D. FISCAL COMMENTS:

The Department of Corrections reports that the bill would create an additional workload for staff to track the details of each delivery for reporting.<sup>19</sup> However DOC was unable to quantify any fiscal impact.<sup>20</sup>

There will be an insignificant workload impact to DJJ residential facilities and to county juvenile detention centers. The Department of Juvenile Justice reports no fiscal impact.<sup>21</sup>

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

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<sup>19</sup> Department of Corrections, Legislative Affairs, HB 367 Analysis

<sup>20</sup> E-mail from Tommy Maggitas, Department of Corrections, Legislative Affairs, February 7, 2012., on file with Justice Appropriations staff.

<sup>21</sup> Department of Juvenile Justice 2012 Analysis of HB 367.

The bill authorizes the Department of Corrections and the Department of Juvenile Justice to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the bill's provisions.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill requires an officer to remove all restraints from a pregnant prisoner if the removal is requested by the treating doctor, nurse, or other health care professional, even if the officer believes that an extraordinary circumstance exists as cause to restrain the prisoner. The Department of Corrections reports that the removal of the restraints should be done *in consultation with* the healthcare professional and the officer to ensure that security risks are appropriately evaluated.<sup>22</sup>
- The bill requires a correctional official to make written findings within 10 days after using restraints in an extraordinary circumstance that dictated the use of restraints on a pregnant prisoner. These findings must be kept on file at the institution for at least 5 years. This is contrary to current file maintenance practices at the Department of Corrections which provides for files to follow a prisoner as he or she is transferred among institutions.<sup>23</sup> This provision of the bill is also contrary to current filing practices for prisoners who are released from DOC custody.<sup>24</sup>
- The written findings and annual report to the Governor are required by the bill to be available for public inspection. The Department of Corrections has concerns that broad public access to the reports could pose a potential conflict with the Health Insurance Portability and Accountability Act (HIPPA) and s. 945.10(1)(a), F.S., as the findings and report would necessarily contain some amount of protected health information.<sup>25</sup> While DOC reports that these files would not be kept as health records, they would contain information related to pregnancy, labor, delivery, and other health-related topics.<sup>26</sup> These reports may have to be heavily redacted in order to maintain the requirements of HIPPA and s. 945.10(1)(a), F.S.<sup>27</sup>

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Criminal Justice Subcommittee approved one amendment and reported the bill favorably as a committee substitute. The amendment:

- Allows a prisoner who is restrained in violation of this section to file a grievance with the appropriate correctional institution within one year after the incident.
- Removes redundant language.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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<sup>22</sup> Department of Corrections 2012 Analysis of HB 367.

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

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

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

<sup>26</sup> Department of Corrections General Counsel. Phone Conversation. January 11, 2012.

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



1                                   A bill to be entitled  
 2           An act relating to the restraint of incarcerated  
 3           pregnant women; providing a short title; defining  
 4           terms; prohibiting use of restraints on a prisoner  
 5           known to be pregnant during labor, delivery, and  
 6           postpartum recovery unless a corrections official  
 7           makes an individualized determination that the  
 8           prisoner presents an extraordinary circumstance  
 9           requiring restraints; providing that a doctor, nurse,  
 10          or other health care professional treating the  
 11          prisoner may request that restraints not be used, in  
 12          which case the corrections officer or other official  
 13          accompanying the prisoner shall remove all restraints;  
 14          requiring that any restraint applied must be done in  
 15          the least restrictive manner necessary; requiring the  
 16          corrections official to make written findings within  
 17          10 days as to the extraordinary circumstance that  
 18          dictated the use of restraints; restricting the use of  
 19          waist, wrist, or leg and ankle restraints during the  
 20          third trimester of pregnancy or when requested by a  
 21          doctor, nurse, or other health care professional  
 22          treating the prisoner; providing that the use of  
 23          restraints at any time after it is known that a  
 24          prisoner is pregnant must be by the least restrictive  
 25          manner necessary in order to mitigate the possibility  
 26          of adverse clinical consequences; requiring that the  
 27          findings be kept on file by the correctional  
 28          institution or detention facility for at least 5 years

29 and be made available for public inspection under  
 30 certain circumstances; authorizing any woman who is  
 31 restrained in violation of the act to file a grievance  
 32 within a specified period; providing that these  
 33 remedies do not prevent a woman harmed from filing a  
 34 complaint under any other relevant provision of  
 35 federal or state law; directing the Department of  
 36 Corrections and the Department of Juvenile Justice to  
 37 adopt rules; requiring correctional institutions and  
 38 detention facilities to inform female prisoners of the  
 39 rules upon admission, include the policies and  
 40 practices in the prisoner handbook, and post the  
 41 policies and practices in the correctional institution  
 42 or detention facility; requiring the Secretary of  
 43 Corrections, the Secretary of Juvenile Justice, and  
 44 county and municipal corrections officials to annually  
 45 file written reports with the Executive Office of the  
 46 Governor detailing each incident of restraint in  
 47 violation of law or as an authorized exception;  
 48 providing an effective date.

49  
 50 WHEREAS, restraining a pregnant prisoner can pose undue  
 51 health risks and increase the potential for physical harm to the  
 52 woman and her pregnancy, and

53 WHEREAS, the vast majority of female prisoners in this  
 54 state are nonviolent offenders, and

55 WHEREAS, the impact of such harm to a pregnant woman can  
 56 negatively affect her pregnancy, and

57 WHEREAS, freedom from physical restraints is especially  
 58 critical during labor, delivery, and postpartum recovery after  
 59 delivery as women often need to move around during labor and  
 60 recovery, including moving their legs as part of the birthing  
 61 process, and

62 WHEREAS, restraints on a pregnant woman can interfere with  
 63 the medical staff's ability to appropriately assist in  
 64 childbirth or to conduct sudden emergency procedures, and

65 WHEREAS, the Federal Bureau of Prisons, the United States  
 66 Marshals Service, the American Correctional Association, the  
 67 American College of Obstetricians and Gynecologists, and the  
 68 American Public Health Association all oppose restraining women  
 69 during labor, delivery, and postpartum recovery because it is  
 70 unnecessary and dangerous to a woman's health and well-being,  
 71 NOW, THEREFORE,

72  
 73 Be It Enacted by the Legislature of the State of Florida:

74  
 75 Section 1. Shackling of incarcerated pregnant women.-

76 (1) SHORT TITLE.-This section may be cited as the "Healthy  
 77 Pregnancies for Incarcerated Women Act."

78 (2) DEFINITIONS.-As used in this section, the term:

79 (a) "Correctional institution" means any facility under  
 80 the authority of the department or the Department of Juvenile  
 81 Justice, a county or municipal detention facility, or a  
 82 detention facility operated by a private entity.

83 (b) "Corrections official" means the official who is  
 84 responsible for oversight of a correctional institution, or his

85 | or her designee.

86 |       (c) "Department" means the Department of Corrections.

87 |       (d) "Extraordinary circumstance" means a substantial  
 88 | flight risk or some other extraordinary medical or security  
 89 | circumstance that dictates restraints be used to ensure the  
 90 | safety and security of the prisoner, the staff of the  
 91 | correctional institution or medical facility, other prisoners,  
 92 | or the public.

93 |       (e) "Labor" means the period of time before a birth during  
 94 | which contractions are of sufficient frequency, intensity, and  
 95 | duration to bring about effacement and progressive dilation of  
 96 | the cervix.

97 |       (f) "Postpartum recovery" means, as determined by her  
 98 | physician, the period immediately following delivery, including  
 99 | the recovery period when a woman is in the hospital or infirmary  
 100 | following birth.

101 |       (g) "Prisoner" means any person incarcerated or detained  
 102 | in any correctional institution who is accused of, convicted of,  
 103 | sentenced for, or adjudicated delinquent for a violation of  
 104 | criminal law or the terms and conditions of parole, probation,  
 105 | community control, pretrial release, or a diversionary program.  
 106 | For purposes of this section, the term includes any woman  
 107 | detained under the immigration laws of the United States at any  
 108 | correctional institution.

109 |       (h) "Restraints" means any physical restraint or  
 110 | mechanical device used to control the movement of a prisoner's  
 111 | body or limbs, including, but not limited to, flex cuffs, soft  
 112 | restraints, hard metal handcuffs, a black box, chubb cuffs, leg

113 | irons, belly chains, a security or tether chain, or a convex  
 114 | shield.

115 | (3) RESTRAINT OF PRISONERS.—

116 | (a) Restraints may not be used on a prisoner who is known  
 117 | to be pregnant during labor, delivery, and postpartum recovery,  
 118 | unless the corrections official makes an individualized  
 119 | determination that the prisoner presents an extraordinary  
 120 | circumstance, except that:

121 | 1. If the doctor, nurse, or other health care professional  
 122 | treating the prisoner requests that restraints not be used, the  
 123 | corrections officer, correctional institution employee, or other  
 124 | officer accompanying the pregnant prisoner shall remove all  
 125 | restraints; and

126 | 2. Under no circumstances shall leg, ankle, or waist  
 127 | restraints be used on any pregnant prisoner who is in labor or  
 128 | delivery.

129 | (b) If restraints are used on a pregnant prisoner pursuant  
 130 | to paragraph (a):

131 | 1. The type of restraint applied and the application of  
 132 | the restraint must be done in the least restrictive manner  
 133 | necessary; and

134 | 2. The corrections official shall make written findings  
 135 | within 10 days after the use of restraints as to the  
 136 | extraordinary circumstance that dictated the use of the  
 137 | restraints. These findings shall be kept on file by the  
 138 | correctional institution for at least 5 years and be made  
 139 | available for public inspection.

140 | (c) During the third trimester of pregnancy, or when

141 requested by the doctor, nurse, or other health care  
 142 professional treating the pregnant prisoner:

143 1. Waist restraints that directly constrict the area of  
 144 pregnancy may not be used;

145 2. If wrist restraints are used, they must be applied in  
 146 such a way that the pregnant prisoner is able to protect herself  
 147 in the event of a forward fall; and

148 3. Leg and ankle restraints that restrain the legs close  
 149 together may not be used when the prisoner is required to walk  
 150 or stand.

151 (d) In addition to the specific requirements of paragraphs  
 152 (a)-(c), any restraint of a prisoner who is known to be pregnant  
 153 must be done in the least restrictive manner necessary in order  
 154 to mitigate the possibility of adverse clinical consequences.

155 (4) ENFORCEMENT.—

156 (a) Notwithstanding any relief or claims afforded by  
 157 federal or state law, any prisoner who is restrained in  
 158 violation of this section may file a grievance with the  
 159 correctional institution within 1 year after the incident.

160 (b) This section does not prevent a woman harmed under  
 161 this section from filing a complaint under any other relevant  
 162 provision of federal or state law.

163 (5) NOTICE TO PRISONERS.—

164 (a) By September 1, 2012, the department and the  
 165 Department of Juvenile Justice shall adopt rules pursuant to ss.  
 166 120.536(1) and 120.54, Florida Statutes, to administer this  
 167 section.

168 (b) Each correctional institution shall inform female

169 prisoners of the rules developed pursuant to paragraph (a) upon  
 170 admission to the correctional institution, including the  
 171 policies and practices in the prisoner handbook, and post the  
 172 policies and practices in locations in the correctional  
 173 institution where such notices are commonly posted and will be  
 174 seen by female prisoners, including common housing areas and  
 175 medical care facilities.

176 (6) ANNUAL REPORT.—By June 30 of each year, the Secretary  
 177 of Corrections, the Secretary of Juvenile Justice, and the  
 178 corrections official of each municipal and county detention  
 179 facility where a pregnant prisoner has been restrained pursuant  
 180 to paragraph (3) (a), or in violation of subsection (3), during  
 181 the previous year shall submit a written report to the Executive  
 182 Office of the Governor which includes an account of every such  
 183 instance. Such reports shall be made available for public  
 184 inspection.

185 Section 2. This act shall take effect July 1, 2012.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 497 Juvenile Expunction  
**SPONSOR(S):** Criminal Justice Subcommittee; Porth and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee		Toms <i>ST</i>	Jones Darity <i>J.Darity</i>
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 985.125, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for no more than 90 days.

Section 943.0582(3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if the juvenile:

- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as defined in s. 741.28, F.S.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.
- Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.
- Submits a \$75 processing fee and necessary paperwork to FDLE within 6 months after completing the program.

Currently a juvenile with a felony arrest is not eligible for a juvenile diversion expunction under s. 943.0582, F.S.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies specified by the bill. The bill provides a list of felony offenses that are ineligible for a juvenile diversion expunction.

The bill also allows a juvenile with a nonviolent misdemeanor arrest for domestic violence to be eligible for a juvenile diversion expunction.

No additional resources are needed to implement the provisions of the bill. See "FISCAL COMMENTS".

The bill is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Juvenile Prearrest or Postarrest Diversion Programs**

Juvenile diversion programs are nonjudicial alternatives used to keep less serious juvenile offenders from being handled through the traditional juvenile justice system.<sup>1</sup> These programs are intended to intervene at an early stage of delinquency, decrease subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders.<sup>2</sup>

Section 985.125, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for no more than 90 days. If the juvenile fails to comply with the requirements of the program, the state attorney may notify the Department of Highway Safety and Motor Vehicles in writing to suspend the child's driver's license for a period that may not exceed 90 days.<sup>3</sup>

The diversion program may, upon agreement of the establishing agencies, provide for the expunction of the nonjudicial arrest record of a juvenile who successfully completes such a program pursuant to s. 943.0582, F.S.<sup>4</sup>

##### **Juvenile Diversion Expunction**

Section 943.0582(3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge<sup>5</sup> a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if the juvenile:

- Submits an application for a juvenile diversion expunction, on a form prescribed by FDLE, signed by the juvenile's parent or legal guardian, or by the juvenile if he or she has reached the age of majority at the time of applying.
- Submits the application for a juvenile diversion expunction no later than 6 months after completion of the diversion program.
- Submits to FDLE, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, and that participation in the program is strictly limited to juveniles arrested for a nonviolent misdemeanor who have not otherwise been charged with or found to have committed any criminal offense or comparable ordinance violation.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.
- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is defined in s. 741.28, F.S.<sup>6</sup>

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<sup>1</sup> "Probation 2010 Florida Comprehensive Accountability Report. Department of Juvenile Justice.

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

<sup>3</sup> Section 985.125(2), F.S.

<sup>4</sup> Section 985.125(3), F.S.

<sup>5</sup> Section 943.0582(2), F.S., defines "Expunction" as the same meaning and effect as s. 943.0585, F.S., except that:

The provisions of s. 943.0585(4)(a), F.S., do not apply, except that the criminal history record of a juvenile whose record is expunged pursuant to this section is made available only to criminal justice agencies: for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs; when the record is sought as part of a criminal investigation; or when the subject of the record is a candidate for employment with a criminal justice agency. Records maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction pursuant to this section are sealed as the term is used in s. 943.059, F.S.

- Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.

Section 943.0582(2), F.S., defines “nonviolent misdemeanor” as simple assault or battery when a juvenile diversion expunction is approved in writing by the state attorney for the county in which the arrest occurred.

Expunction or sealing granted under this section does not prevent the juvenile who receives such relief from petitioning for the expunction or sealing of a later criminal history record as an adult as provided in ss. 943.0585 and 943.059, F.S., if the juvenile is otherwise eligible under those sections.<sup>7</sup>

### **Effect of the Bill**

As noted above, juveniles with felony arrests are not currently eligible for a juvenile diversion expunction.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies directly related to a violation of:

- Section 393.135, F.S., relating to sexual misconduct with an individual with a developmental disability who is in the Department of Children and Families (DCF) custody, who resides in a residential facility, or who is eligible to receive services from a family care program;
- Section 394.4593, F.S., relating to sexual misconduct with a mental health patient who is in DCF custody or who resides in a receiving or treatment facility;
- Section 787.025, F.S., relating to luring or enticing a child;
- Chapter 794, F.S., relating to sexual battery;
- Section 796.03, F.S., relating to procuring person under age of 18 for prostitution;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 810.14, F.S., relating to voyeurism;
- Section 817.034, F.S., relating to the Florida Communications Fraud Act;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Chapter 839, F.S., relating to offenses by public officers and employees;
- Section 847.0133, F.S., relating to prohibition of certain acts in connection with obscenity;
- Section 847.0135, F.S., relating to computer pornography, traveling to meet minor;
- Section 847.0145, F.S., relating to selling or buying of minors;
- Section 893.135, F.S., relating to drug trafficking, conspiracy to engage in drug trafficking;
- Section 916.1075, F.S., relating to sexual misconduct with a client who resides in a civil or forensic facility;
- A violation enumerated in s. 907.041, F.S.;<sup>8</sup> or
- Any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, F.S.,<sup>9</sup> without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, F.S.<sup>10</sup>

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<sup>6</sup> Section 741.28(2), F.S., defines “domestic violence” as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.”

<sup>7</sup> Section 943.0582(6), F.S.

<sup>8</sup> Section 907.041(4)(a), F.S., provides the following list of offenses: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, 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 ch. 893, F.S.; and attempting or conspiring to commit any such crime.

The bill allows a juvenile with a nonviolent misdemeanor arrest for domestic violence to be eligible for a juvenile diversion expunction.

The bill removes the link between the expunction criteria and the diversion programs to ensure that diversion programs are not limited to only excepting minors who have committed specific offenses.

The bill provides a July 1, 2013 deadline for a minor to submit an application for expunction if the minor completes a diversion program before July 1, 2012.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 2. Provides an effective date of July 1, 2012.

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

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

1. Revenues:

See "fiscal comments."

2. Expenditures:

See "fiscal comments."

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

A juvenile applying for an expunction under s. 943.0582, F.S., will be required to pay a \$75 processing fee to FDLE.<sup>11</sup>

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<sup>9</sup> Section 775.21, F.S., specifies the following offenses: (1) 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: ss. 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; s. 794.011, F.S. (sexual battery); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 847.0145, F.S. (selling or buying of minors). (2) Any felony violation, or attempt thereof, of: ss. 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.; s. 794.05, F.S. (unlawful activity with certain minors); s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); s.796.035, F.S. (selling or buying of minors into sex trafficking or prostitution); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person); s. 827.071, F.S. (sexual performance by a child);s. 847.0135(5), F.S. (computer pornography); s. 847.0145, F.S. (selling or buying of minors); s. 985.701(1), F.S. (sexual misconduct with a juvenile offender); and s. 847.0133, F.S. (protection of minors / obscenity).

<sup>10</sup> Section 943.0435, F.S., provides many of the same offenses listed in s. 775.21, F.S., and specifies these additional offenses: s. 847.0137, F.S. (transmission of pornography by electronic device or equipment), and s. 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment).

<sup>11</sup> *Supra* note 11.

#### D. FISCAL COMMENTS:

FDLE is authorized to charge a \$75 processing fee for each request received for a juvenile diversion expunction.<sup>12</sup> FDLE reports there may be a slight increase in the number of juveniles who will become eligible for the juvenile diversion expunction, which could result in a minimal increase in revenue.<sup>13</sup> This could also create an insignificant workload increase. However, no additional resources are needed to implement this bill.

### 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:

Section 943.0582, F.S., provides FDLE rulemaking authority pursuant to ch. 120, F.S.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Clarification may be needed on whether expunction eligibility is limited to a juvenile arrested for a single qualifying misdemeanor or a single qualifying felony, or whether multiple charges could be expunged if none "relate to a violation of" the specified offenses. As worded, it appears that eligibility would be limited to an arrest for a single charge.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes link between the expunction criteria and the diversion programs to ensure that diversion programs are not limited to only excepting minors who have committed specific offenses.
- Provides a July 1, 2013 deadline for a minor to submit an application for expunction if the minor completes a diversion program before July 1, 2012.
- Corrects the title to refer to FDLE as the agency with expunction power.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

<sup>12</sup> Section 943.0585(4), F.S. This fee may be waived by the executive director.

<sup>13</sup> Florida Department of Law Enforcement. 2012 Analysis of HB 497.

1 A bill to be entitled  
 2 An act relating to juvenile expunction; amending s.  
 3 943.0582, F.S.; allowing minors who have certain  
 4 felony arrests to have the Department of Law  
 5 Enforcement expunge their nonjudicial arrest record  
 6 upon successful completion of a prearrest or  
 7 postarrest diversion program; extending the  
 8 application submission date for minors who complete  
 9 the program before a certain date; providing an  
 10 effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14 Section 1. Paragraphs (c), (e), and (f) of subsection (3)  
 15 and subsection (5) of section 943.0582, Florida Statutes, are  
 16 amended to read:

17 943.0582 Prearrest, postarrest, or teen court diversion  
 18 program expunction.—

19 (3) The department shall expunge the nonjudicial arrest  
 20 record of a minor who has successfully completed a prearrest or  
 21 postarrest diversion program if that minor:

22 (c) Submits to the department, with the application, an  
 23 official written statement from the state attorney for the  
 24 county in which the arrest occurred certifying that he or she  
 25 has successfully completed that county's prearrest or postarrest  
 26 diversion program, and that he or she participated ~~participation~~  
 27 in the program based on an arrest ~~is strictly limited to minors~~  
 28 ~~arrested~~ for a nonviolent misdemeanor, or for a felony that does

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2012

29 not relate to a violation of s. 393.135, s. 394.4593, s.  
30 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s.  
31 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.  
32 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation  
33 enumerated in s. 907.041, or any violation specified as a  
34 predicate offense for registration as a sexual predator pursuant  
35 to s. 775.21, without regard to whether that offense alone is  
36 sufficient to require such registration, or for registration as  
37 a sexual offender pursuant to s. 943.0435, and that he or she  
38 has ~~who have~~ not otherwise been charged with or found to have  
39 committed any criminal offense or comparable ordinance  
40 violation.

41 ~~(e) Participated in a prearrest or postarrest diversion~~  
42 ~~program based on an arrest for a nonviolent misdemeanor that~~  
43 ~~would not qualify as an act of domestic violence as that term is~~  
44 ~~defined in s. 741.28.~~

45 ~~(e)-(f)~~ Has never, prior to filing the application for  
46 expunction, been charged with or been found to have committed  
47 any criminal offense or comparable ordinance violation.

48 (5) This section operates retroactively to permit the  
49 expunction of any nonjudicial record of the arrest of a minor  
50 who has successfully completed a prearrest or postarrest  
51 diversion program on or after July 1, 2000; however, in the case  
52 of a minor whose completion of the program occurred before July  
53 1, 2012 ~~the effective date of this section~~, the application for  
54 prearrest or postarrest diversion expunction must be submitted  
55 within 12 ~~6~~ months after July 1, 2012 ~~the effective date of this~~  
56 ~~section~~.

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57

Section 2. This act shall take effect July 1, 2012.



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: Justice Appropriations  
2 Subcommittee  
3 Representative Porth offered the following:  
4

**Amendment (with directory and title amendments)**

6 Between lines 21 and 22, insert:

7 (b) Submits the application for prearrest or postarrest  
8 diversion expunction no later than 12 ~~6~~ months after completion  
9 of the diversion program.

12 -----  
13 **D I R E C T O R Y A M E N D M E N T**

14 Remove lines 14-16 and insert:

15 Section 1. Paragraphs (b), (c), (e), and (f) of subsection  
16 (3) and subsection (5) of section 943.0582, Florida Statutes,  
17 are amended to read:  
18  
19

Amendment No. 1

20

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21

**T I T L E   A M E N D M E N T**

22

Remove line 7 and insert:

23

postarrest diversion program; extending the application

24

submission date for minors who complete a prearrest or

25

postarrest diversion program; extending the



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 963 Dispute Resolution  
SPONSOR(S): Harrison  
TIED BILLS: None IDEN./SIM. BILLS: SB 1458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Cary	Bond
2) Justice Appropriations Subcommittee		Toms <i>ST</i>	Jones Darity <i>J. Darity</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Arbitration Act, based on a 1955 model act, was passed in 1957 and revised in 1967. Since then, it has gone mostly unchanged. This bill creates the Revised Florida Arbitration Act based on the 2000 model act. The bill includes provisions that were not included in the original act, such as the ability for arbitrators to issue provisional remedies, challenges based on notice, consolidation of separate arbitration proceedings, conflict disclosure requirements, providing for immunity of arbitrators, and other important substantive changes to the law. The bill provides a detailed framework for arbitration conducted under Florida law.

This bill has an insignificant fiscal impact on the State Court System; see "fiscal section".

The effective date of this bill is July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

Many contracts, especially in a commercial context, contain an agreement by the parties to submit to binding arbitration rather than litigation for disputes arising out of the contract. Florida's current arbitration code is based on the 1955 Uniform Arbitration Act (UAA). This bare bones act remains largely unchanged since Florida adopted the UAA in 1957<sup>1</sup> and modified it in 1967<sup>2</sup>, even as the use of binding arbitration has become more widespread.

#### **Effect of Proposed Changes**

This bill largely adopts the provisions of the 2000 revision of the UAA, as approved by the National Conference of Commissioners on Uniform State Laws. The bill significantly amends or repeals each section of the existing Florida Arbitration Code, and amends s. 682.01, F.S., to rename the chapter as the "Revised Florida Arbitration Code." This bill also creates s. 682.011, F.S., to provide definitions.

#### Notice

The bill creates s. 682.012, F.S., to provide notice requirements. Notice is generally provided by taking reasonable action to inform the other person, regardless of actual knowledge. Actual knowledge or receipt of notice is sufficient. Delivery to the person's residence or place of business, or another location held out by the person as a place of delivery is also sufficient to provide notice.

#### Applicability

The bill creates s. 682.013, F.S., providing applicability of the revised act. The revised act applies prospectively for agreements to arbitrate. It also applies retrospectively if all parties agree to apply the revised act. On July 1, 2015, the revised act will apply to all arbitration agreements, regardless of whether the parties agree to apply it retroactively or not.

#### Effect of Agreement to Arbitrate

The bill creates s. 682.014, F.S., providing that parties may waive procedural requirements of the revised act except that parties may not waive certain reliefs or remedies, jurisdiction, the right to appeal, notice, right to disclosure, or the right to an attorney, before a controversy arises. Parties may not waive other procedural requirements that would fundamentally undermine the arbitration agreement at any time.

#### Judicial Relief

The bill creates s. 682.015, F.S., providing that a petition for judicial relief must be made to the court in a manner provided by law or by the rules of court. Notice of an initial petition to the court must be provided in a manner consistent with the service of a summons in a civil action. Other motions must be made in the manner provided by law or by the rules of court for serving motions in pending cases.

#### Nature of Arbitration Agreements

The bill amends s. 682.02, F.S., providing that an agreement to submit to arbitration is valid, enforceable, and irrevocable except upon grounds that a contract can otherwise be revoked. The court decides whether an agreement to arbitrate is valid, while an arbitrator decides whether a condition

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<sup>1</sup> Chapter 57-402, L.O.F.

<sup>2</sup> Chapter 67-254, L.O.F.

precedent to arbitrability has been fulfilled and whether the contract containing the agreement to arbitrate is enforceable. Arbitration continues during a court challenge of this nature unless the court orders otherwise.

### Compelling or Staying Arbitration

The bill amends s. 682.03, F.S., providing that if a party with a valid agreement to arbitrate fails to appear or does not oppose a motion to compel arbitration, the court must order the arbitration. If the refusing party opposes the motion, the court must decide the issue and order arbitration unless it finds that there is no enforceable agreement to arbitrate the matter. If the court finds that there is no enforceable agreement to arbitrate, then it may not order the parties to arbitrate, however the court may not refuse to order arbitration on the merits of the claim.

The motion to compel arbitration may be made in any court with jurisdiction, however if the controversy is already pending in court, the motion to compel arbitration must be made in the court where the controversy is pending. If a pending case exists, the court must halt the judicial proceeding until it renders a final decision regarding arbitrability. If the court orders arbitration, the judicial proceeding must be stayed pending arbitration.

### Provisional Remedies

The bill creates s. 682.031, F.S., providing for conditions of provisional remedies. Before an arbitrator is appointed, the court may enter an order for provision remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action. After an arbitrator is appointed, the arbitrator may issue provisional remedies to the same extent that a court could in a civil action. After an arbitrator is appointed, a party may move for a court order for provisional remedies only if the matter is urgent and the arbitrator cannot act in a timely matter or provide an adequate remedy.

### Initiation of Arbitration

The bill creates s. 682.032, F.S., providing that a person initiates arbitration by providing notice by the manner agreed to by the parties, or by certified mail if the agreement does not provide for a method of notice, or by a method allowed by law or rules of court for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought. Unless a party objects for lack of notice by the beginning of the arbitration hearing, notice challenges are waived if the party appears at the hearing.

### Consolidation of Separate Arbitration Proceedings

The bill creates s. 682.033, F.S., providing several conditions upon which a court may consolidate separate arbitration proceedings:

- Separate agreements and proceedings exist between the same parties or one party is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
- The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of transactions;
- The existence of a common issue of law or fact creates the possibility of conflicting decisions if there were separate arbitration proceedings; and
- Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

The court may consolidate some claims while allowing other claims to be resolved separately, however the court may not order consolidation if the agreement to arbitrate prohibits consolidation.

### Appointment of Arbitrators by the Court

The bill amends s. 682.04, F.S., to provide conditions for the court to appoint arbitrators. The court, on motion, must appoint one or more arbitrators if the parties have not agreed on a method or the agreed upon method fails, or one or more parties failed to respond to the demand for arbitration or an arbitrator fails to act and a successor has not been appointed. The court must not appoint an arbitrator with a known, direct and material interest in the outcome of the arbitration or a relationship to a party if the agreement calls for a neutral arbitrator.

### Disclosure by Arbitrator

The bill creates s. 682.041, F.S., providing that before accepting appointment, an arbitrator must disclose potential conflicts or impartiality including financial or relationship conflicts. The arbitrator must continue to disclose any facts that may affect the arbitrator's impartiality that the arbitrator learns after accepting the appointment. Upon disclosure, if a party objects to the appointment or continued service, the objection may be grounds for vacating an award. If the arbitrator did not disclose a fact as required, the court may vacate an award upon timely objection by a party. A neutral arbitrator is presumed to act with evident partiality. Substantial compliance with agreed upon procedures is a condition precedent to a motion to vacate an award on these grounds.

### Majority Action by Arbitrators

The bill amends s. 682.05, F.S., providing that if there is more than one arbitrator, powers of the arbitrator must be exercised by a majority of the arbitrators.

### Immunity of Arbitrator

The bill creates s. 682.051, F.S., granting arbitrators immunity from civil liability to the same extent as judges acting in a judicial capacity. Failure of an arbitrator to disclose conflicts does not waive immunity. Arbitrators cannot be compelled to testify about occurrences during arbitration except to determine the claim of an arbitrator against a party or to a hearing on a motion to vacate an award if the moving party establishes prima facie that a ground for vacating the award exists. An arbitrator sued by a party must be awarded attorney fees if the court decides that the arbitrator has civil liability.

### Hearing

The bill amends s. 682.06, F.S., granting broad authority to an arbitrator to conduct the arbitration as the arbitrator considers appropriate. An arbitrator may decide a request for summary judgment if the parties agree, or if a party gives notice of the request to the other parties and they have an opportunity to respond. The arbitrator must provide at least five days notice prior to the beginning of the hearing. The arbitrator then has may control the hearing, including adjourning the hearing from time to time as necessary. Each party has the right to be heard, to present material evidence, and to cross-examine witnesses. If an arbitrator is unable to act during the proceeding, a replacement arbitrator must be appointed.

### Representation by Attorney

The bill amends s. 682.07, F.S., providing that a party to an arbitration proceeding may be represented by an attorney.

### Witnesses, Subpoenas, and Depositions

The bill amends s. 682.08, F.S., providing that an arbitrator has the authority to issue a subpoena in the same manner as a court in a civil action. Arbitrators may allow discovery and depositions of witnesses and may determine the conditions under which discovery and depositions may be taken. An arbitrator may also issue a protective order to prevent disclosure of privileged or confidential information, trade secrets, or other protected information, to the same extent as a court could in a civil action. Subpoena

laws apply to arbitration proceedings, and out of state subpoenas are treated like they would be in a civil action.

#### Judicial Enforcement of Preaward Ruling by an Arbitrator

The bill creates s. 682.081, F.S., to establish that preaward rulings by an arbitrator may be incorporated into the ruling on motion by the prevailing party, and the court must summarily decide the motion and issue an order.

#### Award

The bill amends s. 682.09, F.S., to provide that an arbitrator must make a signed record of an award and provide a copy to each party. The award must be made within the time specified by the agreement to arbitrate or within the time ordered by the court. The time may be extended by a court order or by agreement of the parties of the arbitration.

#### Change of Award by Arbitrators

The bill amends s. 682.10, F.S., to provide conditions for the modification or correct an award. The arbitrator may correct an award when a miscalculation or problem of form, but not substance, resulted in an incorrect initial award. The arbitrator may also modify the award if the arbitrator has not yet made a final and definite award, or to clarify the award. A motion to change or modify an award must be made and notice provided within 20 days of the moving party receiving notice of the award. An motion to object to the award on any other basis must be made within 10 days of receipt of the notice of the award.

#### Remedies, Fees and Expenses of Arbitration Proceeding

The bill amends s. 682.11, F.S., providing that arbitrators may award punitive damages and attorney fees to the same extent they would be available in a civil action, but the arbitrator must justify such damages in the award. An arbitrator has broad authority to impose all other remedies, regardless of whether a court would provide similar remedies in a civil action.

#### Confirming or Vacating an Award

The bill amends s. 682.12, F.S., providing that after an award is granted, a party may motion the court to confirm the award and provide a confirming order.

The bill amends s. 682.13, F.S., providing conditions upon which a court may vacate an award:

- Evident partiality by an arbitrator appointed as a neutral arbitrator;
- Corruption by an arbitrator;
- Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- An arbitrator refused to postpone the hearing upon showing of sufficient cause of postponement;
- An arbitrator refused to consider material evidence;
- An arbitrator conducted the hearing contrary to the act so as to substantially prejudice the rights of a party to the arbitration proceeding;
- An arbitrator exceeded the arbitrator's powers;
- There was no agreement to arbitrate, unless the moving party participated in the hearing without objection; or
- The arbitration was conducted without proper notice so as to substantially prejudice the rights of a party to the arbitration proceeding.

A motion to vacate an award must be filed within 90 days of the award, or within 90 days of the finding of corruption, fraud, or other undue means, or within 90 days of when the party should have known of



such a finding. If the court vacates an award for any reason other than the lack of an agreement to arbitrate, the court may order a rehearing. If a motion to vacate is denied, the court must confirm the award.

#### Modification or Correction of Award

The bill amends s. 682.14, F.S., providing the court must modify or correct an award if:

- There is an evident miscalculation of figures or mistake in the description of any person, thing, or property referred to in the award;
- The arbitrator awarded something not submitted in the arbitration and making such a correction will not affect the merits of the decision; or
- The award is imperfect as a matter of form, not substance.

If the application is granted, the court will modify and correct the award. If not, the court shall confirm the award.

#### Judgment or Decree on Award

The bill amends s. 682.15, F.S., requiring the court, upon granting an order confirming, vacating, modifying, or correcting an award, to enter an order as if for a civil judgment. The court may allow reasonable costs of the motion and subsequent judicial proceedings. On motion by the prevailing party, the court may add reasonable attorney fees and expenses.

#### Jurisdiction

The bill creates s. 682.181, F.S., providing a court with jurisdiction over the controversy the right to enforce an agreement to arbitrate. An agreement to arbitrate in this state confers exclusive jurisdiction on the court to enter judgment on an award.

#### Venue

The bill amends s. 682.19, F.S., providing that a petition for judicial relief under this act must be filed in the county specified in the agreement to arbitrate, unless a hearing has already been held, in which case the petition must be filed in that court. Otherwise, the petition may be filed in any Florida county in which an adverse party has a residence or a place of business. If no adverse party has a residence or place of business in Florida, the petition may be filed in any Florida county.

#### Appeals

The bill amends s. 682.20, F.S., providing for appeals from:

- An order denying an application to compel arbitration;
- An order granting a motion to stay arbitration;
- An order confirming an award;
- An order denying confirmation of an award except in certain circumstances;
- An order modifying or correcting an award;
- An order vacating an award without directing a rehearing; or
- A judgment or decree entered pursuant to this act.

Appeals are taken in the same manner and to the same extent as from orders or judgments in a civil action.

## Electronic Signatures in Global and National Commerce Act

The bill creates s. 682.23, F.S., providing that the revised act conforms to the requirements of s. 102 of the Electronic Signatures in Global and National Commerce Act, 15. U.S.C. s. 7002.

### Effective Date and Applicability

The bill provides an effective date of July 1, 2012. The revised act does not affect an action or proceeding commenced or right accrued before the revised act takes effect.

### Disputes Excluded

The bill creates s. 682.25, F.S., providing that the revised act does not apply to any dispute involving child custody, visitation, or child support.

### Mediation Alternatives to Judicial Action

The bill renames ch. 44, F.S., as "Alternative Dispute Resolution" and amends ss. 44.104, 44.107, and 731.401 F.S., removing references to binding arbitration. This ensures that the revised act is the sole statute in Florida pertaining to binding arbitration. The bill also amends ss. 440.1926 and 489.144, F.S., to correctly cross-reference the revised act. The bill directs the Division of Statutory Revision to replace the phrase "the effective date of this act" with the date this act becomes a law.

The bill provides an effective date of July 1, 2012.

## B. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 creates s. 682.011, F.S., providing definitions.

Section 3 creates s. 682.012, F.S., relating to notice.

Section 4 creates s. 682.013, F.S., relating to applicability of the revised code.

Section 5 creates s. 682.014, F.S., relating to effect of agreements to arbitrate.

Section 6 creates s. 682.015, F.S., relating to petition for judicial relief.

Section 7 amends s. 682.02, F.S., relating to arbitration agreements made valid, irrevocable and enforceable.

Section 8 amends s. 682.03, F.S., relating to proceedings to compel and to stay arbitration.

Section 9 creates s. 682.031, F.S., relating to provisional remedies.

Section 10 creates s. 682.032, F.S., relating to initiation of arbitration.

Section 11 creates s. 682.033, F.S., relating to consolidation of separate arbitration proceedings.

Section 12 amends s. 682.04, F.S., relating to appointment of arbitrators by court.

Section 13 creates s. 682.041, F.S., relating to disclosure by arbitrator.

Section 14 amends s. 682.05, F.S., relating to majority action by arbitrators.

Section 15 creates s. 682.051, F.S., relating to immunity of arbitrator.

Section 16 amends s. 682.06, F.S., relating to hearings.

Section 17 amends s. 682.07, F.S., relating to representation by attorney.

Section 18 amends s. 682.08, F.S., relating to witnesses, subpoenas, and depositions.

Section 19 creates s. 682.081, F.S., relating to judicial enforcement of a preaward ruling.

Section 20 amends s. 682.09, F.S., relating to awards.

Section 21 amends s. 682.10, F.S., relating to change of award by arbitrators.

Section 22 amends s. 682.11, F.S., relating to remedies, fees and expenses of arbitration.

Section 23 amends s. 682.12, F.S., relating to confirmation of an award.

Section 24 amends s. 682.13, F.S., relating to vacating an award.

Section 25 amends s. 682.14, F.S., relating to modification or correction of an award.

Section 26 amends s. 682.15, F.S., relating to judgment or decree on award.

Section 27 repeals s. 682.16, F.S., relating to judgment roll and docketing.

Section 28 repeals s. 682.17, F.S., relating to application to court.

Section 29 repeals s. 682.18, F.S., relating to court definition and jurisdiction.

Section 30 creates s. 682.181, F.S., relating to jurisdiction.

Section 31 amends s. 682.19, F.S., relating to venue.

Section 32 amends s. 682.20, F.S., relating to appeals.

Section 33 repeals s. 682.21, F.S., relating to retroactivity.

Section 34 repeals s. 682.22, F.S., relating to severability.

Section 35 creates s. 682.23, F.S., relating to relationship to electronic signatures in Global and National Commerce Act.

Section 36 creates s. 682.24, F.S., relating to effective date and applicability.

Section 37 creates s. 682.25, F.S., relating to excluded disputes.

Section 38 amends s. 44.104, F.S., relating to voluntary trial resolution.

Section 39 amends s. 44.107, F.S., relating to immunity for arbitrators.

Section 40 amends s. 440.1926, F.S., relating to alternate dispute resolution.

Section 41 amends s. 489.1402, F.S., relating to Homeowners' Construction Recovery Fund.

Section 42 amends s. 731.401, F.S., relating to arbitration of disputes.

Section 43 redesignates the title of chapter 44.

Section 44 provides direction to the Division of Statutory Revision.

Section 45 provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "fiscal comments" section.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "fiscal comments" section.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The statutory changes in this bill could result in an increase in judicial workload. However, the increase should be insignificant and absorbed within existing resources.<sup>3</sup>

## 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.

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<sup>3</sup> Email from Eric Maclure, Director of Community and Intergovernmental Relations, Office of State Courts Administrator, February 3, 2012, on file with Justice Appropriations Subcommittee staff

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1                                   A bill to be entitled  
2           An act relating to dispute resolution; amending s.  
3           682.01, F.S.; revising the short title of the "Florida  
4           Arbitration Code" to the "Revised Florida Arbitration  
5           Code"; creating s. 682.011, F.S.; providing  
6           definitions; creating s. 682.012, F.S.; specifying how  
7           a person gives notice to another person and how a  
8           person receives notice; creating s. 682.013, F.S.;  
9           specifying the applicability of the revised code;  
10          creating s. 682.014, F.S.; providing that an agreement  
11          may waive or vary the effect of statutory arbitration  
12          provisions; providing exceptions; creating s. 682.015,  
13          F.S.; providing for petitions for judicial relief;  
14          providing for service of notice of an initial petition  
15          for such relief; amending s. 682.02, F.S.; revising  
16          provisions relating to the making of arbitration  
17          agreements; requiring a court to decide whether an  
18          agreement to arbitrate exists or a controversy is  
19          subject to an agreement to arbitrate; providing for  
20          determination of specified issues by an arbitrator;  
21          providing for continuation of an arbitration  
22          proceeding pending resolution of certain issues by a  
23          court; revising provisions relating to applicability  
24          of provisions to certain interlocal agreements;  
25          amending s. 682.03, F.S.; revising provisions relating  
26          to proceedings to compel and to stay arbitration;  
27          creating s. 682.031, F.S.; providing for a court to  
28          order provisional remedies before an arbitrator is

29 appointed and is authorized and able to act; providing  
 30 for orders for provisional remedies by an arbitrator;  
 31 providing that a party does not waive a right of  
 32 arbitration by seeking provisional remedies in court;  
 33 creating s. 682.032, F.S.; providing for initiation of  
 34 arbitration; providing that a person waives any  
 35 objection to lack of or insufficiency of notice by  
 36 appearing at the arbitration hearing; providing an  
 37 exception; creating s. 682.033, F.S.; providing for  
 38 consolidation of separate arbitration proceedings as  
 39 to all or some of the claims in certain circumstances;  
 40 prohibiting consolidation if the agreement prohibits  
 41 consolidation; amending s. 682.04, F.S.; revising  
 42 provisions relating to appointment of an arbitrator;  
 43 prohibiting an individual with an interest in the  
 44 outcome of an arbitration from serving as a neutral  
 45 arbitrator; creating s. 682.041, F.S.; requiring  
 46 certain disclosures of interests and relationships by  
 47 a person before accepting appointment as an  
 48 arbitrator; providing a continuing obligation to make  
 49 such disclosures; providing for objections to an  
 50 arbitrator based on information disclosed; providing  
 51 for vacation of an award if an arbitrator failed to  
 52 disclose a fact as required; providing that an  
 53 arbitrator appointed as a neutral arbitrator who does  
 54 not disclose certain interests or relationships is  
 55 presumed to act with partiality for specified  
 56 purposes; requiring parties to substantially comply

57 | with agreed to procedures of an arbitration  
 58 | organization or any other procedures for challenges to  
 59 | arbitrators before an award is made in order to seek  
 60 | vacation of an award on specified grounds; amending s.  
 61 | 682.05, F.S.; requiring that if there is more than one  
 62 | arbitrator, the powers of an arbitrator must be  
 63 | exercised by a majority of the arbitrators; requiring  
 64 | all arbitrators to conduct the arbitration hearing;  
 65 | creating s. 682.051, F.S.; providing immunity from  
 66 | civil liability for an arbitrator or an arbitration  
 67 | organization acting in the capacity of an arbitrator;  
 68 | providing that this immunity is supplemental to any  
 69 | immunity under other law; providing that failure to  
 70 | make a required disclosure does not remove immunity;  
 71 | providing that an arbitrator or representative of an  
 72 | arbitration organization is not competent to testify  
 73 | and may not be required to produce records concerning  
 74 | the arbitration; providing exceptions; providing for  
 75 | awarding an arbitrator, arbitration organization, or  
 76 | representative of an arbitration organization with  
 77 | reasonable attorney fees and expenses of litigation  
 78 | under certain circumstances; amending s. 682.06, F.S.;  
 79 | revising provisions relating to the conduct of  
 80 | arbitration hearings; providing for summary  
 81 | disposition, notice of hearings, adjournment, and  
 82 | rights of a party to the arbitration proceeding;  
 83 | requiring appointment of a replacement arbitrator in  
 84 | certain circumstances; amending s. 682.07, F.S.;



85 providing that a party to an arbitration proceeding  
 86 may be represented by an attorney; amending s. 682.08,  
 87 F.S.; revising provisions relating to the issuance,  
 88 service, and enforcement of subpoenas; revising  
 89 provisions relating to depositions; authorizing an  
 90 arbitrator to permit discovery in certain  
 91 circumstances; authorizing an arbitrator to order  
 92 compliance with discovery; authorizing protective  
 93 orders by an arbitrator; providing for applicability  
 94 of laws compelling a person under subpoena to testify  
 95 and all fees for attending a judicial proceeding, a  
 96 deposition, or a discovery proceeding as a witness;  
 97 providing for court enforcement of a subpoena or  
 98 discovery-related order; providing for witness fees;  
 99 creating s. 682.081, F.S.; providing for judicial  
 100 enforcement of a preaward ruling by an arbitrator in  
 101 certain circumstances; amending s. 682.09, F.S.;  
 102 revising provisions relating to the record needed for  
 103 an award; revising provisions relating to the time  
 104 within which an award must be made; amending s.  
 105 682.10, F.S.; revising provisions relating to  
 106 requirements for a motion to modify or correct an  
 107 award; amending s. 682.11, F.S.; revising provisions  
 108 relating to fees and expenses of arbitration;  
 109 authorizing punitive damages and other exemplary  
 110 relief and remedies; amending s. 682.12, F.S.;  
 111 revising provisions relating to confirmation of an  
 112 award; amending s. 682.13, F.S.; revising provisions

113 relating to grounds for vacating an award; revising  
 114 provisions relating to a motion for vacating an award;  
 115 providing for a rehearing in certain circumstances;  
 116 amending s. 682.14, F.S.; revising provisions relating  
 117 to the time for moving to modify or correct an award;  
 118 deleting references to the term "umpire"; revising a  
 119 provision concerning confirmation of awards; amending  
 120 s. 682.15, F.S.; revising provisions relating to a  
 121 court order confirming, vacating without directing a  
 122 rehearing, modifying, or correcting an award;  
 123 providing for award of costs and attorney fees in  
 124 certain circumstances; repealing s. 682.16, F.S.,  
 125 relating to judgment roll and docketing of certain  
 126 orders; repealing s. 682.17, F.S., relating to  
 127 application to court; repealing s. 682.18, F.S.,  
 128 relating to the definition of the term "court" and  
 129 jurisdiction; creating s. 682.181, F.S.; providing for  
 130 jurisdiction relating to the revised code; amending s.  
 131 682.19, F.S.; revising provisions relating to venue  
 132 for actions relating to the code; amending s. 682.20,  
 133 F.S.; providing that an appeal may be taken from an  
 134 order denying confirmation of an award unless the  
 135 court has entered an order under specified provisions;  
 136 providing that all other orders denying confirmation  
 137 of an award are final orders; repealing s. 682.21,  
 138 F.S., relating to the previous code not applying  
 139 retroactively; repealing s. 682.22, F.S., relating to  
 140 conflict of laws; creating s. 682.23, F.S.; specifying

141 the relationship of the code to the Electronic  
 142 Signatures in Global and National Commerce Act;  
 143 creating s. 682.24, F.S.; specifying the effective  
 144 date of the revised code; providing for applicability;  
 145 creating s. 682.25, F.S.; providing that the revised  
 146 code does not apply to any dispute involving child  
 147 custody, visitation, or child support; amending s.  
 148 44.104, F.S.; deleting references to binding  
 149 arbitration from provisions providing for voluntary  
 150 trial resolution; providing for temporary relief;  
 151 revising provisions relating to procedures in  
 152 voluntary trial resolution; providing that a judgment  
 153 is reviewable in the same manner as a judgment in a  
 154 civil action; deleting provisions relating to  
 155 applicability of the harmless error doctrine;  
 156 providing limitations on the jurisdiction of a trial  
 157 resolution judge; providing for the use of juries;  
 158 providing for the title of a trial resolution judge  
 159 and the use of judicial robes; amending s. 44.107,  
 160 F.S.; providing immunity for voluntary trial  
 161 resolution judges serving under specified provisions;  
 162 amending ss. 440.1926 and 489.1402, F.S.; conforming  
 163 cross-references; amending s. 731.401, F.S.; revising  
 164 a reference to binding arbitration under a specified  
 165 provision; providing directives to the Division of  
 166 Statutory Revision, including redesignating the title  
 167 of chapter 44, Florida Statutes, as "Alternative  
 168 Dispute Resolution"; providing an effective date.

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

Section 1. Section 682.01, Florida Statutes, is amended to read:

682.01 Short title Florida Arbitration Code.~~This chapter Sections 682.01-682.22~~ may be cited as the "Revised Florida Arbitration Code."

Section 2. Section 682.011, Florida Statutes, is created to read:

682.011 Definitions.-As used in this chapter, the term:

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means a court of competent jurisdiction in this state.

(4) "Knowledge" means actual knowledge.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

195           (6) "Record" means information that is inscribed on a  
 196 tangible medium or that is stored in an electronic or other  
 197 medium and is retrievable in perceivable form.

198           Section 3. Section 682.012, Florida Statutes, is created  
 199 to read:

200           682.012 Notice.-

201           (1) Except as otherwise provided in the Revised Florida  
 202 Arbitration Code, a person gives notice to another person by  
 203 taking action that is reasonably necessary to inform the other  
 204 person in ordinary course, whether or not the other person  
 205 acquires knowledge of the notice.

206           (2) A person has notice if the person has knowledge of the  
 207 notice or has received notice.

208           (3) A person receives notice when it comes to the person's  
 209 attention or the notice is delivered at the person's place of  
 210 residence or place of business, or at another location held out  
 211 by the person as a place of delivery of such communications.

212           Section 4. Section 682.013, Florida Statutes, is created  
 213 to read:

214           682.013 Applicability of revised code.-

215           (1) The Revised Florida Arbitration Code governs an  
 216 agreement to arbitrate made on or after the effective date of  
 217 this act.

218           (2) The Revised Florida Arbitration Code governs an  
 219 agreement to arbitrate made before the effective date of this  
 220 act if all the parties to the agreement or to the arbitration  
 221 proceeding so agree in a record.

222       (3) Beginning July 1, 2015, the Revised Florida  
 223 Arbitration Code governs an agreement to arbitrate whenever  
 224 made.

225       Section 5. Section 682.014, Florida Statutes, is created  
 226 to read:

227       682.014 Effect of agreement to arbitrate; nonwaivable  
 228 provisions.-

229       (1) Except as otherwise provided in subsections (2) and  
 230 (3), a party to an agreement to arbitrate or to an arbitration  
 231 proceeding may waive, or the parties may vary the effect of, the  
 232 requirements of the Revised Florida Arbitration Code to the  
 233 extent permitted by law.

234       (2) Before a controversy arises that is subject to an  
 235 agreement to arbitrate, a party to the agreement may not:

236       (a) Waive or agree to vary the effect of the requirements  
 237 of s. 682.015(1), s. 682.02(1), s. 682.031, s. 682.08(1) or (2),  
 238 s. 682.181, or s. 682.20;

239       (b) Agree to unreasonably restrict the right under s.  
 240 682.032 to notice of the initiation of an arbitration  
 241 proceeding;

242       (c) Agree to unreasonably restrict the right under s.  
 243 682.041 to disclosure of any facts by a neutral arbitrator; or

244       (d) Waive the right under s. 682.07 of a party to an  
 245 agreement to arbitrate to be represented by an attorney at any  
 246 proceeding or hearing under the Revised Florida Arbitration  
 247 Code, but an employer and a labor organization may waive the  
 248 right to representation by an attorney in a labor arbitration.

249           (3) A party to an agreement to arbitrate or arbitration  
 250 proceeding may not waive, or the parties may not vary the effect  
 251 of, the requirements in this section or s. 682.013(1) or (3), s.  
 252 682.03, s. 682.051, s. 682.081, s. 682.10(4) or (5), s. 682.12,  
 253 s. 682.13, s. 682.14, s. 682.15(1) or (2), s. 682.23, s. 682.24,  
 254 or s. 682.25.

255           Section 6. Section 682.015, Florida Statutes, is created  
 256 to read:

257           682.015 Petition for judicial relief.-

258           (1) Except as otherwise provided in s. 682.20, a petition  
 259 for judicial relief under this chapter must be made to the court  
 260 and heard in the manner provided by law or rule of court for  
 261 making and hearing motions.

262           (2) Unless a civil action involving the agreement to  
 263 arbitrate is pending, notice of an initial petition to the court  
 264 under this chapter must be served in the manner provided by law  
 265 for the service of a summons in a civil action. Otherwise,  
 266 notice of the motion must be given in the manner provided by law  
 267 or rule of court for serving motions in pending cases.

268           Section 7. Section 682.02, Florida Statutes, is amended to  
 269 read:

270           682.02 Arbitration agreements made valid, irrevocable, and  
 271 enforceable; scope.-

272           (1) An agreement contained in a record to submit to  
 273 arbitration any existing or subsequent controversy arising  
 274 between the parties to the agreement is valid, enforceable, and  
 275 irrevocable except upon a ground that exists at law or in equity  
 276 for the revocation of a contract.

277 (2) The court shall decide whether an agreement to  
 278 arbitrate exists or a controversy is subject to an agreement to  
 279 arbitrate.

280 (3) An arbitrator shall decide whether a condition  
 281 precedent to arbitrability has been fulfilled and whether a  
 282 contract containing a valid agreement to arbitrate is  
 283 enforceable.

284 (4) If a party to a judicial proceeding challenges the  
 285 existence of, or claims that a controversy is not subject to, an  
 286 agreement to arbitrate, the arbitration proceeding may continue  
 287 pending final resolution of the issue by the court, unless the  
 288 court otherwise orders.

289 ~~(5) Two or more parties may agree in writing to submit to~~  
 290 ~~arbitration any controversy existing between them at the time of~~  
 291 ~~the agreement, or they may include in a written contract a~~  
 292 ~~provision for the settlement by arbitration of any controversy~~  
 293 ~~thereafter arising between them relating to such contract or the~~  
 294 ~~failure or refusal to perform the whole or any part thereof.~~

295 This section also applies to written interlocal agreements under  
 296 ss. 163.01 and 373.713 in which two or more parties agree to  
 297 submit to arbitration any controversy between them concerning  
 298 water use permit motions ~~applications~~ and other matters,  
 299 regardless of whether or not the water management district with  
 300 jurisdiction over the subject motion ~~application~~ is a party to  
 301 the interlocal agreement or a participant in the arbitration.  
 302 ~~Such agreement or provision shall be valid, enforceable, and~~  
 303 ~~irrevocable without regard to the justiciable character of the~~  
 304 ~~controversy; provided that this act shall not apply to any such~~



305 ~~agreement or provision to arbitrate in which it is stipulated~~  
 306 ~~that this law shall not apply or to any arbitration or award~~  
 307 ~~thereunder.~~

308 Section 8. Section 682.03, Florida Statutes, is amended to  
 309 read:

310 682.03 Proceedings to compel and to stay arbitration.-

311 (1) On motion of a person showing an agreement to  
 312 arbitrate and alleging another person's refusal to arbitrate  
 313 pursuant to the agreement:

314 (a) If the refusing party does not appear or does not  
 315 oppose the motion, the court shall order the parties to  
 316 arbitrate.

317 (b) If the refusing party opposes the motion, the court  
 318 shall proceed summarily to decide the issue and order the  
 319 parties to arbitrate unless it finds that there is no  
 320 enforceable agreement to arbitrate ~~A party to an agreement or~~  
 321 ~~provision for arbitration subject to this law claiming the~~  
 322 ~~neglect or refusal of another party thereto to comply therewith~~  
 323 ~~may make application to the court for an order directing the~~  
 324 ~~parties to proceed with arbitration in accordance with the terms~~  
 325 ~~thereof. If the court is satisfied that no substantial issue~~  
 326 ~~exists as to the making of the agreement or provision, it shall~~  
 327 ~~grant the application. If the court shall find that a~~  
 328 ~~substantial issue is raised as to the making of the agreement or~~  
 329 ~~provision, it shall summarily hear and determine the issue and,~~  
 330 ~~according to its determination, shall grant or deny the~~  
 331 ~~application.~~

332 (2) On motion of a person alleging that an arbitration

333 proceeding has been initiated or threatened but that there is no  
 334 agreement to arbitrate, the court shall proceed summarily to  
 335 decide the issue. If the court finds that there is an  
 336 enforceable agreement to arbitrate, it shall order the parties  
 337 to arbitrate ~~If an issue referable to arbitration under an~~  
 338 ~~agreement or provision for arbitration subject to this law~~  
 339 ~~becomes involved in an action or proceeding pending in a court~~  
 340 ~~having jurisdiction to hear an application under subsection (1),~~  
 341 ~~such application shall be made in said court. Otherwise and~~  
 342 ~~subject to s. 682.19, such application may be made in any court~~  
 343 ~~of competent jurisdiction.~~

344 (3) If the court finds that there is no enforceable  
 345 agreement to arbitrate, it may not order the parties to  
 346 arbitrate pursuant to subsection (1) or subsection (2) ~~Any~~  
 347 ~~action or proceeding involving an issue subject to arbitration~~  
 348 ~~under this law shall be stayed if an order for arbitration or an~~  
 349 ~~application therefor has been made under this section or, if the~~  
 350 ~~issue is severable, the stay may be with respect thereto only.~~  
 351 ~~When the application is made in such action or proceeding, the~~  
 352 ~~order for arbitration shall include such stay.~~

353 (4) The court may not refuse to order arbitration because  
 354 the claim subject to arbitration lacks merit or grounds for the  
 355 claim have not been established ~~On application the court may~~  
 356 ~~stay an arbitration proceeding commenced or about to be~~  
 357 ~~commenced, if it shall find that no agreement or provision for~~  
 358 ~~arbitration subject to this law exists between the party making~~  
 359 ~~the application and the party causing the arbitration to be had.~~  
 360 ~~The court shall summarily hear and determine the issue of the~~

361 ~~making of the agreement or provision and, according to its~~  
 362 ~~determination, shall grant or deny the application.~~

363 (5) If a proceeding involving a claim referable to  
 364 arbitration under an alleged agreement to arbitrate is pending  
 365 in court, a motion under this section must be made in that  
 366 court. Otherwise, a motion under this section may be made in any  
 367 court as provided in s. 682.19 ~~An order for arbitration shall~~  
 368 ~~not be refused on the ground that the claim in issue lacks merit~~  
 369 ~~or bona fides or because any fault or grounds for the claim~~  
 370 ~~sought to be arbitrated have not been shown.~~

371 (6) If a party makes a motion to the court to order  
 372 arbitration, the court on just terms shall stay any judicial  
 373 proceeding that involves a claim alleged to be subject to the  
 374 arbitration until the court renders a final decision under this  
 375 section.

376 (7) If the court orders arbitration, the court on just  
 377 terms shall stay any judicial proceeding that involves a claim  
 378 subject to the arbitration. If a claim subject to the  
 379 arbitration is severable, the court may limit the stay to that  
 380 claim.

381 Section 9. Section 682.031, Florida Statutes, is created  
 382 to read:

383 682.031 Provisional remedies.—

384 (1) Before an arbitrator is appointed and is authorized  
 385 and able to act, the court, upon motion of a party to an  
 386 arbitration proceeding and for good cause shown, may enter an  
 387 order for provisional remedies to protect the effectiveness of  
 388 the arbitration proceeding to the same extent and under the same

389 conditions as if the controversy were the subject of a civil  
 390 action.

391 (2) After an arbitrator is appointed and is authorized and  
 392 able to act:

393 (a) The arbitrator may issue such orders for provisional  
 394 remedies, including interim awards, as the arbitrator finds  
 395 necessary to protect the effectiveness of the arbitration  
 396 proceeding and to promote the fair and expeditious resolution of  
 397 the controversy, to the same extent and under the same  
 398 conditions as if the controversy were the subject of a civil  
 399 action.

400 (b) A party to an arbitration proceeding may move the  
 401 court for a provisional remedy only if the matter is urgent and  
 402 the arbitrator is not able to act timely or the arbitrator  
 403 cannot provide an adequate remedy.

404 (3) A party does not waive a right of arbitration by  
 405 making a motion under this section.

406 Section 10. Section 682.032, Florida Statutes, is created  
 407 to read:

408 682.032 Initiation of arbitration.-

409 (1) A person initiates an arbitration proceeding by giving  
 410 notice in a record to the other parties to the agreement to  
 411 arbitrate in the agreed manner between the parties or, in the  
 412 absence of agreement, by certified or registered mail, return  
 413 receipt requested and obtained, or by service as authorized for  
 414 the commencement of a civil action. The notice must describe the  
 415 nature of the controversy and the remedy sought.

416 (2) Unless a person objects for lack or insufficiency of  
 417 notice under s. 682.06(3) not later than the beginning of the  
 418 arbitration hearing, the person by appearing at the hearing  
 419 waives any objection to lack of or insufficiency of notice.

420 Section 11. Section 682.033, Florida Statutes, is created  
 421 to read:

422 682.033 Consolidation of separate arbitration  
 423 proceedings.-

424 (1) Except as otherwise provided in subsection (3), upon  
 425 motion of a party to an agreement to arbitrate or to an  
 426 arbitration proceeding, the court may order consolidation of  
 427 separate arbitration proceedings as to all or some of the claims  
 428 if:

429 (a) There are separate agreements to arbitrate or separate  
 430 arbitration proceedings between the same persons or one of them  
 431 is a party to a separate agreement to arbitrate or a separate  
 432 arbitration proceeding with a third person;

433 (b) The claims subject to the agreements to arbitrate  
 434 arise in substantial part from the same transaction or series of  
 435 related transactions;

436 (c) The existence of a common issue of law or fact creates  
 437 the possibility of conflicting decisions in the separate  
 438 arbitration proceedings; and

439 (d) Prejudice resulting from a failure to consolidate is  
 440 not outweighed by the risk of undue delay or prejudice to the  
 441 rights of or hardship to parties opposing consolidation.

442       (2) The court may order consolidation of separate  
 443 arbitration proceedings as to some claims and allow other claims  
 444 to be resolved in separate arbitration proceedings.

445       (3) The court may not order consolidation of the claims of  
 446 a party to an agreement to arbitrate if the agreement prohibits  
 447 consolidation.

448       Section 12. Section 682.04, Florida Statutes, is amended  
 449 to read:

450       682.04 Appointment of arbitrators by court.—

451       (1) If the parties to an agreement to arbitrate agree on  
 452 ~~or provision for arbitration subject to this law provides a~~  
 453 ~~method for appointing the appointment of arbitrators or an~~  
 454 ~~umpire, this method must shall be followed, unless the method~~  
 455 ~~fails.~~

456       (2) The court, on application of a party to an arbitration  
 457 agreement, shall appoint one or more arbitrators, if:

- 458       (a) The parties have not agreed on a method;
- 459       (b) The agreed method fails;
- 460       (c) One or more of the parties failed to respond to the  
 461 demand for arbitration; or
- 462       (d) An arbitrator fails to act and a successor has not  
 463 been appointed.

464       (3) In the absence thereof, or if the agreed method fails  
 465 ~~or for any reason cannot be followed, or if an arbitrator or~~  
 466 ~~umpire who has been appointed fails to act and his or her~~  
 467 ~~successor has not been duly appointed, the court, on application~~  
 468 ~~of a party to such agreement or provision shall appoint one or~~  
 469 ~~more arbitrators or an umpire. An arbitrator or umpire so~~

470 appointed has all the ~~shall have like~~ powers of an arbitrator  
 471 designated as if named or provided for in the agreement to  
 472 arbitrate appointed pursuant to the agreed method ~~or provision.~~

473 (4) An individual who has a known, direct, and material  
 474 interest in the outcome of the arbitration proceeding or a  
 475 known, existing, and substantial relationship with a party may  
 476 not serve as an arbitrator required by an agreement to be  
 477 neutral.

478 Section 13. Section 682.041, Florida Statutes, is created  
 479 to read:

480 682.041 Disclosure by arbitrator.—

481 (1) Before accepting appointment, an individual who is  
 482 requested to serve as an arbitrator, after making a reasonable  
 483 inquiry, shall disclose to all parties to the agreement to  
 484 arbitrate and arbitration proceeding and to any other  
 485 arbitrators any known facts that a reasonable person would  
 486 consider likely to affect the person's impartiality as an  
 487 arbitrator in the arbitration proceeding, including:

488 (a) A financial or personal interest in the outcome of the  
 489 arbitration proceeding.

490 (b) An existing or past relationship with any of the  
 491 parties to the agreement to arbitrate or the arbitration  
 492 proceeding, their counsel or representative, a witness, or  
 493 another arbitrator.

494 (2) An arbitrator has a continuing obligation to disclose  
 495 to all parties to the agreement to arbitrate and arbitration  
 496 proceeding and to any other arbitrators any facts that the  
 497 arbitrator learns after accepting appointment that a reasonable

498 person would consider likely to affect the impartiality of the  
 499 arbitrator.

500 (3) If an arbitrator discloses a fact required by  
 501 subsection (1) or subsection (2) to be disclosed and a party  
 502 timely objects to the appointment or continued service of the  
 503 arbitrator based upon the fact disclosed, the objection may be a  
 504 ground under s. 682.13(1)(b) for vacating an award made by the  
 505 arbitrator.

506 (4) If the arbitrator did not disclose a fact as required  
 507 by subsection (1) or subsection (2), upon timely objection by a  
 508 party, the court may vacate an award under s. 682.13(1)(b).

509 (5) An arbitrator appointed as a neutral arbitrator who  
 510 does not disclose a known, direct, and material interest in the  
 511 outcome of the arbitration proceeding or a known, existing, and  
 512 substantial relationship with a party is presumed to act with  
 513 evident partiality under s. 682.13(1)(b).

514 (6) If the parties to an arbitration proceeding agree to  
 515 the procedures of an arbitration organization or any other  
 516 procedures for challenges to arbitrators before an award is  
 517 made, substantial compliance with those procedures is a  
 518 condition precedent to a motion to vacate an award on that  
 519 ground under s. 682.13(1)(b).

520 Section 14. Section 682.05, Florida Statutes, is amended  
 521 to read:

522 682.05 Majority action by arbitrators.—If there is more  
 523 than one arbitrator, the powers of an arbitrator must be  
 524 exercised by a majority of the arbitrators, but all of the  
 525 arbitrators shall conduct the hearing under s. 682.06(3) ~~The~~



526 ~~powers of the arbitrators may be exercised by a majority of~~  
 527 ~~their number unless otherwise provided in the agreement or~~  
 528 ~~provision for arbitration.~~

529 Section 15. Section 682.051, Florida Statutes, is created  
 530 to read:

531 682.051 Immunity of arbitrator; competency to testify;  
 532 attorney fees and costs.-

533 (1) An arbitrator or an arbitration organization acting in  
 534 the capacity of an arbitrator is immune from civil liability to  
 535 the same extent as a judge of a court of this state acting in a  
 536 judicial capacity.

537 (2) The immunity afforded under this section supplements  
 538 any immunity under other law.

539 (3) The failure of an arbitrator to make a disclosure  
 540 required by s. 682.041 does not cause any loss of immunity under  
 541 this section.

542 (4) In a judicial, administrative, or similar proceeding,  
 543 an arbitrator or representative of an arbitration organization  
 544 is not competent to testify, and may not be required to produce  
 545 records as to any statement, conduct, decision, or ruling  
 546 occurring during the arbitration proceeding, to the same extent  
 547 as a judge of a court of this state acting in a judicial  
 548 capacity. This subsection does not apply:

549 (a) To the extent necessary to determine the claim of an  
 550 arbitrator, arbitration organization, or representative of the  
 551 arbitration organization against a party to the arbitration  
 552 proceeding; or

553 (b) To a hearing on a motion to vacate an award under s.  
 554 682.13(1)(a) or (b) if the movant establishes prima facie that a  
 555 ground for vacating the award exists.

556 (5) If a person commences a civil action against an  
 557 arbitrator, arbitration organization, or representative of an  
 558 arbitration organization arising from the services of the  
 559 arbitrator, organization, or representative or if a person seeks  
 560 to compel an arbitrator or a representative of an arbitration  
 561 organization to testify or produce records in violation of  
 562 subsection (4), and the court decides that the arbitrator,  
 563 arbitration organization, or representative of an arbitration  
 564 organization is immune from civil liability or that the  
 565 arbitrator or representative of the organization is not  
 566 competent to testify, the court shall award to the arbitrator,  
 567 organization, or representative reasonable attorney fees and  
 568 other reasonable expenses of litigation.

569 Section 16. Section 682.06, Florida Statutes, is amended  
 570 to read:

571 682.06 Hearing.—

572 (1) An arbitrator may conduct an arbitration in such  
 573 manner as the arbitrator considers appropriate for a fair and  
 574 expeditious disposition of the proceeding. The arbitrator's  
 575 authority includes the power to hold conferences with the  
 576 parties to the arbitration proceeding before the hearing and,  
 577 among other matters, determine the admissibility, relevance,  
 578 materiality, and weight of any evidence ~~Unless otherwise~~  
 579 ~~provided by the agreement or provision for arbitration:~~

580 ~~(1)(a) The arbitrators shall appoint a time and place for~~

581 ~~the hearing and cause notification to the parties to be served~~  
 582 ~~personally or by registered or certified mail not less than 5~~  
 583 ~~days before the hearing. Appearance at the hearing waives a~~  
 584 ~~party's right to such notice. The arbitrators may adjourn their~~  
 585 ~~hearing from time to time upon their own motion and shall do so~~  
 586 ~~upon the request of any party to the arbitration for good cause~~  
 587 ~~shown, provided that no adjournment or postponement of their~~  
 588 ~~hearing shall extend beyond the date fixed in the agreement or~~  
 589 ~~provision for making the award unless the parties consent to a~~  
 590 ~~later date. An umpire authorized to hear and decide the cause~~  
 591 ~~upon failure of the arbitrators to agree upon an award shall, in~~  
 592 ~~the course of his or her jurisdiction, have like powers and be~~  
 593 ~~subject to like limitations thereon.~~

594 ~~(b) The arbitrators, or umpire in the course of his or her~~  
 595 ~~jurisdiction, may hear and decide the controversy upon the~~  
 596 ~~evidence produced notwithstanding the failure or refusal of a~~  
 597 ~~party duly notified of the time and place of the hearing to~~  
 598 ~~appear. The court on application may direct the arbitrators, or~~  
 599 ~~the umpire in the course of his or her jurisdiction, to proceed~~  
 600 ~~promptly with the hearing and making of the award.~~

601 (2) An arbitrator may decide a request for summary  
 602 disposition of a claim or particular issue:

603 (a) If all interested parties agree; or

604 (b) Upon request of one party to the arbitration  
 605 proceeding, if that party gives notice to all other parties to  
 606 the proceeding and the other parties have a reasonable  
 607 opportunity to respond ~~The parties are entitled to be heard, to~~  
 608 ~~present evidence material to the controversy and to cross-~~

609 ~~examine witnesses appearing at the hearing.~~  
 610       (3) If an arbitrator orders a hearing, the arbitrator  
 611 shall set a time and place and give notice of the hearing not  
 612 less than 5 days before the hearing begins. Unless a party to  
 613 the arbitration proceeding makes an objection to lack or  
 614 insufficiency of notice not later than the beginning of the  
 615 hearing, the party's appearance at the hearing waives the  
 616 objection. Upon request of a party to the arbitration proceeding  
 617 and for good cause shown, or upon the arbitrator's own  
 618 initiative, the arbitrator may adjourn the hearing from time to  
 619 time as necessary but may not postpone the hearing to a time  
 620 later than that fixed by the agreement to arbitrate for making  
 621 the award unless the parties to the arbitration proceeding  
 622 consent to a later date. The arbitrator may hear and decide the  
 623 controversy upon the evidence produced although a party who was  
 624 duly notified of the arbitration proceeding did not appear. The  
 625 court, on request, may direct the arbitrator to conduct the  
 626 hearing promptly and render a timely decision ~~The hearing shall~~  
 627 ~~be conducted by all of the arbitrators but a majority may~~  
 628 ~~determine any question and render a final award. An umpire~~  
 629 ~~authorized to hear and decide the cause upon the failure of the~~  
 630 ~~arbitrators to agree upon an award shall sit with the~~  
 631 ~~arbitrators throughout their hearing but shall not be counted as~~  
 632 ~~a part of their quorum or in the making of their award. If,~~  
 633 ~~during the course of the hearing, an arbitrator for any reason~~  
 634 ~~ceases to act, the remaining arbitrator, arbitrators or umpire~~  
 635 ~~appointed to act as neutrals may continue with the hearing and~~  
 636 ~~determination of the controversy.~~

637 (4) At a hearing under subsection (3), a party to the  
 638 arbitration proceeding has a right to be heard, to present  
 639 evidence material to the controversy, and to cross-examine  
 640 witnesses appearing at the hearing.

641 (5) If an arbitrator ceases or is unable to act during the  
 642 arbitration proceeding, a replacement arbitrator must be  
 643 appointed in accordance with s. 682.04 to continue the  
 644 proceeding and to resolve the controversy.

645 Section 17. Section 682.07, Florida Statutes, is amended  
 646 to read:

647 682.07 Representation by attorney.—A party to an  
 648 arbitration proceeding may ~~has the right to~~ be represented by an  
 649 attorney ~~at any arbitration proceeding or hearing under this~~  
 650 ~~law. A waiver thereof prior to the proceeding or hearing is~~  
 651 ~~ineffective.~~

652 Section 18. Section 682.08, Florida Statutes, is amended  
 653 to read:

654 682.08 Witnesses, subpoenas, depositions.—

655 (1) An arbitrator may issue a subpoena for the attendance  
 656 of a witness and for the production of records and other  
 657 evidence at any hearing and may administer oaths. A subpoena  
 658 must be served in the manner for service of subpoenas in a civil  
 659 action and, upon motion to the court by a party to the  
 660 arbitration proceeding or the arbitrator, enforced in the manner  
 661 for enforcement of subpoenas in a civil action ~~Arbitrators, or~~  
 662 ~~an umpire authorized to hear and decide the cause upon failure~~  
 663 ~~of the arbitrators to agree upon an award, in the course of her~~  
 664 ~~or his jurisdiction, may issue subpoenas for the attendance of~~

665 ~~witnesses and for the production of books, records, documents~~  
 666 ~~and other evidence, and shall have the power to administer~~  
 667 ~~oaths. Subpoenas so issued shall be served, and upon application~~  
 668 ~~to the court by a party to the arbitration or the arbitrators,~~  
 669 ~~or the umpire, enforced in the manner provided by law for the~~  
 670 ~~service and enforcement of subpoenas in a civil action.~~

671 (2) In order to make the proceedings fair, expeditious,  
 672 and cost effective, upon request of a party to, or a witness in,  
 673 an arbitration proceeding, an arbitrator may permit a deposition  
 674 of any witness to be taken for use as evidence at the hearing,  
 675 including a witness who cannot be subpoenaed for or is unable to  
 676 attend a hearing. The arbitrator shall determine the conditions  
 677 under which the deposition is taken ~~On application of a party to~~  
 678 ~~the arbitration and for use as evidence, the arbitrators, or the~~  
 679 ~~umpire in the course of her or his jurisdiction, may permit a~~  
 680 ~~deposition to be taken, in the manner and upon the terms~~  
 681 ~~designated by them or her or him of a witness who cannot be~~  
 682 ~~subpoenaed or is unable to attend the hearing.~~

683 (3) An arbitrator may permit such discovery as the  
 684 arbitrator decides is appropriate in the circumstances, taking  
 685 into account the needs of the parties to the arbitration  
 686 proceeding and other affected persons and the desirability of  
 687 making the proceeding fair, expeditious, and cost effective ~~All~~  
 688 ~~provisions of law compelling a person under subpoena to testify~~  
 689 ~~are applicable.~~

690 (4) If an arbitrator permits discovery under subsection  
 691 (3), the arbitrator may order a party to the arbitration  
 692 proceeding to comply with the arbitrator's discovery-related

693 orders, issue subpoenas for the attendance of a witness and for  
 694 the production of records and other evidence at a discovery  
 695 proceeding, and take action against a noncomplying party to the  
 696 extent a court could if the controversy were the subject of a  
 697 civil action in this state.

698 (5) An arbitrator may issue a protective order to prevent  
 699 the disclosure of privileged information, confidential  
 700 information, trade secrets, and other information protected from  
 701 disclosure to the extent a court could if the controversy were  
 702 the subject of a civil action in this state.

703 (6) All laws compelling a person under subpoena to testify  
 704 and all fees for attending a judicial proceeding, a deposition,  
 705 or a discovery proceeding as a witness apply to an arbitration  
 706 proceeding as if the controversy were the subject of a civil  
 707 action in this state.

708 (7) The court may enforce a subpoena or discovery-related  
 709 order for the attendance of a witness within this state and for  
 710 the production of records and other evidence issued by an  
 711 arbitrator in connection with an arbitration proceeding in  
 712 another state upon conditions determined by the court so as to  
 713 make the arbitration proceeding fair, expeditious, and cost  
 714 effective. A subpoena or discovery-related order issued by an  
 715 arbitrator in another state must be served in the manner  
 716 provided by law for service of subpoenas in a civil action in  
 717 this state and, upon motion to the court by a party to the  
 718 arbitration proceeding or the arbitrator, enforced in the manner  
 719 provided by law for enforcement of subpoenas in a civil action  
 720 in this state.

721 ~~(8)(4)~~ Fees for attendance as a witness shall be the same  
 722 as for a witness in the circuit court.

723 Section 19. Section 682.081, Florida Statutes, is created  
 724 to read:

725 682.081 Judicial enforcement of preaward ruling by  
 726 arbitrator.—If an arbitrator makes a preaward ruling in favor of  
 727 a party to the arbitration proceeding, the party may request  
 728 that the arbitrator incorporate the ruling into an award under  
 729 s. 682.12. A prevailing party may make a motion to the court for  
 730 an expedited order to confirm the award under s. 682.12, in  
 731 which case the court shall summarily decide the motion. The  
 732 court shall issue an order to confirm the award unless the court  
 733 vacates, modifies, or corrects the award under s. 682.13 or s.  
 734 682.14.

735 Section 20. Section 682.09, Florida Statutes, is amended  
 736 to read:

737 682.09 Award.—

738 (1) An arbitrator shall make a record of an award. The  
 739 record must be signed or otherwise authenticated by any  
 740 arbitrator who concurs with the award. The arbitrator or the  
 741 arbitration organization shall give notice of the award,  
 742 including a copy of the award, to each party to the arbitration  
 743 proceeding ~~The award shall be in writing and shall be signed by~~  
 744 ~~the arbitrators joining in the award or by the umpire in the~~  
 745 ~~course of his or her jurisdiction. They or he or she shall~~  
 746 ~~deliver a copy to each party to the arbitration either~~  
 747 ~~personally or by registered or certified mail, or as provided in~~  
 748 ~~the agreement or provision.~~



749           (2) An award must be made within the time specified by the  
 750 agreement to arbitrate or, if not specified therein, within the  
 751 time ordered by the court. The court may extend, or the parties  
 752 to the arbitration proceeding may agree in a record to extend,  
 753 the time. The court or the parties may do so within or after the  
 754 time specified or ordered. A party waives any objection that an  
 755 award was not timely made unless the party gives notice of the  
 756 objection to the arbitrator before receiving notice of the award  
 757 ~~An award shall be made within the time fixed therefor by the~~  
 758 ~~agreement or provision for arbitration or, if not so fixed,~~  
 759 ~~within such time as the court may order on application of a~~  
 760 ~~party to the arbitration. The parties may, by written agreement,~~  
 761 ~~extend the time either before or after the expiration thereof.~~  
 762 ~~Any objection that an award was not made within the time~~  
 763 ~~required is waived unless the objecting party notifies the~~  
 764 ~~arbitrators or umpire in writing of his or her objection prior~~  
 765 ~~to the delivery of the award to him or her.~~

766           Section 21. Section 682.10, Florida Statutes, is amended  
 767 to read:

768           682.10 Change of award by arbitrators ~~or umpire.~~-

769           (1) On motion to an arbitrator by a party to an  
 770 arbitration proceeding, the arbitrator may modify or correct an  
 771 award:

772           (a) Upon a ground stated in s. 682.14(1)(a) or (c);

773           (b) Because the arbitrator has not made a final and  
 774 definite award upon a claim submitted by the parties to the  
 775 arbitration proceeding; or

776           (c) To clarify the award.

777 (2) A motion under subsection (1) must be made and notice  
 778 given to all parties within 20 days after the movant receives  
 779 notice of the award.

780 (3) A party to the arbitration proceeding must give notice  
 781 of any objection to the motion within 10 days after receipt of  
 782 the notice.

783 (4) If a motion to the court is pending under s. 682.12,  
 784 s. 682.13, or s. 682.14, the court may submit the claim to the  
 785 arbitrator to consider whether to modify or correct the award:

786 (a) Upon a ground stated in s. 682.14(1)(a) or (c);

787 (b) Because the arbitrator has not made a final and  
 788 definite award upon a claim submitted by the parties to the  
 789 arbitration proceeding; or

790 (c) To clarify the award.

791 (5) An award modified or corrected pursuant to this  
 792 section is subject to ss. 682.09(1), 682.12, 682.13, and 682.14  
 793 ~~On application of a party to the arbitration, or if an~~  
 794 ~~application to the court is pending under s. 682.12, s. 682.13~~  
 795 ~~or s. 682.14, on submission to the arbitrators, or to the umpire~~  
 796 ~~in the case of an umpire's award, by the court under such~~  
 797 ~~conditions as the court may order, the arbitrators or umpire may~~  
 798 ~~modify or correct the award upon the grounds stated in s.~~  
 799 ~~682.14(1)(a) and (c) or for the purpose of clarifying the award.~~  
 800 ~~The application shall be made within 20 days after delivery of~~  
 801 ~~the award to the applicant. Written notice thereof shall be~~  
 802 ~~given forthwith to the other party to the arbitration, stating~~  
 803 ~~that he or she must serve his or her objections thereto, if any,~~  
 804 ~~within 10 days from the notice. The award so modified or~~

805 ~~corrected is subject to the provisions of ss. 682.12-682.14.~~

806 Section 22. Section 682.11, Florida Statutes, is amended  
807 to read:

808 682.11 Remedies; fees and expenses of arbitration  
809 proceeding.—

810 (1) An arbitrator may award punitive damages or other  
811 exemplary relief if such an award is authorized by law in a  
812 civil action involving the same claim and the evidence produced  
813 at the hearing justifies the award under the legal standards  
814 otherwise applicable to the claim.

815 (2) An arbitrator may award reasonable attorney fees and  
816 other reasonable expenses of arbitration if such an award is  
817 authorized by law in a civil action involving the same claim or  
818 by the agreement of the parties to the arbitration proceeding.

819 (3) As to all remedies other than those authorized by  
820 subsections (1) and (2), an arbitrator may order such remedies  
821 as the arbitrator considers just and appropriate under the  
822 circumstances of the arbitration proceeding. The fact that such  
823 a remedy could not or would not be granted by the court is not a  
824 ground for refusing to confirm an award under s. 682.12 or for  
825 vacating an award under s. 682.13.

826 (4) An arbitrator's expenses and fees, together with other  
827 expenses, must be paid as provided in the award.

828 (5) If an arbitrator awards punitive damages or other  
829 exemplary relief under subsection (1), the arbitrator shall  
830 specify in the award the basis in fact justifying and the basis  
831 in law authorizing the award and state separately the amount of  
832 the punitive damages or other exemplary relief ~~Unless otherwise~~

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833 ~~provided in the agreement or provision for arbitration, the~~  
 834 ~~arbitrators' and umpire's expenses and fees, together with other~~  
 835 ~~expenses, not including counsel fees, incurred in the conduct of~~  
 836 ~~the arbitration, shall be paid as provided in the award.~~

837 Section 23. Section 682.12, Florida Statutes, is amended  
 838 to read:

839 682.12 Confirmation of an award.—After a party to an  
 840 arbitration proceeding receives notice of an award, the party  
 841 may make a motion to the court for an order confirming the award  
 842 at which time the court shall issue a confirming order unless  
 843 the award is modified or corrected pursuant to s. 682.10 or s.  
 844 682.14 or is vacated pursuant to s. 682.13 ~~Upon application of a~~  
 845 ~~party to the arbitration, the court shall confirm an award,~~  
 846 ~~unless within the time limits hereinafter imposed grounds are~~  
 847 ~~urged for vacating or modifying or correcting the award, in~~  
 848 ~~which case the court shall proceed as provided in ss. 682.13 and~~  
 849 ~~682.14.~~

850 Section 24. Section 682.13, Florida Statutes, is amended  
 851 to read:

852 682.13 Vacating an award.—

853 (1) Upon motion application of a party to an arbitration  
 854 proceeding, the court shall vacate an arbitration award if when:

855 (a) The award was procured by corruption, fraud, or other  
 856 undue means;—

857 (b) There was:

858 1. Evident partiality by an arbitrator appointed as a  
 859 neutral arbitrator;

860 2. Corruption by an arbitrator; or

861 3. Misconduct by an arbitrator prejudicing the rights of a  
 862 party to the arbitration proceeding; or corruption in any of the  
 863 ~~arbitrators or umpire or misconduct prejudicing the rights of~~  
 864 ~~any party.~~

865 (c) An arbitrator refused to postpone the hearing upon  
 866 showing of sufficient cause for postponement, refused to  
 867 consider evidence material to the controversy, or otherwise  
 868 conducted the hearing contrary to s. 682.06, so as to prejudice  
 869 substantially the rights of a party to the arbitration  
 870 proceeding; The arbitrators or the umpire in the course of her  
 871 ~~or his jurisdiction exceeded their powers.~~

872 (d) An arbitrator exceeded the arbitrator's powers; The  
 873 ~~arbitrators or the umpire in the course of her or his~~  
 874 ~~jurisdiction refused to postpone the hearing upon sufficient~~  
 875 ~~cause being shown therefor or refused to hear evidence material~~  
 876 ~~to the controversy or otherwise so conducted the hearing,~~  
 877 ~~contrary to the provisions of s. 682.06, as to prejudice~~  
 878 ~~substantially the rights of a party.~~

879 (e) There was no agreement to arbitrate, unless the person  
 880 participated in the arbitration proceeding without raising the  
 881 objection under s. 682.06(3) not later than the beginning of the  
 882 arbitration hearing; or There was no agreement or provision for  
 883 ~~arbitration subject to this law, unless the matter was~~  
 884 ~~determined in proceedings under s. 682.03 and unless the party~~  
 885 ~~participated in the arbitration hearing without raising the~~  
 886 ~~objection.~~

887 (f) The arbitration was conducted without proper notice of  
 888 the initiation of an arbitration as required in s. 682.032 so as

889 to prejudice substantially the rights of a party to the  
 890 arbitration proceeding

891  
 892 ~~But the fact that the relief was such that it could not or would~~  
 893 ~~not be granted by a court of law or equity is not ground for~~  
 894 ~~vacating or refusing to confirm the award.~~

895 (2) A motion under this section must be filed within 90  
 896 days after the movant receives notice of the award pursuant to  
 897 s. 682.09 or within 90 days after the movant receives notice of  
 898 a modified or corrected award pursuant to s. 682.10, unless the  
 899 movant alleges that the award was procured by corruption, fraud,  
 900 or other undue means, in which case the motion must be made  
 901 within 90 days after the ground is known or by the exercise of  
 902 reasonable care would have been known by the movant An  
 903 ~~application under this section shall be made within 90 days~~  
 904 ~~after delivery of a copy of the award to the applicant, except~~  
 905 ~~that, if predicated upon corruption, fraud or other undue means,~~  
 906 ~~it shall be made within 90 days after such grounds are known or~~  
 907 ~~should have been known.~~

908 (3) If the court vacates an award on a ground other than  
 909 that set forth in paragraph (1)(e), it may order a rehearing. If  
 910 the award is vacated on a ground stated in paragraph (1)(a) or  
 911 paragraph (1)(b), the rehearing must be before a new arbitrator.  
 912 If the award is vacated on a ground stated in paragraph (1)(c),  
 913 paragraph (1)(d), or paragraph (1)(f), the rehearing may be  
 914 before the arbitrator who made the award or the arbitrator's  
 915 successor. The arbitrator must render the decision in the  
 916 rehearing within the same time as that provided in s. 682.09(2)

917 ~~for an award In vacating the award on grounds other than those~~  
 918 ~~stated in paragraph (1) (c), the court may order a rehearing~~  
 919 ~~before new arbitrators chosen as provided in the agreement or~~  
 920 ~~provision for arbitration or by the court in accordance with s.~~  
 921 ~~682.04, or, if the award is vacated on grounds set forth in~~  
 922 ~~paragraphs (1) (c) and (d), the court may order a rehearing~~  
 923 ~~before the arbitrators or umpire who made the award or their~~  
 924 ~~successors appointed in accordance with s. 682.04. The time~~  
 925 ~~within which the agreement or provision for arbitration requires~~  
 926 ~~the award to be made is applicable to the rehearing and~~  
 927 ~~commences from the date of the order therefor.~~

928 (4) ~~If a motion the application~~ to vacate is denied and no  
 929 motion to modify or correct the award is pending, the court  
 930 shall confirm the award.

931 Section 25. Section 682.14, Florida Statutes, is amended  
 932 to read:

933 682.14 Modification or correction of award.-

934 (1) Upon motion made within 90 days after the movant  
 935 receives notice of the award pursuant to s. 682.09 or within 90  
 936 days after the movant receives notice of a modified or corrected  
 937 award pursuant to s. 682.10, the court shall modify or correct  
 938 the award if ~~Upon application made within 90 days after delivery~~  
 939 ~~of a copy of the award to the applicant, the court shall modify~~  
 940 ~~or correct the award when:~~

941 (a) There is an evident miscalculation of figures or an  
 942 evident mistake in the description of any person, thing, or  
 943 property referred to in the award.

944 (b) The arbitrators ~~or umpire~~ have awarded upon a matter

945 | not submitted in the arbitration ~~to them or him or her~~ and the  
 946 | award may be corrected without affecting the merits of the  
 947 | decision upon the issues submitted.

948 |       (c) The award is imperfect as a matter of form, not  
 949 | affecting the merits of the controversy.

950 |       (2) If the application is granted, the court shall modify  
 951 | and correct the award ~~so as to effect its intent~~ and shall  
 952 | confirm the award as so modified and corrected. Otherwise,  
 953 | unless a motion to vacate the award under s. 682.13 is pending,  
 954 | the court shall confirm the award as made.

955 |       (3) An application to modify or correct an award may be  
 956 | joined in the alternative with an application to vacate the  
 957 | award under s. 682.13.

958 |       Section 26. Section 682.15, Florida Statutes, is amended  
 959 | to read:

960 |       682.15 Judgment or decree on award.—

961 |       (1) Upon granting an order confirming, vacating without  
 962 | directing a rehearing, modifying, or correcting an award, the  
 963 | court shall enter a judgment in conformity therewith. The  
 964 | judgment may be recorded, docketed, and enforced as any other  
 965 | judgment in a civil action.

966 |       (2) A court may allow reasonable costs of the motion and  
 967 | subsequent judicial proceedings.

968 |       (3) On motion of a prevailing party to a contested  
 969 | judicial proceeding under s. 682.12, s. 682.13, or s. 682.14,  
 970 | the court may add reasonable attorney fees and other reasonable  
 971 | expenses of litigation incurred in a judicial proceeding after  
 972 | the award is made to a judgment confirming, vacating without



973 directing a rehearing, modifying, or correcting an award ~~Upon~~  
 974 ~~the granting of an order confirming, modifying or correcting an~~  
 975 ~~award, judgment or decree shall be entered in conformity~~  
 976 ~~therewith and be enforced as any other judgment or decree. Costs~~  
 977 ~~of the application and of the proceedings subsequent thereto,~~  
 978 ~~and disbursements may be awarded by the court.~~

979 Section 27. Section 682.16, Florida Statutes, is repealed.

980 Section 28. Section 682.17, Florida Statutes, is repealed.

981 Section 29. Section 682.18, Florida Statutes, is repealed.

982 Section 30. Section 682.181, Florida Statutes, is created  
 983 to read:

984 682.181 Jurisdiction.—

985 (1) A court of this state having jurisdiction over the  
 986 controversy and the parties may enforce an agreement to  
 987 arbitrate.

988 (2) An agreement to arbitrate providing for arbitration in  
 989 this state confers exclusive jurisdiction on the court to enter  
 990 judgment on an award under the Revised Florida Arbitration Code.

991 Section 31. Section 682.19, Florida Statutes, is amended  
 992 to read:

993 682.19 Venue.—A petition pursuant to s. 682.015 must be  
 994 filed in the court of the county in which the agreement to  
 995 arbitrate specifies the arbitration hearing is to be held or, if  
 996 the hearing has been held, in the court of the county in which  
 997 it was held. Otherwise, the petition may be made in the court of  
 998 any county in which an adverse party resides or has a place of  
 999 business or, if no adverse party has a residence or place of  
 1000 business in this state, in the court of any county in this

1001 state. All subsequent petitions must be made in the court  
 1002 hearing the initial petition unless the court otherwise directs  
 1003 ~~Any application under this law may be made to the court of the~~  
 1004 ~~county in which the other party to the agreement or provision~~  
 1005 ~~for arbitration resides or has a place of business, or, if she~~  
 1006 ~~or he has no residence or place of business in this state, then~~  
 1007 ~~to the court of any county. All applications under this law~~  
 1008 ~~subsequent to an initial application shall be made to the court~~  
 1009 ~~hearing the initial application unless it shall order otherwise.~~

1010 Section 32. Section 682.20, Florida Statutes, is amended  
 1011 to read:

1012 682.20 Appeals.—

1013 (1) An appeal may be taken from:

1014 (a) An order denying an application to compel arbitration  
 1015 made under s. 682.03.

1016 (b) An order granting a motion ~~an application~~ to stay  
 1017 arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).

1018 (c) An order confirming ~~or denying confirmation of~~ an  
 1019 award.

1020 (d) An order denying confirmation of an award unless the  
 1021 court has entered an order under s. 682.10(4) or s. 682.13. All  
 1022 other orders denying confirmation of an award are final orders.

1023 ~~(e)-(d)~~ An order modifying or correcting an award.

1024 ~~(f)-(e)~~ An order vacating an award without directing a  
 1025 rehearing.

1026 ~~(g)-(f)~~ A judgment or decree entered pursuant to this  
 1027 chapter ~~the provisions of this law.~~

1028 (2) The appeal shall be taken in the manner and to the

1029 same extent as from orders or judgments in a civil action.  
 1030 Section 33. Section 682.21, Florida Statutes, is repealed.  
 1031 Section 34. Section 682.22, Florida Statutes, is repealed.  
 1032 Section 35. Section 682.23, Florida Statutes, is created  
 1033 to read:  
 1034 682.23 Relationship to Electronic Signatures in Global and  
 1035 National Commerce Act.—The provisions of this chapter governing  
 1036 the legal effect, validity, and enforceability of electronic  
 1037 records or electronic signatures and of contracts performed with  
 1038 the use of such records or signatures conform to the  
 1039 requirements of s. 102 of the Electronic Signatures in Global  
 1040 and National Commerce Act, 15 U.S.C. s. 7002.  
 1041 Section 36. Section 682.24, Florida Statutes, is created  
 1042 to read:  
 1043 682.24 Effective date; applicability.—  
 1044 (1) The Revised Florida Arbitration Code takes effect on  
 1045 July 1, 2012.  
 1046 (2) The Revised Florida Arbitration Code does not affect  
 1047 an action or proceeding commenced or right accrued before the  
 1048 Revised Florida Arbitration Code takes effect. Subject to s.  
 1049 682.013, an arbitration agreement made before July 1, 2012, is  
 1050 governed by the former Florida Arbitration Code.  
 1051 Section 37. Section 682.25, Florida Statutes, is created  
 1052 to read:  
 1053 682.25 Disputes excluded.—The Revised Florida Arbitration  
 1054 Code does not apply to any dispute involving child custody,  
 1055 visitation, or child support.

1056 Section 38. Section 44.104, Florida Statutes, is amended  
 1057 to read:

1058 44.104 Voluntary ~~binding arbitration and voluntary trial~~  
 1059 resolution.-

1060 (1) Two or more opposing parties who are involved in a  
 1061 civil dispute may agree in writing to submit the controversy to  
 1062 ~~voluntary binding arbitration, or voluntary trial resolution, in~~  
 1063 lieu of judicial litigation of the issues involved, prior to or  
 1064 after a lawsuit has been filed, ~~provided no constitutional issue~~  
 1065 ~~is involved.~~

1066 (2) If the parties have entered into an such an agreement  
 1067 and the agreement which provides in voluntary binding  
 1068 ~~arbitration for a method for appointing of one or more~~  
 1069 ~~arbitrators, or which provides in voluntary trial resolution a~~  
 1070 method for appointing the a member of The Florida Bar in good  
 1071 ~~standing for more than 5 years to act as trial resolution judge,~~  
 1072 that method shall be followed ~~the court shall proceed with the~~  
 1073 ~~appointment as prescribed. However, in voluntary binding~~  
 1074 ~~arbitration at least one of the arbitrators, who shall serve as~~  
 1075 ~~the chief arbitrator, shall meet the qualifications and training~~  
 1076 ~~requirements adopted pursuant to s. 44.106. In the absence of an~~  
 1077 agreement on a method for appointing the trial resolution judge,  
 1078 or if the agreement method fails or for any reason cannot be  
 1079 followed, and the parties fail to agree on the person to serve  
 1080 as the trial resolution judge, the court, on application of a  
 1081 party, shall appoint ~~one or more qualified arbitrators, or the~~  
 1082 trial resolution judge, as the case requires. A trial resolution  
 1083 judge must be a member of The Florida Bar in good standing for 5

1084 years or more who has agreed to serve.

1085 (3) The ~~arbitrators or~~ trial resolution judge shall be  
 1086 compensated by the parties according to their agreement with the  
 1087 trial resolution judge.

1088 (4) Within 10 days after the submission of the request for  
 1089 ~~binding arbitration, or~~ voluntary trial resolution, the court  
 1090 shall provide for the appointment of the ~~arbitrator or~~  
 1091 ~~arbitrators, or~~ trial resolution judge, as the case requires.  
 1092 Once appointed, the ~~arbitrators or~~ trial resolution judge shall  
 1093 notify the parties of the time and place for the hearing.

1094 (5) Application for ~~voluntary binding arbitration or~~  
 1095 voluntary trial resolution shall be filed and fees paid to the  
 1096 clerk of court as if for complaints initiating civil actions.  
 1097 The clerk of the court shall handle and account for these  
 1098 matters in all respects as if they were civil actions, except  
 1099 that the clerk of court shall keep separate ~~the records of the~~  
 1100 ~~applications for voluntary binding arbitration and~~ the records  
 1101 of the applications for voluntary trial resolution from all  
 1102 other civil actions.

1103 (6) Filing of the application for ~~binding arbitration or~~  
 1104 voluntary trial resolution tolls ~~will toll~~ the running of the  
 1105 applicable statutes of limitation.

1106 (7) The ~~chief arbitrator or~~ trial resolution judge may  
 1107 administer oaths or affirmations and conduct the proceedings as  
 1108 the rules of court shall provide. At the request of any party,  
 1109 the ~~chief arbitrator or~~ trial resolution judge shall issue  
 1110 subpoenas for the attendance of witnesses and for the production  
 1111 of books, records, documents, and other evidence and may apply

1112 to the court for orders compelling attendance and production.  
 1113 Subpoenas shall be served and shall be enforceable in the manner  
 1114 provided by law. The trial resolution judge may order temporary  
 1115 relief in the same manner, and to the same extent, as in civil  
 1116 actions generally. Any party may enforce such an order by filing  
 1117 a petition in the court. Orders entered by the court are  
 1118 reviewable by the appellate court in the same manner, and to the  
 1119 same extent, as orders in civil actions generally.

1120 ~~(8) A voluntary binding arbitration hearing shall be~~  
 1121 ~~conducted by all of the arbitrators, but a majority may~~  
 1122 ~~determine any question and render a final decision.~~ A trial  
 1123 resolution judge shall conduct a voluntary trial resolution  
 1124 hearing. The trial resolution judge may determine any question  
 1125 and render a final decision.

1126 (9) The Florida Evidence Code and Florida Rules of Civil  
 1127 Procedure shall apply to all proceedings under this section,  
 1128 except that voluntary trial resolution is not governed by  
 1129 procedural rules regulating general and special magistrates, and  
 1130 rulings of the trial resolution judge are not reviewable by  
 1131 filing exceptions with the court.

1132 ~~(10) An appeal of a voluntary binding arbitration decision~~  
 1133 ~~shall be taken to the circuit court and shall be limited to~~  
 1134 ~~review on the record and not de novo, of:~~

1135 ~~(a) Any alleged failure of the arbitrators to comply with~~  
 1136 ~~the applicable rules of procedure or evidence.~~

1137 ~~(b) Any alleged partiality or misconduct by an arbitrator~~  
 1138 ~~prejudicing the rights of any party.~~

1139 ~~(c) Whether the decision reaches a result contrary to the~~

1140 ~~Constitution of the United States or of the State of Florida.~~

1141 (10)~~(11)~~ Any party may enforce a final decision rendered  
 1142 in a voluntary trial by filing a petition for final judgment in  
 1143 the circuit court in the circuit in which the voluntary trial  
 1144 took place. Upon entry of final judgment by the circuit court,  
 1145 any party may appeal to the appropriate appellate court. The  
 1146 judgment is reviewable by the appellate court in the same  
 1147 manner, and to the same extent, as a judgment in a civil action  
 1148 ~~Factual findings determined in the voluntary trial are not~~  
 1149 ~~subject to appeal.~~

1150 ~~(12) The harmless error doctrine shall apply in all~~  
 1151 ~~appeals. No further review shall be permitted unless a~~  
 1152 ~~constitutional issue is raised.~~

1153 (11)~~(13)~~ If no appeal is taken within the time provided by  
 1154 rules promulgated by the Supreme Court, ~~then~~ the decision shall  
 1155 be referred to the presiding judge in the case, or if one has  
 1156 not been assigned, then to the chief judge of the circuit for  
 1157 assignment to a circuit judge, who shall enter such orders and  
 1158 judgments as are required to carry out the terms of the  
 1159 decision. Equitable remedies are, which orders shall be  
 1160 enforceable by the contempt powers of the court to the same  
 1161 extent as in civil actions generally. When a judgment provides  
 1162 for execution, and for which judgments execution shall issue on  
 1163 request of a party.

1164 (12)~~(14)~~ This section does ~~shall~~ not apply ~~to any dispute~~  
 1165 ~~involving child custody, visitation, or child support, or to any~~  
 1166 ~~dispute that~~ which involves the rights of a third party not a  
 1167 party to the ~~arbitration or~~ voluntary trial resolution when the

1168 third party would be an indispensable party if the dispute were  
 1169 resolved in court or when the third party notifies ~~the chief~~  
 1170 ~~arbitrator or~~ the trial resolution judge that the third party  
 1171 would be a proper party if the dispute were resolved in court,  
 1172 that the third party intends to intervene in the action in  
 1173 court, and that the third party does not agree to proceed under  
 1174 this section.

1175 (13) A trial resolution judge does not have jurisdiction  
 1176 to declare unconstitutional a statute, ordinance, or provision  
 1177 of a constitution. If any such claim is made in the voluntary  
 1178 trial resolution proceeding, that claim shall be severed and  
 1179 adjudicated by a judge of the court.

1180 (14) (a) The parties may agree to a trial by a privately  
 1181 selected jury. The court's jury pool may not be used for this  
 1182 purpose. In all other cases, the trial resolution judge shall  
 1183 conduct a bench trial.

1184 (b) The trial resolution judge may wear a judicial robe  
 1185 and use the title "Trial Resolution Judge" when acting in that  
 1186 capacity.

1187 Section 39. Subsection (1) of section 44.107, Florida  
 1188 Statutes, is amended to read:

1189 44.107 Immunity for arbitrators, voluntary trial  
 1190 resolution judges, mediators, and mediator trainees.-

1191 (1) Arbitrators serving under s. 44.103, voluntary trial  
 1192 resolution judges serving under ~~or~~ s. 44.104, mediators serving  
 1193 under s. 44.102, and trainees fulfilling the mentorship  
 1194 requirements for certification by the Supreme Court as a  
 1195 mediator ~~shall~~ have judicial immunity in the same manner and to



1196 the same extent as a judge and are entitled to the same immunity  
 1197 and remedies provided in s. 682.051.

1198 Section 40. Section 440.1926, Florida Statutes, is amended  
 1199 to read:

1200 440.1926 Alternate dispute resolution; claim arbitration.—  
 1201 Notwithstanding any other provision of this chapter, the  
 1202 employer, carrier, and employee may mutually agree to seek  
 1203 consent from a judge of compensation claims to enter into  
 1204 binding claim arbitration in lieu of any other remedy provided  
 1205 for in this chapter to resolve all issues in dispute regarding  
 1206 an injury. Arbitrations agreed to pursuant to this section shall  
 1207 be governed by chapter 682, the Revised Florida Arbitration  
 1208 Code, except that, notwithstanding any provision in chapter 682,  
 1209 the term "court" shall mean a judge of compensation claims. An  
 1210 arbitration award in accordance with this section is ~~shall be~~  
 1211 enforceable in the same manner and with the same powers as any  
 1212 final compensation order.

1213 Section 41. Paragraph (a) of subsection (1) of section  
 1214 489.1402, Florida Statutes, is amended to read:

1215 489.1402 Homeowners' Construction Recovery Fund;  
 1216 definitions.—

1217 (1) The following definitions apply to ss. 489.140-  
 1218 489.144:

1219 (a) "Arbitration" means alternative dispute resolution  
 1220 entered into between a claimant and a contractor either pursuant  
 1221 to a construction contract that contains a mandatory arbitration  
 1222 clause or through any binding arbitration under the Revised  
 1223 Florida Arbitration Code.

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1224 Section 42. Subsection (2) of section 731.401, Florida  
 1225 Statutes, is amended to read:

1226 731.401 Arbitration of disputes.—

1227 (2) Unless otherwise specified in the will or trust, a  
 1228 will or trust provision requiring arbitration shall be presumed  
 1229 to require voluntary trial resolution ~~binding arbitration~~ under  
 1230 s. 44.104.

1231 Section 43. The Division of Statutory Revision is directed  
 1232 to redesignate the title of chapter 44, Florida Statutes, as  
 1233 "Alternative Dispute Resolution."

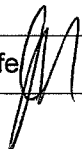
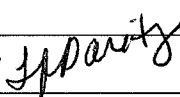
1234 Section 44. The Division of Statutory Revision is directed  
 1235 to replace the phrase "the effective date of this act" wherever  
 1236 it occurs in this act with the date this act becomes a law.

1237 Section 45. This act shall take effect July 1, 2012.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1115 Teacher Protection  
**SPONSOR(S):** Civil Justice Subcommittee; Brandes; Grant and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	8 Y, 6 N, As CS	Cary	Bond
2) Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 
3) Education Committee			
4) Judiciary Committee			

**SUMMARY ANALYSIS**

Public school classroom teachers are occasionally named as defendants in civil lawsuits as a result of in-school disciplinary issues. This bill allows a teacher to request that the Office of the Attorney General (OAG) represent the teacher in a civil lawsuit arising out of disciplinary issues. The OAG must represent the teacher unless the teacher has been subjected to disciplinary proceedings for the same act by the employing school district or the Education Practices Commission.

The bill also modifies the definition of "employee organization" within the labor organizations statute to exclude professional teacher associations that do not register as collective bargaining organizations.

This bill does not appear to have a fiscal impact on local governments. This bill appears to require recurring expenditures in the Department of Legal Affairs, commencing in FY 2012-13, payable from the General Revenue Fund, of an indeterminate amount. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Civil Suits Against Teachers - Present Situation**

Public school teachers<sup>1</sup> are granted the authority to control and discipline students, subject to state law, school district policy, and the direction of the school principal.<sup>2</sup> A classroom teacher, in some circumstances, may be sued for in-class discipline by or on behalf of an aggrieved student.<sup>3</sup> A teacher is not civilly or criminally liable for any action carried out in conformity with the State Board of Education and district school board rules regarding the control or discipline of students, except in the case of excessive force or cruel and unusual punishment.<sup>4</sup>

Sovereign immunity can act as a complete bar to recovery where the act is a discretionary function of government.<sup>5</sup> However, teachers are under a common law and statutory duty to supervise the activity of students under their care and control, and such duty is not fully protected by sovereign immunity.<sup>6</sup> Rather, in such cases, the state waives sovereign immunity, but damages are capped at \$200,000 for any single claim or judgment, or \$300,000 for multiple claims or judgments arising out of the same incidence or occurrence.<sup>7</sup> Furthermore, if the teacher acts outside of the scope of employment or commits an intentional tort, the government is immune and there is no sovereign immunity protection for the teacher.<sup>8</sup>

##### **Civil Suits Against Teachers - Effect of Proposed Changes**

This bill creates s. 16.0152, F.S. to allow a public school teacher, other than a substitute teacher, to request that the Office of the Attorney General (OAG) represent the teacher in the suit. Such a request must be made in writing with 14 days of receipt of the complaint. The bill requires the OAG to defend the teacher throughout the civil action if the teacher has not been subjected to disciplinary proceedings for the same act by the employing school district or the Education Practices Commission.

The OAG is required to draft a notice of the teacher's options under this bill for dissemination by the Commissioner of Education to each K-12 classroom teacher by August 15th of each year.

##### **Employee Organizations - Present Situation**

An employee organization is any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, that represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.<sup>9</sup> This definition comes from the chapter of the Florida Statutes relating to labor unions.<sup>10</sup> Recent decisions by the Florida Public Employees Relations Commission, however, have expanded the scope of that definition to include professional teacher associations that do not perform collective bargaining functions, allowing unions to challenge non-collective bargaining teacher associations<sup>11</sup> for unfair labor practices.<sup>12</sup>

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<sup>1</sup> Section 1012.01(2)(a), F.S.

<sup>2</sup> Section 1003.32, F.S.

<sup>3</sup> See, e.g., *Williams v. Cotton*, 346 So.2d 1039 (Fla. 1st DCA 1977).

<sup>4</sup> Section 1006.11(2), F.S.

<sup>5</sup> *Trianon Park Condominium Assoc. v. City of Hialeah*, 468 So.2d 912, 918 (Fla. 1985).

<sup>6</sup> *Doe v. Escambia County School Bd.*, 599 So.2d 226, 227 (Fla. 1st DCA 1992.)

<sup>7</sup> Section 768.28, F.S.

<sup>8</sup> Section 768.28(9)(a).

<sup>9</sup> Section 447.203(11), F.S.

<sup>10</sup> Chapter 447, F.S.

<sup>11</sup> Professional teacher associations are defined by s. 1001.03, F.S., as not-for-profit, professional teacher associations that offer membership to all teachers and offer teacher training and staff development at no fee to the district. Such organizations are allowed

## Employee Organizations - Effect of Proposed Changes

This bill amends the definition for "employee organization" in s. 447.203, F.S., to specifically exclude any "professional teacher association" as defined in s. 1001.03(4), F.S., until such organization applies for registration pursuant to the labor union statute.

### B. SECTION DIRECTORY:

Section 1 provides a name for the act.

Section 2 creates s. 16.0152, F.S., relating to suits against K-12 classroom teachers.

Section 3 amends s. 447.203, F.S., relating to definition of employee organization.

Section 4 provides an effective date of July 1, 2012.

## 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:

Section 2 of the bill appears to require recurring expenditures from the General Revenue Fund by the Office of the Attorney General. The amount is indeterminate. See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

This bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

This bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

As to Section 2 of the bill, there is conflicting information regarding the potential fiscal impact of the bill. The first comments from the affected agency implied a fiscal impact of \$2.1 million annually.<sup>13</sup> Later

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equal access to voluntary teacher meetings, access to teacher mailboxes, and may collect voluntary membership fees through payroll deductions.

<sup>12</sup> See, e.g., *Osceola Classroom Teachers Assoc. v. School District of Osceola County*, Case No. CA-2009-068 (PERC Final Order, Oct. 29, 2010) and *Duval Teachers United v. School District of Duval County*, Case No. CA-2010-134 (Hearing Officer's Recommended Order).

<sup>13</sup> On January 13, 2012, the Civil Justice Subcommittee received the following comments: "While it is unknown the potential cases that may arise under this proposed legislation, approximately 1,000 cases a year come to Department of Education, Professional Practices Section, 22 of which are in the category of inappropriate discipline. Based on those numbers, there may be dozens of cases per year in Florida alleging excessive use of force by a teacher. According to the OAG, the estimated fiscal impact for defending a teacher in an excessive use of force case, which includes attorneys fees, discovery costs, expert witness fees, court reporter transcription fees, etc., is approximately \$96,000 per case." A previous bill analysis relied on this statement to estimate annual costs at \$2.1 million (22 cases at \$96,000 each).

comments from the agency indicated that the potential expenditures could be significantly less, but did not provide information sufficient to create an estimate.<sup>14</sup>

The state previously purchased an insurance policy to protect teachers from civil suits. In its 5 years of operation ending in FY 2005-06, 39 professional liability policy claims were filed. Of the 30 claims that were closed at the time of a 2006 report, 27 experienced no losses. The remaining 3 claims paid a total of just over \$50,000. The one claim that was settled during litigation cost \$33,375 in attorney fees. None of the 30 closed claims went to trial.<sup>15</sup> Claims handling experience and costs are unknown, so the total cost of the program cannot be used to create an estimate of the cost of the narrower program created by this bill. Nevertheless, the relatively low claims experience of this prior program may lead to doubt about the significantly higher estimates recently provided regarding this bill. Accordingly, the estimated fiscal cost is indeterminate.

### 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:

This bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

As to Section 2 of the bill:

- The bill provides that a decision by the OAG to not represent a teacher is not admissible as evidence in the trial of any civil action that commences; however the bill requires representation. The two provisions appear inconsistent.
- According to the Office of the Attorney General, requiring the OAG to defend a teacher in a civil lawsuit could create a potential conflict of interest for the OAG, since the OAG currently serves as a legal advisor to the Florida Education Practices Commission (EPC).
- The bill may also create another potential conflict of interest. The OAG prepares criminal appeals on behalf of the state. It is possible that the OAG could obtain information from a teacher seeking representation in a civil case that implicates the teacher in a criminal case. If that teacher is convicted and appeals the conviction, the OAG may then be limited in acting as appellate counsel for the state in that case.

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<sup>14</sup> On January 17, 2012, the Civil Justice Subcommittee received the following comments: "As you can see from the comments below that we sent to the Civil Justice Committee, we did not conclude that every case alleging excessive force by a teacher would go to trial. We did provide the estimate for going to trial at 96k per case. Nor did we purport to estimate how many cases would actually occur in a year; we simply used the data we had from DOE about the pending inappropriate discipline cases (22) as of November 2011. Since some cases may be settled before trial, I asked our attorneys to provide us with the fiscal impact for a typical summary judgement, and that number is 27k per case. Again, to be clear: we do not know how many cases are likely to arise each year, nor can we predict with certainty at which stage in the process most cases are likely to be resolved. We simply have provided cost estimates of two points in litigation: summary judgement and full trial. We have not attempted to quantify appellate costs."

<sup>15</sup> Office of Program Policy Analysis and Government Accountability, Report No. 06-08, January 2006.

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

On January 18, 2012, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that the OAG must defend the teacher unless the teacher has not been subjected to disciplinary proceedings by the school district or the Education Practices Commission. The amendment removes the OAG's discretion to decide to take a case if the teacher acted in a good faith belief that the act was within the scope of the teacher's duties in enforcing discipline policies. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.



1 A bill to be entitled

2 An act relating to teacher protection; providing a  
 3 short title; creating s. 16.0152, F.S.; authorizing  
 4 certain teachers who are made a party to a civil suit  
 5 to request representation by the Attorney General;  
 6 requiring the Attorney General to defend the teacher  
 7 if the teacher has not been subjected to disciplinary  
 8 proceedings for the same act by the employing school  
 9 district or the Education Practices Commission;  
 10 requiring annual notice to teachers of their options  
 11 under this provision; providing that certain  
 12 determinations by the Attorney General are not  
 13 admissible in evidence; providing construction;  
 14 amending s. 447.203, F.S.; excluding certain  
 15 professional teacher associations from the definition  
 16 of "employee organization" for purposes of provisions  
 17 relating to public employee organizations unless such  
 18 associations apply for registration under specified  
 19 provisions; providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. This act may be cited as the "Teacher  
 24 Protection Act."

25 Section 2. Section 16.0152, Florida Statutes, is created  
 26 to read:

27 16.0152 Suits against K-12 classroom teachers; defense by  
 28 Attorney General.—

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29       (1) A K-12 classroom teacher as defined in s.  
30 1012.01(2)(a), other than a substitute teacher, who is made a  
31 party to a civil suit for enforcing discipline policies  
32 developed under s. 1003.32 may request legal representation by  
33 the Attorney General. Such request must be in writing and  
34 submitted to the Attorney General as soon as possible, but no  
35 later than 14 days after the teacher receives the complaint.

36       (2) The Attorney General shall defend the teacher  
37 throughout the civil action if the teacher has not been  
38 subjected to disciplinary proceedings for the same act by the  
39 employing school district or the Education Practices Commission.

40       (3) No later than August 15 of each year, the Attorney  
41 General shall draft and the Commissioner of Education shall  
42 disseminate a notice to each K-12 classroom teacher concerning  
43 the teacher's options under this section.

44       (4) A determination made by the Attorney General not to  
45 represent a teacher under this section is not admissible as  
46 evidence in the trial of any such civil action.

47       (5) This section does not deprive any person of the  
48 person's right to select counsel of the person's own choice at  
49 the person's own expense.

50       Section 3. Subsection (11) of section 447.203, Florida  
51 Statutes, is amended to read:

52       447.203 Definitions.—As used in this part:

53       (11) "Employee organization" or "organization" means any  
54 labor organization, union, association, fraternal order,  
55 occupational or professional society, or group, however  
56 organized or constituted, that ~~which~~ represents, or seeks to

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57 | represent, any public employee or group of public employees  
58 | concerning any matters relating to their employment relationship  
59 | with a public employer, except that a "professional teacher  
60 | association" as defined in s. 1001.03(4) shall not be included  
61 | in this definition until it applies for registration pursuant to  
62 | s. 447.305.

63 |       Section 4. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1115 (2012)

Amendment No.

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: Justice Appropriations  
2 Subcommittee  
3 Representative Brandes offered the following:  
4

**Amendment (with title amendment)**

6 Remove lines 23-49  
7  
8

9 -----  
10 **T I T L E A M E N D M E N T**

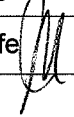
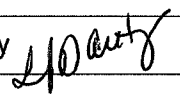
11 Remove lines 1-13 and insert:

12 A bill to be entitled  
13 An act relating to teachers;  
14



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1173 Criminal Gang Prevention  
**SPONSOR(S):** Criminal Justice Subcommittee; Ingram and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1846

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 
3) Judiciary Committee			

### SUMMARY ANALYSIS

House Bill 1173 contains a variety of provisions relating to criminal gangs. Specifically, the bill:

- Increases the penalty for violating s. 810.0975(2), F.S. (trespassing in school safety zones), from a second degree misdemeanor to a first degree misdemeanor if the person has previously been convicted of any offense contained in ch. 874, F.S. (relating to criminal gangs).
- Amends s. 874.05, F.S., to make it a second degree felony, ranked in Level 5 of the offense severity ranking chart, for a person to intentionally cause, encourage, solicit, or recruit another person *under the age of 13* to become a criminal gang member where a condition of membership or continued membership is the commission of any crime. The bill makes second or subsequent violations of this provision a first degree felony, ranked in Level 7 of the offense severity ranking chart.
- Authorizes jails to designate an individual to be responsible for determining the gang status of each inmate entering the jail using specified criteria and to assess each current inmate for any gang activity or gang affiliation.
- Amends the criminal gang multiplier in s. 921.0024, F.S., so that the multiplier will be able to be applied with a finding by the judge (rather than the jury) that the defendant committed the offense for the purposes of benefitting, promoting, or furthering the interests of a criminal gang in instances where the lowest permissible sentence does not exceed the statutory maximum sentence for the offense.

The Criminal Justice Impact Conference met January 30, 2012 and determined the bill will have an insignificant impact on state prison beds.

The bill increases the penalty for violating s. 810.0975(2), F.S. from a second degree misdemeanor to a first degree misdemeanor if the person has previously been convicted of any offense contained in ch. 874, F.S. This may have an insignificant negative jail bed impact on local governments.

The bill is effective October 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **School Safety Zones**

Section 810.0975, F.S., relates to trespassing in "school safety zones," which is defined as "in, on, or within 500 feet of any real property owned by or leased to any public or private elementary, middle, or high school or school board and used for elementary, middle, or high school education." Subsection (2) of the statute:

- Requires public and private school principals to notify law enforcement to prohibit specified persons<sup>1</sup> from loitering in a school safety zone.<sup>2</sup>
- Prohibits specified persons<sup>3</sup> from entering the premises or trespassing within a school safety zone or remaining on such premises or within such school safety zone.<sup>4</sup>
- Prohibits specified persons<sup>5</sup> from willfully failing to remove themselves from a school safety zone after a principal, who has a reasonable belief that the person will commit a crime or is engaged in harassment or intimidation of students entering or leaving school property, requests the person to leave the school safety zone.<sup>6</sup>

A violation of s. 810.0975(2), F.S., is currently a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine.<sup>7</sup>

#### *Effect of the Bill*

The bill makes a violation of s. 810.0975(2), F.S., a first degree misdemeanor if the person has previously been convicted of any offense contained in ch. 874, F.S. (relating to criminal gangs). A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine.<sup>8</sup>

#### **Causing, Encouraging, Soliciting, or Recruiting Criminal Gang Membership**

Section 874.05, F.S., makes it a third degree felony<sup>9</sup> for a person to intentionally cause, encourage, solicit, or recruit another person to become a criminal gang member<sup>10</sup> where a condition of membership or continued membership is the commission of any crime. This offense is ranked in Level 4 (22 sentencing points) of the offense severity ranking chart (ranking chart).<sup>11</sup> Second or subsequent

<sup>1</sup> These persons include those who do not have legitimate business in the school safety zone, those who do not have authorization or license to enter or remain in a school safety zone, and those who do not have invitee status in the school safety zone. Section 810.0975(2)(a), F.S.

<sup>2</sup> Section 810.0975(2)(a), F.S.

<sup>3</sup> *Supra* note 1.

<sup>4</sup> This prohibition only applies during the period from one hour before the start of a school session until one hour after the conclusion of a school session. Section 810.0975(2)(b), F.S.

<sup>5</sup> *Supra* note 1.

<sup>6</sup> Section 810.0975(2)(c), F.S.

<sup>7</sup> Sections 775.082 and 775.083, F.S.

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

<sup>9</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>10</sup> Section 874.03(3), F.S., defines the term "criminal gang member" as a person who meets two or more of the following criteria: admits to criminal gang membership; is identified as a criminal gang member by a parent or guardian; is identified as a criminal gang member by a documented reliable informant; adopts the style of dress of a criminal gang; adopts the use of a hand sign identified as used by a criminal gang; has a tattoo identified as used by a criminal gang; associates with one or more known criminal gang members; is identified as a criminal gang member by an informant of previously untested reliability and such identification is corroborated by independent information; is identified as a criminal gang member by physical evidence; has been observed in the company of one or more known criminal gang members four or more times; has authored any communication indicating responsibility for the commission of any crime by the criminal gang.

<sup>11</sup> Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence

violations of the statute are second degree felonies, ranked in Level 5 (28 sentencing points) of the ranking chart.<sup>12</sup>

#### *Effect of the Bill*

The bill amends s. 874.05, F.S., to make it a second degree felony for a person to intentionally cause, encourage, solicit, or recruit another person *under the age of 13* to become a criminal gang member where a condition of membership or continued membership is the commission of any crime. This offense is ranked in Level 5 of the ranking chart. The bill makes second or subsequent violations of this provision a first degree felony, ranked in Level 7 (56 sentencing points) of the ranking chart.<sup>13</sup>

#### **Jails – Inmate Gang Status**

Section 951.23, F.S., contains a variety of provisions relating to county and municipal detention facilities (jails). For example, the statute requires county detention facilities to provide specified inmate data to the Department of Corrections, requires that jail model standards be developed, requires jails to contract for fire safety inspections, authorizes commissaries to be operated in jails and provides requirements for such operation, and provides criminal penalties for jail inmates who violate certain jail rules.<sup>14</sup>

#### *Effect of the Bill*

The bill amends s. 951.23, F.S., to authorize jails to designate an individual to be responsible for determining the gang status of each inmate entering the jail using the criteria contained in s. 874.03, F.S., and to assess each current inmate for any gang activity or gang affiliation using such criteria. The bill specifies that such person should at least once biweekly reconcile information with the arresting law enforcement agency and the statewide criminal gang database.<sup>15</sup>

#### **Criminal Gang Offenses – Penalty Enhancements and Sentencing Multipliers**

Criminal offenses are ranked in the ranking chart from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors such as: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. The Criminal Punishment Code worksheet, found in s. 921.0024, F.S., is used to compute a defendant's total sentence points.

The Criminal Punishment Code worksheet contains a variety of sentencing multipliers that act to multiply a defendant's sentencing points by a certain number, thereby increasing the defendant's lowest permissible sentence. The worksheet currently contains a criminal gang multiplier that multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang as prohibited under s. 874.04, F.S.

Section 874.04, F.S., provides that upon a finding by the factfinder that a defendant committed the charged offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang, the penalty for such offense can be enhanced. The statute specifies the extent to which such enhancement can be made and requires each of the findings required as a basis for such enhancement to be found beyond a reasonable doubt.

As noted above, the criminal gang multiplier in the worksheet multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the

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points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence.

<sup>12</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>13</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>14</sup> Section 951.23, F.S.

<sup>15</sup> Pursuant to s. 874.09, F.S., the Florida Department of Law Enforcement manages a statewide criminal gang database where gang intelligence information is shared among all law enforcement agencies statewide. Information is entered into the database by local law enforcement agencies who, after carrying out any arrest of any individual whom they believe is a member or associate of a criminal gang, may create or update that individual's electronic file within the database.



interests of a criminal gang as *prohibited under s. 874.04, F.S.* Section 874.04, F.S., requires the factfinder (i.e., the jury) to find that a defendant committed the offense for such purposes. This limits the instances in which the criminal gang multiplier can be used to those instances in which the jury has made the required finding. If the reference to s. 874.04, F.S., were removed from the multiplier, a *judge* could made the required finding so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the charged offense.<sup>16</sup>

#### *Effect of the Bill*

The bill amends the criminal gang multiplier in s. 921.0024, F.S., to specify that a defendant's sentence points are multiplied by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang as *defined in s. 874.03, F.S.* As a result, the multiplier will be able to be applied with a finding by a *judge* that the defendant committed the offense for the purposes of benefitting, promoting, or furthering the interests of a criminal gang so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the offense.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 810.0975, F.S., relating to school safety zones; definition; trespass prohibited; penalty.

Section 2. Amends s. 874.05, F.S., relating to causing, encouraging, soliciting, or recruiting criminal gang membership.

Section 3. Amends s. 951.23, F.S., relating to county and municipal detention facilities; definitions; administration; standards and requirements.

Section 4. Amends s. 435.04, F.S., relating to level 2 screening standards.

Section 5. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 6. Amends s. 921.0024, F.S., relating to Criminal Punishment Code; worksheet computations; scoresheets.

Section 7. Provides an effective date of October 1, 2012.

## 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 Criminal Justice Impact Conference met January 30, 2011, and determined the bill will have an insignificant impact on state prison beds.

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

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

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<sup>16</sup> See *Mathew v. State*, 837 So.2d 1167 (Fla. 4<sup>th</sup> DCA 2003)(holding that pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), a jury must find that the facts necessary to impose a domestic violence multiplier exist beyond a reasonable doubt when the multiplier results in a sentence that exceeds the statutory maximum for the charged offense).

2. Expenditures:

The bill increases the penalty for violating s. 810.0975(2), F.S. (trespassing in school safety zones), from a second degree misdemeanor to a first degree misdemeanor if the person has previously been convicted of any offense contained in ch. 874, F.S. (relating to criminal gangs). This may have an insignificant negative jail bed impact on local governments.

The bill authorizes local jails to designate an individual to be responsible for determining the gang status of each inmate entering the jail. However, the provision is permissive and does not require local jails to designate such an individual so any fiscal impact would be at the discretion of the county or municipal detention facility.

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:

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**

On January 25, 2012, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment removed an incorrect reference to s. 921.243, F.S., in section 2 of the bill. The second amendment clarified that the court could not apply the criminal gang sentencing multiplier if doing so resulted in the defendant's lowest permissible sentence exceeding the statutory maximum for the charged offense. In such instances, the court must sentence the defendant to the statutory maximum sentence.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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A bill to be entitled  
 An act relating to criminal gang prevention; amending  
 s. 810.0975, F.S.; providing enhanced criminal  
 penalties for certain trespassing offenses in school  
 safety zones by a person convicted of certain gang-  
 related offenses; amending s. 874.05, F.S.; providing  
 enhanced criminal penalties for a person who  
 intentionally causes, encourages, solicits, or  
 recruits another person under a specified age to  
 become a criminal gang member in certain  
 circumstances; amending s. 951.23, F.S.; authorizing  
 county and municipal detention facilities to designate  
 an individual to be responsible for determining the  
 gang status of each inmate entering the facility and  
 to assess each current inmate for gang activity or  
 gang affiliation; providing duties of such  
 individuals; amending ss. 435.04 and 921.0022, F.S.;  
 conforming cross-references and assigning offense  
 severity rankings for violations of s. 874.05, F.S.;  
 amending s. 921.0024, F.S.; revising the criteria for  
 application of the sentencing multiplier for offenses  
 related to criminal gangs; limiting application of the  
 multiplier if application would result in the lowest  
 permissible sentence exceeding the statutory maximum  
 sentence; providing an effective date.

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

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29 Section 1. Section 810.0975, Florida Statutes, is amended  
 30 to read:

31 810.0975 School safety zones; definition; trespass  
 32 prohibited; penalty.—

33 (1) For the purposes of this section, the term "school  
 34 safety zone" means in, on, or within 500 feet of any real  
 35 property owned by or leased to any public or private elementary,  
 36 middle, or high school or school board and used for elementary,  
 37 middle, or high school education.

38 (2)(a) Each principal or designee of each public or  
 39 private school in this state shall notify the appropriate law  
 40 enforcement agency to prohibit any person from loitering in the  
 41 school safety zone who does not have legitimate business in the  
 42 school safety zone or any other authorization, or license to  
 43 enter or remain in the school safety zone or does not otherwise  
 44 have invitee status in the designated safety zone.

45 (b)1. During the period from 1 hour prior to the start of  
 46 a school session until 1 hour after the conclusion of a school  
 47 session, it is unlawful for any person to enter the premises or  
 48 trespass within a school safety zone or to remain on such  
 49 premises or within such school safety zone when that person does  
 50 not have legitimate business in the school safety zone or any  
 51 other authorization, license, or invitation to enter or remain  
 52 in the school safety zone.

53 2.a. Except as provided in sub-subparagraph b., a ~~Any~~  
 54 person who violates this subsection commits a misdemeanor of the  
 55 second degree, punishable as provided in s. 775.082 or s.  
 56 775.083.

57 b. A person who violates this subsection and who has been  
 58 previously convicted of any offense contained in chapter 874  
 59 commits a misdemeanor of the first degree, punishable as  
 60 provided in s. 775.082 or s. 775.083.

61 (c) 1. Except a provided in subparagraph 2., a Any person  
 62 who does not have legitimate business in the school safety zone  
 63 or any other authorization, license, or invitation to enter or  
 64 remain in the school safety zone who shall willfully fail to  
 65 remove himself or herself from the school safety zone after the  
 66 principal or designee, having a reasonable belief that he or she  
 67 will commit a crime or is engaged in harassment or intimidation  
 68 of students entering or leaving school property, requests him or  
 69 her to leave the school safety zone commits a misdemeanor of the  
 70 second degree, punishable as provided in s. 775.082 or s.  
 71 775.083.

72 2. A person who violates subparagraph 1. and who has been  
 73 previously convicted of any offense contained in chapter 874  
 74 commits a misdemeanor of the first degree, punishable as  
 75 provided in s. 775.082 or s. 775.083.

76 (3) ~~Nothing in This section does not shall be construed to~~  
 77 ~~abridge or infringe upon the right of any person to peaceably~~  
 78 ~~assemble and protest.~~

79 (4) ~~(3)~~ This section does not apply to residents or persons  
 80 engaged in the operation of a licensed commercial business  
 81 within the school safety zone.

82 Section 2. Section 874.05, Florida Statutes, is amended to  
 83 read:

84 874.05 Causing, encouraging, soliciting, or recruiting

85 criminal gang membership.-

86 (1) (a) Except as provided in paragraph (b) ~~subsection (2)~~,  
 87 a person who intentionally causes, encourages, solicits, or  
 88 recruits another person to become a criminal gang member where a  
 89 condition of membership or continued membership is the  
 90 commission of any crime commits a felony of the third degree,  
 91 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

92 ~~(b) (2)~~ A person who commits a second or subsequent  
 93 violation of this subsection commits a felony of the second  
 94 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 95 775.084.

96 (2) (a) Except as provided in paragraph (b), a person who  
 97 intentionally causes, encourages, solicits, or recruits another  
 98 person under 13 years of age to become a criminal gang member  
 99 where a condition of membership or continued membership is the  
 100 commission of any crime commits a felony of the second degree,  
 101 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

102 (b) A person who commits a second or subsequent violation  
 103 of this subsection commits a felony of the first degree,  
 104 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

105 Section 3. Subsection (11) is added to section 951.23,  
 106 Florida Statutes, to read:

107 951.23 County and municipal detention facilities;  
 108 definitions; administration; standards and requirements.-

109 (11) GANG STATUS OF INMATES.-A county or municipal  
 110 detention facility may designate an individual to be responsible  
 111 for determining the gang status of each inmate entering the  
 112 facility using the criteria in s. 874.03 and assess each current

113 | inmate for any gang activity or gang affiliation using those  
 114 | criteria. The individual should at least once biweekly reconcile  
 115 | information with the arresting law enforcement agency and the  
 116 | statewide criminal gang database.

117 | Section 4. Paragraph (qq) of subsection (2) of section  
 118 | 435.04, Florida Statutes, is amended to read:

119 | 435.04 Level 2 screening standards.—

120 | (2) The security background investigations under this  
 121 | section must ensure that no persons subject to the provisions of  
 122 | this section have been arrested for and are awaiting final  
 123 | disposition of, have been found guilty of, regardless of  
 124 | adjudication, or entered a plea of nolo contendere or guilty to,  
 125 | or have been adjudicated delinquent and the record has not been  
 126 | sealed or expunged for, any offense prohibited under any of the  
 127 | following provisions of state law or similar law of another  
 128 | jurisdiction:

129 | (qq) Section 874.05~~(1)~~, relating to encouraging or  
 130 | recruiting another to join a criminal gang.

131 | Section 5. Paragraphs (d), (e), and (g) of subsection (3)  
 132 | of section 921.0022, Florida Statutes, are amended to read:

133 | 921.0022 Criminal Punishment Code; offense severity  
 134 | ranking chart.—

135 | (3) OFFENSE SEVERITY RANKING CHART

136 | (d) LEVEL 4

137 |

Florida	Felony	
Statute	Degree	Description

138 |

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139	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.
140	499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
141	499.0051(2)	3rd	Failure to authenticate pedigree papers.
142	499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
143	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
144	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
145	784.075	3rd	Battery on detention or commitment facility staff.
	784.078	3rd	Battery of facility employee by



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			throwing, tossing, or expelling certain fluids or materials.
146	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
147	784.081(3)	3rd	Battery on specified official or employee.
148	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
149	784.083(3)	3rd	Battery on code inspector.
150	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
151	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
152	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
153			

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154	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
155	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
156	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
157	790.115 (2) (c)	3rd	Possessing firearm on school property.
158	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
159	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied

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			conveyance; unarmed; no assault or battery.
160	810.06	3rd	Burglary; possession of tools.
161	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
162	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
163	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
164	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
165	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03 (5) drugs.
166	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
167			

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168	817.625 (2) (a)	3rd	Fraudulent use of scanning device or reencoder.
169	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
170	837.02 (1)	3rd	Perjury in official proceedings.
171	837.021 (1)	3rd	Make contradictory statements in official proceedings.
172	838.022	3rd	Official misconduct.
173	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
174	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Family Services.
175	843.021	3rd	Possession of a concealed handcuff key by a person in custody.

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176	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
177	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
178	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
179	874.05(1)( <u>a</u> )	3rd	Encouraging or recruiting another to join a criminal gang.
180	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).
181	914.14(2)	3rd	Witnesses accepting bribes.
182	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.

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183	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
184	918.12	3rd	Tampering with jurors.
185	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
186	(e)	LEVEL 5	
187	Florida Statute	Felony Degree	Description
188	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
189	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
190	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
191	327.30(5)	3rd	Vessel accidents involving

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192			personal injury; leaving scene.
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
193			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
194			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
195			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
196			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
197			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
198			
	790.01(2)	3rd	Carrying a concealed firearm.
199			

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200	790.162	2nd	Threat to throw or discharge destructive device.
201	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
202	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
203	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
204	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
205	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
206	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more



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207			but less than \$50,000.
208	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
209	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
210	812.131(2)(b)	3rd	Robbery by sudden snatching.
211	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
212	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
213	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
214	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

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215	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
216	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
217	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
218	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
218	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion

			picture, etc., which includes sexual conduct by a child.
219	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
220	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
221	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
222	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
223	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
224	<u>874.05(1)(b)</u> <del>874.05(2)</del>	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent

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			offense.
225	<u>874.05 (2) (a)</u>	<u>2nd</u>	<u>Encouraging or recruiting person under 13 to join a criminal gang.</u>
226	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).
227	893.13 (1) (c) 2.	2nd	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) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
228	893.13 (1) (d) 1.	1st	Sell, manufacture, or deliver cocaine (or other s.

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893.03(1)(a), (1)(b), (1)(d),  
 (2)(a), (2)(b), or (2)(c)4.  
 drugs) within 1,000 feet of  
 university.

229

893.13(1)(e)2.            2nd    Sell, manufacture, or deliver  
 cannabis or other drug  
 prohibited under s.  
 893.03(1)(c), (2)(c)1.,  
 (2)(c)2., (2)(c)3., (2)(c)5.,  
 (2)(c)6., (2)(c)7., (2)(c)8.,  
 (2)(c)9., (3), or (4) within  
 1,000 feet of property used for  
 religious services or a  
 specified business site.

230

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.

231

893.13(4)(b)            2nd    Deliver to minor 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.,

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(2)(c)8., (2)(c)9., (3), or (4) drugs).

232

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

233

234 (g) LEVEL 7

235

Florida	Felony	
Statute	Degree	Description

236

316.027(1)(b) 1st Accident involving death, failure to stop; leaving scene.

237

316.193(3)(c)2. 3rd DUI resulting in serious bodily injury.

238

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.

239

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240	327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.
241	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
242	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
243	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
244	456.065 (2)	3rd	Practicing a health care profession without a license.
245	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
246	458.327 (1)	3rd	Practicing medicine without a license.

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247	459.013(1)	3rd	Practicing osteopathic medicine without a license.
248	460.411(1)	3rd	Practicing chiropractic medicine without a license.
249	461.012(1)	3rd	Practicing podiatric medicine without a license.
250	462.17	3rd	Practicing naturopathy without a license.
251	463.015(1)	3rd	Practicing optometry without a license.
252	464.016(1)	3rd	Practicing nursing without a license.
253	465.015(2)	3rd	Practicing pharmacy without a license.
254	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
255	467.201	3rd	Practicing midwifery without a license.



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256	468.366	3rd	Delivering respiratory care services without a license.
257	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
258	483.901 (9)	3rd	Practicing medical physics without a license.
259	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
260	484.053	3rd	Dispensing hearing aids without a license.
261	494.0018 (2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
262	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.

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263	560.125 (5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
264	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
265	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
266	775.21 (10) (b)	3rd	Sexual predator working where children regularly congregate.
267	775.21 (10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
	782.051 (3)	2nd	Attempted felony murder of a person by a person other than

			the perpetrator or the perpetrator of an attempted felony.
268	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
269	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
270	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
271	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
272	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
273			

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274	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
275	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
276	784.048 (7)	3rd	Aggravated stalking; violation of court order.
277	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
278	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
279	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
280	784.081 (1)	1st	Aggravated battery on specified official or employee.
281	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
	784.083 (1)	1st	Aggravated battery on code

282			inspector.
283	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
284	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
285	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
286	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
287	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
288	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

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289	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
290	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.
291	796.03	2nd	Procuring any person under 16 years for prostitution.
292	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
293	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
294	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.

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295	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
296	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
297	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
298	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
299	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.
300	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
	812.014 (2) (b) 3.	2nd	Property stolen, emergency

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			medical equipment; 2nd degree grand theft.
301	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
302	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
303	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
304	812.131(2)(a)	2nd	Robbery by sudden snatching.
305	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
306	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
307	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
308			



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309	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
310	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.
311	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
312	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
313	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21

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			years of age or older.
314	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
315	838.015	2nd	Bribery.
316	838.016	2nd	Unlawful compensation or reward for official behavior.
317	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
318	838.22	2nd	Bid tampering.
319	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
320	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
321	872.06	2nd	Abuse of a dead human body.
322	<u>874.05 (2) (b)</u>	<u>1st</u>	<u>Encouraging or recruiting person under 13 to join a</u>

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criminal gang; second or  
subsequent offense.

323

874.10                    1st, PBL    Knowingly initiates, organizes,  
plans, finances, directs,  
manages, or supervises criminal  
gang-related activity.

324

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  
state, county, or municipal  
park or publicly owned  
recreational facility or  
community center.

325

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.
326	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
327	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
328	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
329	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
330	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
331	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
332			

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333	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
334	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
335	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
336	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
337	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
338	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but

339	896.104(4)(a)1.	3rd	less than \$20,000. Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
340	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
341	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
342	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
343	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
344			

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345	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
346	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
347	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
348	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
349	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
350	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.

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

351

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

352

353 Section 6. Paragraph (b) of subsection (1) of section  
354 921.0024, Florida Statutes, is amended to read:

355 921.0024 Criminal Punishment Code; worksheet computations;  
356 scoresheets.-

357 (1)

358 (b) WORKSHEET KEY:

359

360 Legal status points are assessed when any form of legal status  
361 existed at the time the offender committed an offense before the  
362 court for sentencing. Four (4) sentence points are assessed for  
363 an offender's legal status.

364

365 Community sanction violation points are assessed when a  
366 community sanction violation is before the court for sentencing.  
367 Six (6) sentence points are assessed for each community sanction  
368 violation and each successive community sanction violation,  
369 unless any of the following apply:

370 1. If the community sanction violation includes a new



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371 felony conviction before the sentencing court, twelve (12)  
 372 community sanction violation points are assessed for the  
 373 violation, and for each successive community sanction violation  
 374 involving a new felony conviction.

375 2. If the community sanction violation is committed by a  
 376 violent felony offender of special concern as defined in s.  
 377 948.06:

378 a. Twelve (12) community sanction violation points are  
 379 assessed for the violation and for each successive violation of  
 380 felony probation or community control where:

381 (I) The violation does not include a new felony  
 382 conviction; and

383 (II) The community sanction violation is not based solely  
 384 on the probationer or offender's failure to pay costs or fines  
 385 or make restitution payments.

386 b. Twenty-four (24) community sanction violation points  
 387 are assessed for the violation and for each successive violation  
 388 of felony probation or community control where the violation  
 389 includes a new felony conviction.

390  
 391 Multiple counts of community sanction violations before the  
 392 sentencing court shall not be a basis for multiplying the  
 393 assessment of community sanction violation points.

394  
 395 Prior serious felony points: If the offender has a primary  
 396 offense or any additional offense ranked in level 8, level 9, or  
 397 level 10, and one or more prior serious felonies, a single  
 398 assessment of thirty (30) points shall be added. For purposes of

399 | this section, a prior serious felony is an offense in the  
 400 | offender's prior record that is ranked in level 8, level 9, or  
 401 | level 10 under s. 921.0022 or s. 921.0023 and for which the  
 402 | offender is serving a sentence of confinement, supervision, or  
 403 | other sanction or for which the offender's date of release from  
 404 | confinement, supervision, or other sanction, whichever is later,  
 405 | is within 3 years before the date the primary offense or any  
 406 | additional offense was committed.

407 |  
 408 | Prior capital felony points: If the offender has one or more  
 409 | prior capital felonies in the offender's criminal record, points  
 410 | shall be added to the subtotal sentence points of the offender  
 411 | equal to twice the number of points the offender receives for  
 412 | the primary offense and any additional offense. A prior capital  
 413 | felony in the offender's criminal record is a previous capital  
 414 | felony offense for which the offender has entered a plea of nolo  
 415 | contendere or guilty or has been found guilty; or a felony in  
 416 | another jurisdiction which is a capital felony in that  
 417 | jurisdiction, or would be a capital felony if the offense were  
 418 | committed in this state.

419 |  
 420 | Possession of a firearm, semiautomatic firearm, or machine gun:  
 421 | If the offender is convicted of committing or attempting to  
 422 | commit any felony other than those enumerated in s. 775.087(2)  
 423 | while having in his or her possession: a firearm as defined in  
 424 | s. 790.001(6), an additional eighteen (18) sentence points are  
 425 | assessed; or if the offender is convicted of committing or  
 426 | attempting to commit any felony other than those enumerated in

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427 s. 775.087(3) while having in his or her possession a  
 428 semiautomatic firearm as defined in s. 775.087(3) or a machine  
 429 gun as defined in s. 790.001(9), an additional twenty-five (25)  
 430 sentence points are assessed.

431

432 Sentencing multipliers:

433

434 Drug trafficking: If the primary offense is drug trafficking  
 435 under s. 893.135, the subtotal sentence points are multiplied,  
 436 at the discretion of the court, for a level 7 or level 8  
 437 offense, by 1.5. The state attorney may move the sentencing  
 438 court to reduce or suspend the sentence of a person convicted of  
 439 a level 7 or level 8 offense, if the offender provides  
 440 substantial assistance as described in s. 893.135(4).

441

442 Law enforcement protection: If the primary offense is a  
 443 violation of the Law Enforcement Protection Act under s.  
 444 775.0823(2), (3), or (4), the subtotal sentence points are  
 445 multiplied by 2.5. If the primary offense is a violation of s.  
 446 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points  
 447 are multiplied by 2.0. If the primary offense is a violation of  
 448 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
 449 Protection Act under s. 775.0823(10) or (11), the subtotal  
 450 sentence points are multiplied by 1.5.

451

452 Grand theft of a motor vehicle: If the primary offense is grand  
 453 theft of the third degree involving a motor vehicle and in the  
 454 offender's prior record, there are three or more grand thefts of

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455 the third degree involving a motor vehicle, the subtotal  
456 sentence points are multiplied by 1.5.

457

458 Offense related to a criminal gang: If the offender is convicted  
459 of the primary offense and committed that offense for the  
460 purpose of benefiting, promoting, or furthering the interests of  
461 a criminal gang as defined in s. 874.03 ~~prohibited under s.~~  
462 ~~874.04~~, the subtotal sentence points are multiplied by 1.5. If  
463 applying the multiplier results in the lowest permissible  
464 sentence exceeding the statutory maximum sentence for the  
465 primary offense under chapter 775, the court may not apply the  
466 multiplier and must sentence the defendant to the statutory  
467 maximum sentence.

468

469 Domestic violence in the presence of a child: If the offender is  
470 convicted of the primary offense and the primary offense is a  
471 crime of domestic violence, as defined in s. 741.28, which was  
472 committed in the presence of a child under 16 years of age who  
473 is a family or household member as defined in s. 741.28(3) with  
474 the victim or perpetrator, the subtotal sentence points are  
475 multiplied by 1.5.

476

Section 7. This act shall take effect October 1, 2012.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1187 Sentencing Child Abusers

**SPONSOR(S):** Criminal Justice Subcommittee; Perry

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity <i>J. Darity</i>
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 921.187, F.S., gives judges sentencing alternatives when disposing criminal cases where an offender does not receive a state prison sentence. These alternatives must be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation.

The bill allows a judge to impose an additional assessment of \$250 on an offender who violates any criminal provision of ch. 827, F.S. (relating to the abuse of children), and who does not receive a state prison sentence. The \$250 assessment is paid to the child protection team in the judicial circuit in which the alternative sentence is imposed.

The bill provides that if there is more than one child protection team in the judicial circuit in which the alternative sentence is imposed, the assessment shall be allocated evenly among them.

The bill may result in increased funding for local child protection teams. See "fiscal comments."

The bill is effective July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Abuse of Children**

Chapter 827, F.S., provides various criminal offenses relating to the abuse of children.<sup>1</sup>

Child abuse is defined as:

- Intentional infliction of physical or mental injury upon a child;
- An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.<sup>2</sup>

Child abuse is a third degree felony<sup>3</sup> and occurs when a person knowingly and willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child.

Aggravated child abuse is a first degree felony<sup>4</sup> and occurs when a person:

- Commits aggravated battery on a child;
- Willfully tortures, maliciously<sup>5</sup> punishes, or willfully and unlawfully cages a child; or
- Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.<sup>6</sup>

Neglect of a child occurs when:

- A caregiver<sup>7</sup> fails or omits to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or
- A caregiver fails to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.<sup>8</sup>

Neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.<sup>9</sup> Neglect of a child is a third degree felony when a person willfully or by culpable negligence neglects a child. However, it is a second degree felony<sup>10</sup> when a person willfully or by culpable negligence neglects a child and in doing so causes great bodily harm, permanent disability, or permanent disfigurement to the child.

#### **Child Protection Teams**

The Department of Health Children's Medical Services Child Protection Team (CPT) Program is a medically directed, multidisciplinary statewide program designed to supplement the child protective investigation activities of local Sheriff's offices and the Department of Children and Family Services

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<sup>1</sup> Section 827.01(2), F.S., defines "child" as "any person under the age of 18 years."

<sup>2</sup> Section 827.03(1), F.S.

<sup>3</sup> Punishable by up to 5 years imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Punishable by up to 30 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>5</sup> For purposes of this section, "maliciously" means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury. Section 827.03(4), F.S.

<sup>6</sup> Section 827.03(2), F.S.

<sup>7</sup> Section 827.01(1), F.S., defines "caregiver" as "a parent, adult household member, or other person responsible for a child's welfare."

<sup>8</sup> Section 827.03(3)(a), F.S.

<sup>9</sup> Section 827.03(3)(a), F.S.

<sup>10</sup> Punishable by up to 15 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

(DCFS) in complex cases of child abuse and neglect.<sup>11</sup> Section 39.303, F.S., authorizes the Children's Medical Services (CMS) Program within the Department of Health (DOH) to develop, maintain, and coordinate CPT services through contracts with local community-based programs. Twenty-two CPTs, some with satellite offices, provide these services to all children in the state meeting criteria for referral.

A CPT provides consultation to DCFS programs and other persons regarding child abuse, abandonment, and neglect cases.<sup>12</sup> All child abuse and neglect cases transmitted to child protection investigation by the child abuse hotline must be simultaneously transmitted to a CPT for review.<sup>13</sup> The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a CPT is capable of providing include, but are not limited to, the following:

- Medical diagnosis and evaluation services, including provision or interpretation of X-rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto.
- Telephone consultation services in emergencies and in other situations.
- Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of DOH.
- Psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.
- Expert medical, psychological, and related professional testimony in court cases.
- Case staffings to develop treatment plans for children whose cases have been referred to the team.
- Case service coordination and assistance, including the location of services available from other public and private agencies in the community.
- Training services for program and other employees of DCFS, employees of DOH, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.
- Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens to prevent, identify, and treat child abuse, abandonment, and neglect in the community.
- CPT assessments that include, as appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews.<sup>14</sup>

### **Sentencing Alternatives**

Section 921.187, F.S., gives judges sentencing alternatives when disposing criminal cases where an offender does not receive a state prison sentence. These alternatives must be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation,<sup>15</sup> and include:

- Requiring an offender who violates ch. 893, F.S.,<sup>16</sup> or violates any law while under the influence of a controlled substance or alcohol to participate in a substance abuse program.<sup>17</sup>
- Requiring an offender who violates any criminal provision of ch. 893, F.S., to pay an additional assessment in an amount up to the amount of any fine imposed, pursuant to ss. 938.21<sup>18</sup> and 938.23, F.S.<sup>19,20</sup>

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<sup>11</sup> "Children's Medical Services: Child Protection Team" Department of Health. <http://www.doh.state.fl.us/cms/HProviderPICPT.html> (last visited January 27, 2012).

<sup>12</sup> Section 39.01(13), F.S.

<sup>13</sup> Section 39.303(3), F.S.

<sup>14</sup> Section 39.303(1), F.S.

<sup>15</sup> Section 921.187(1), F.S.

<sup>16</sup> Chapter 893, F.S., relates to drug abuse prevention and control.

<sup>17</sup> Section 921.187(k), F.S.

<sup>18</sup> Section 938.21, F.S., relates to alcohol and drug abuse programs.

<sup>19</sup> Section 938.23, F.S., relates to assistance grants for alcohol and other drug abuse programs.

<sup>20</sup> Section 921.187(1)1., F.S.



- Requiring an offender who violates any provision of s. 893.13, F.S.,<sup>21</sup> to pay an additional assessment in an amount of \$100, pursuant to ss. 938.25<sup>22</sup> and 943.361, F.S.<sup>23,24</sup>
- Requiring residence in a state probation and restitution center or private drug treatment program for offenders on community control or offenders who have violated conditions of probation.<sup>25</sup>

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

The bill allows a judge to impose an additional assessment of \$250 on an offender who violates any criminal provision of ch. 827, F.S. (relating to the abuse of children), and who does not receive a state prison sentence. The \$250 assessment is paid to the child protection team in the judicial circuit in which the alternative sentence is imposed.

The bill provides that if there is more than one child protection team in the judicial circuit in which the alternative sentence is imposed, the assessment shall be allocated evenly among them.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 921.187, F.S., disposition and sentencing; alternatives; restitution.

Section 2. Provides an effective date of July 1, 2012.

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

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

##### **1. Revenues:**

See "fiscal comments."

##### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

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

##### **1. Revenues:**

See "fiscal comments."

##### **2. Expenditures:**

The bill does not appear to have any impact on local government expenditures.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

See "fiscal comments."

#### **D. FISCAL COMMENTS:**

The Child Protection Team (CPT) Program is funded by the Legislature through the Department of Health's (DOH) Children's Medical Services program office, which contracts with local providers for

<sup>21</sup> Section 893.13, relates to various controlled substance penalties.

<sup>22</sup> Section 938.25, F.S., relates to operating Trust Fund of the Department of Law Enforcement.

<sup>23</sup> Section 943.361, F.S., relates to statewide criminal analysis laboratory system; funding through fine surcharges.

<sup>24</sup> Section 921.187(1)2., F.S.

<sup>25</sup> Section 921.187(o), F.S.

team services.<sup>26</sup> Providers currently under contract with DOH include non-profit agencies, hospitals, universities, and county governments.<sup>27</sup>

The bill requires offenders who violate any criminal provision of ch. 827, F.S., to pay an additional assessment of \$250 to the CPT in the judicial circuit in which the alternative sentence is imposed. The bill would have a positive fiscal impact on any of the above named entities to the extent that they are contracted as a CPT.

Persons who violate any criminal provision of ch. 827, F.S., and who are sentenced to the alternative proposed by the bill will be required to pay an additional \$250 fee.

### 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:

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

On January 31, 2012, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that if there is more than one child protection team in the judicial circuit in which the alternative sentence is imposed, the assessment shall be allocated evenly among them.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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<sup>26</sup> Child Protection Team Program Policy and Procedure Handbook. June 2009. [http://www.cms-kids.com/providers/prevention/documents/handbook\\_cpt.pdf](http://www.cms-kids.com/providers/prevention/documents/handbook_cpt.pdf) (last visited January 27, 2012).

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

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1                                   A bill to be entitled  
 2           An act relating to sentencing child abusers; amending  
 3           s. 921.187, F.S.; authorizing the court to order an  
 4           offender convicted of an offense of child abuse to pay  
 5           an assessment of a specified amount if the offender  
 6           does not receive a state prison sentence; specifying  
 7           how the assessments are allocated to child protection  
 8           teams; providing an effective date.

9

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

11

12           Section 1. Paragraph (r) is added to subsection (1) of  
 13 section 921.187, Florida Statutes, to read:

14           921.187 Disposition and sentencing; alternatives;  
 15 restitution.-

16           (1) The alternatives provided in this section for the  
 17 disposition of criminal cases shall be used in a manner that  
 18 will best serve the needs of society, punish criminal offenders,  
 19 and provide the opportunity for rehabilitation. If the offender  
 20 does not receive a state prison sentence, the court may:

21           (r) Require the offender who violates any criminal  
 22 provision of chapter 827 to pay an additional assessment in the  
 23 amount of \$250 to the child protection team in the judicial  
 24 circuit in which the alternative sentence is imposed. If there  
 25 is more than one child protection team in the judicial circuit  
 26 in which the alternative sentence is imposed, the assessment  
 27 shall be allocated evenly among them.

28           Section 2. This act shall take effect July 1, 2012.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1285 Criminal Conduct  
**SPONSOR(S):** Criminal Justice Subcommittee; Schwartz  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		Toms <i>ST</i>	Jones Darity <i>J. Darity</i>
3) Judiciary Committee			

### SUMMARY ANALYSIS

In 2001, s. 827.03, F.S. (the criminal child abuse statute), was challenged as being unconstitutionally vague because the statute does not define the term "mental injury." In 2002, the Florida Supreme Court held that the statute was not unconstitutionally vague because "mental injury" was defined in chapter 39, F.S., a related child-protection statute. However, the court suggested that it would be preferable for the Legislature to place a definition in s. 827.03, F.S.

The bill amends s. 827.03, F.S., to define the term "mental injury" as "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony." This definition significantly mirrors the definition found in s. 39.01, F.S.

The bill also specifies that physicians and psychologists can only provide expert testimony in criminal child abuse cases if they meet the following requirements:

- A physician may not provide expert testimony in a criminal child abuse case unless the physician is a physician licensed under chapters 458 or 459, F.S., or has obtained certification as an expert witness pursuant to s. 458.3175, F.S.
- A physician may not provide expert testimony in a criminal child abuse case regarding mental injury unless the physician is a physician licensed under chapters 458 or 459, F.S., who is board certified in psychiatry, or has obtained certification as an expert witness pursuant to s. 458.3175.
- A psychologist may not give expert testimony in a criminal child abuse case regarding mental injury unless the psychologist is licensed under chapter 490, F.S.

The bill also amends the definition of the terms "victim" and "crime" contained in chapter 960, F.S. (the victim assistance chapter). The definition of the term "victim" is expanded to include a person younger than 18 who was the victim of a felony or misdemeanor offense that resulted in a psychiatric or psychological injury, but who was not physically injured. The term "crime" is amended to include felonies or misdemeanors committed by an adult or a juvenile which result in psychiatric or psychological injury to a person less than 18 years of age who was not physically injured by the criminal act. These changes expand the pool of persons eligible for victim compensation awards.

The Florida Office of the Attorney General reports that the bill's impact on the Crimes Compensation Trust Fund would be indeterminate. With the expanded definitions of the terms "victim" and "crime", there will be more victims eligible to receive awards. The Crimes Victims' Services Office would have to lower the rates of compensation given to each victim to stay within the budget of the Crimes Compensation Trust Fund.

The bill is effective October 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Criminal Child Abuse – Mental Injury**

Section 827.03, F.S., Florida's criminal child abuse statute, currently provides the following:

- (1) "Child abuse" means:
  - (a) Intentional infliction of physical or mental injury upon a child;
  - (b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
  - (c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a third degree felony.<sup>1</sup>

- (2) "Aggravated child abuse" occurs when a person:
  - (a) Commits aggravated battery on a child;
  - (b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or
  - (c) Knowingly and willfully abuses a child and in doing so causes great bodily harm, permanent disability, or permanent disfigurement to a child.

A person who commits aggravated child abuse commits a first degree felony.<sup>2</sup>

In 2001, the criminal child abuse statute was challenged as being unconstitutionally vague based on the fact that the statute does not define the term "mental injury."<sup>3</sup> In 2002, the Florida Supreme Court held that the statute was not unconstitutionally vague because "mental injury" was defined in chapter 39, F.S.,<sup>4</sup> a related child-protection statute.<sup>5</sup> However, the court suggested that it would be preferable for the Legislature to place a definition in s. 827.03, F.S.<sup>6</sup>

#### *Effect of the Bill*

The bill amends s. 827.03, F.S., to define the term "mental injury" as "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony." This definition significantly mirrors the definition found in s. 39.01, F.S.

The bill also reorganizes s. 827.03, F.S., to improve its readability, and amends the following statutes to conform them to these organizational changes.

- Section 775.084, F.S. (relating to violent career criminals, etc.)
- Section 775.0877, F.S. (relating to criminal transmission of HIV)
- Section 782.07, F.S. (relating to manslaughter, etc.)
- Section 921.0022, F.S. (the offense severity ranking chart)
- Section 948.062, F.S. (relating to reporting offenses committed by probationers)

<sup>1</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> See *State v. DuFresne*, 782 So.2d 888 (Fla. 4<sup>th</sup> DCA 2001).

<sup>4</sup> Section 39.01(42), F.S., defines "mental injury" as "an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior."

<sup>5</sup> See *DuFresne v. State*, 826 So.2d 272 (Fla. 2002).

<sup>6</sup> The court stated in its opinion that "while it may obviously be preferable for the Legislature to place the appropriate definition in the same statute, citizens should be on notice that controlling definitions may be contained in other related statutes." *Id.* at 279.

## **Criminal Child Abuse – Expert Testimony**

Florida's evidence code specifically addresses expert testimony. Section 90.702, F.S., provides that if scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion. However, the opinion is admissible only if it can be applied to evidence at trial. The determination of a witness's qualifications to express an expert opinion is within the discretion of the trial judge, whose decision will not be reversed absent a clear showing of error.<sup>7</sup> The weight and credibility given to expert testimony is a matter for the fact finder.<sup>8</sup>

In regards to medical expert testimony, courts have held that whether a doctor is qualified to testify as an expert depends upon whether he or she is known to have such skill, knowledge, or experience with respect to subject matter about which he or she is called to testify that it appears to the trial court that his or her opinion will aid a jury in resolution of the ultimate issue of fact.<sup>9</sup> For example, Florida's 4<sup>th</sup> District Court of Appeal held that the testimony of a physician which outlined her formal training and experience and her licensing as a physician in two states with a specialty in child and adolescent psychiatry established her qualifications to render an opinion on whether the victim of alleged sexual assault was suffering from posttraumatic stress syndrome.<sup>10</sup>

Outside of the requirements contained in s. 90.702, F.S., Florida law does not place limitations as to who can provide expert testimony in criminal child abuse cases. In other words, anyone can provide expert testimony in such cases so long as the trial judge determines that the person is qualified to express an expert opinion.

### *Effect of the Bill*

The bill creates a new "expert testimony" subsection in s. 827.03, F.S., and specifies that physicians and psychologists can only provide expert testimony in criminal child abuse cases if they meet the following requirements:

- A physician may not provide expert testimony in a criminal child abuse case unless the physician is a physician licensed under chapters 458 or 459, F.S., or has obtained certification as an expert witness pursuant to s. 458.3175, F.S.<sup>11</sup>
- A physician may not provide expert testimony in a criminal child abuse case regarding mental injury unless the physician is a physician licensed under chapters 458 or 459, F.S., who is board certified in psychiatry, or has obtained certification as an expert witness pursuant to s. 458.3175.
- A psychologist may not give expert testimony in a criminal child abuse case regarding mental injury unless the psychologist is licensed under chapter 490, F.S.

## **Victim Assistance**

The Florida Office of the Attorney General's (OAG) Division of Victim Services serves as an advocate for crime victims and administers a compensation program to ensure financial assistance for innocent victims of crime.<sup>12</sup> Currently, injured crime victims may be eligible for financial assistance for medical care, lost income, funeral expenses, and other out-of-pocket expenses directly related to the injury.<sup>13</sup>

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<sup>7</sup> See, *Anderson v. State*, 863 So.2d 169 (Fla.2003).

<sup>8</sup> See, *Horowitz v. American Motorist Inc. Co.*, 343 So.2d 1305 (Fla. 2<sup>nd</sup> DCA 1977).

<sup>9</sup> See, *Pearson v. State*, 254 So.2d 573 (Fla. 3<sup>rd</sup> DCA 1971).

<sup>10</sup> *Kruse v. State*, 483 So.2d 1383 (Fla. 4<sup>th</sup> DCA 1986).

<sup>11</sup> Section 458.3175, F.S., requires the Department of Health to issue a certificate authorizing a physician who holds an active and valid license to practice medicine in another state or a province of Canada to provide expert testimony in this state, if the physician submits a registration application and an application fee.

<sup>12</sup> Crime Victims' Services (<http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument>)(last visited on January 23, 2012).

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

Payment is made from the Crime Compensation Trust Fund.<sup>14</sup> The sources of revenue in this trust fund are receipts from additional court costs, fines and from restitution received from the Federal Government. The OAG may adopt rules establishing compensation award limits, however, compensation awards may not exceed:

- \$10,000 for treatment;
- \$10,000 for continuing or periodic mental health care of a minor victim whose normal emotional development is adversely affected by being the victim of a crime;
- A total of \$25,000 for all compensable costs; or
- \$50,000 when the OAG makes a written finding that the victim has suffered a catastrophic injury as a direct result of the crime.<sup>15</sup>

While s. 960.03(14), F.S., defines the term "victim" to include persons who have suffered *physical* injury, the term also includes certain victims who suffer *mental* injuries. Children under 16 who are present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime but who are not physically injured are considered "victims" for compensation purposes, as are people who suffer a psychiatric or psychological injury as a direct result of a forcible felony<sup>16</sup> being committed upon them.<sup>17</sup>

Section 960.03(3), F.S., also defines the term "crime" for victim assistance purposes to include "a felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death."

#### *Effect of the Bill*

The bill amends s. 960.03, F.S., to expand the definition of the term "victim" to include a person younger than 18 who was the victim of a felony or misdemeanor offender that resulted in a psychiatric or psychological injury, but who was not physically injured.

The bill also amends the definition of the term "crime" to include felonies or misdemeanors committed by an adult or a juvenile which result in psychiatric or psychological injury to a person less than 18 years of age who was not physically injured by the criminal act.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 827.03, F.S., relating to abuse, aggravated abuse, and neglect of a child; penalties.

Section 2. Amends s. 775.084, F.S., relating to violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.

Section 3. Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

Section 4. Amends s. 782.07, F.S., relating to manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

Section 5. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

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<sup>14</sup> Section 960.21, F.S.

<sup>15</sup> Section 960.13, F.S.

<sup>16</sup> The term "forcible felony" means "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Section 776.08, F.S.

<sup>17</sup> Section 960.03, F.S.



Section 6. Amends s. 948.062, F.S., relating to reviewing and reporting serious offenses committed by offenders placed on probation or community control.

Section 7. Amends s. 960.03, F.S., relating to definitions; ss. 960.01-960.28.

Section 8. This bill takes effect October 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons younger than 18, who are the victim of a criminal offense that resulted in a psychiatric or psychological injury, but no physical injury, will be eligible for victim compensation awards.

### D. FISCAL COMMENTS:

Chapter 960, F.S. sets guidelines for the Crime Victims' Services Office within the OAG and allows the office to set the rates of compensation given to each victim based on yearly projections. The awards are provided out of the Crimes Compensation Trust Fund. Examples of victims who currently receive awards are:

- elderly persons or disabled adults who suffer a property loss that causes a substantial diminution in their quality of life;
- a child who suffers psychiatric or psychological injury as a direct result of online sexual exploitation;
- children who have been identified by the National Center for Missing and Exploited Children as a victim of child pornography.
- A victim of domestic violence who needs immediate assistance to escape from a domestic violence environment

The Florida Office of the Attorney General reports that the bill's impact on the Crimes Compensation Trust Fund would be indeterminate. With the expanded definitions of the terms "victim" and "crime", there will be more victims eligible to receive awards. The Crimes Victims' Services Office would have to lower the rates of compensation given to each victim to stay within the budget of the Crimes Compensation Trust Fund.

The bill will not have an impact to the General Revenue Fund.

### 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

On January 25, 2012, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment creates a new "expert testimony" subsection in s. 827.03, F.S., and specifies that physicians and psychologists can only provide expert testimony in criminal child abuse cases if they meet certain requirements.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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A bill to be entitled  
 An act relating to criminal conduct; amending s.  
 827.03, F.S.; defining the term "mental injury" with  
 respect to the offenses of abuse, aggravated abuse,  
 and neglect of a child; requiring that a physician or  
 psychologist acting as an expert witness in certain  
 proceedings have certain credentials; amending ss.  
 775.084, 775.0877, 782.07, 921.0022, and 948.062,  
 F.S.; conforming cross-references; amending s. 960.03,  
 F.S.; redefining the term "crime" for purposes of  
 crime victims compensation to include additional forms  
 of injury; redefining the term "victim" to conform  
 with the modified definition of the term "crime";  
 providing an effective date.

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

Section 1. Section 827.03, Florida Statutes, is amended to  
 read:

827.03 Abuse, aggravated abuse, and neglect of a child;  
 penalties.-

- (1) DEFINITIONS.-As used in this section, the term:
  - (a) "Aggravated child abuse" occurs when a person:
    - 1. Commits aggravated battery on a child;
    - 2. Willfully tortures, maliciously punishes, or willfully  
and unlawfully cages a child; or
    - 3. Knowingly or willfully abuses a child and in so doing  
causes great bodily harm, permanent disability, or permanent

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

29 disfigurement to the child.

30 (b) "Child abuse" means:

31 1.(a) Intentional infliction of physical or mental injury  
32 upon a child;

33 2.(b) An intentional act that could reasonably be expected  
34 to result in physical or mental injury to a child; or

35 3.(e) Active encouragement of any person to commit an act  
36 that results or could reasonably be expected to result in  
37 physical or mental injury to a child.

38

39 ~~A person who knowingly or willfully abuses a child without~~  
40 ~~causing great bodily harm, permanent disability, or permanent~~  
41 ~~disfigurement to the child commits a felony of the third degree,~~  
42 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

43 ~~(2) "Aggravated child abuse" occurs when a person:~~

44 ~~(a) Commits aggravated battery on a child;~~

45 ~~(b) Willfully tortures, maliciously punishes, or willfully~~  
46 ~~and unlawfully cages a child; or~~

47 ~~(c) Knowingly or willfully abuses a child and in so doing~~  
48 ~~causes great bodily harm, permanent disability, or permanent~~  
49 ~~disfigurement to the child.~~

50

51 ~~A person who commits aggravated child abuse commits a felony of~~  
52 ~~the first degree, punishable as provided in s. 775.082, s.~~  
53 ~~775.083, or s. 775.084.~~

54 (c) "Maliciously" means wrongfully, intentionally, and  
55 without legal justification or excuse. Maliciousness may be  
56 established by circumstances from which one could conclude that

57 a reasonable parent would not have engaged in the damaging acts  
 58 toward the child for any valid reason and that the primary  
 59 purpose of the acts was to cause the victim unjustifiable pain  
 60 or injury.

61 (d) "Mental injury" means injury to the intellectual or  
 62 psychological capacity of a child as evidenced by a discernible  
 63 and substantial impairment in the ability of the child to  
 64 function within the normal range of performance and behavior as  
 65 supported by expert testimony.

66 (e)(3)(a) "Neglect of a child" means:

67 1. A caregiver's failure or omission to provide a child  
 68 with the care, supervision, and services necessary to maintain  
 69 the child's physical and mental health, including, but not  
 70 limited to, food, nutrition, clothing, shelter, supervision,  
 71 medicine, and medical services that a prudent person would  
 72 consider essential for the well-being of the child; or

73 2. A caregiver's failure to make a reasonable effort to  
 74 protect a child from abuse, neglect, or exploitation by another  
 75 person.

76  
 77 Except as otherwise provided in this section, neglect of a child  
 78 may be based on repeated conduct or on a single incident or  
 79 omission that results in, or could reasonably be expected to  
 80 result in, serious physical or mental injury, or a substantial  
 81 risk of death, to a child.

82 (2) OFFENSES.—

83 (a) A person who commits aggravated child abuse commits a  
 84 felony of the first degree, punishable as provided in s.

85 775.082, s. 775.083, or s. 775.084.

86 (b) A person who willfully or by culpable negligence  
 87 neglects a child and in so doing causes great bodily harm,  
 88 permanent disability, or permanent disfigurement to the child  
 89 commits a felony of the second degree, punishable as provided in  
 90 s. 775.082, s. 775.083, or s. 775.084.

91 (c) A person who knowingly or willfully abuses a child  
 92 without causing great bodily harm, permanent disability, or  
 93 permanent disfigurement to the child commits a felony of the  
 94 third degree, punishable as provided in s. 775.082, s. 775.083,  
 95 or s. 775.084.

96 ~~(d)(e)~~ A person who willfully or by culpable negligence  
 97 neglects a child without causing great bodily harm, permanent  
 98 disability, or permanent disfigurement to the child commits a  
 99 felony of the third degree, punishable as provided in s.  
 100 775.082, s. 775.083, or s. 775.084.

101 (3) EXPERT TESTIMONY.-

102 (a) Except as provided in paragraph (b), a physician may  
 103 not provide expert testimony in a criminal child abuse case  
 104 unless the physician is a physician licensed under chapter 458  
 105 or chapter 459 or has obtained certification as an expert  
 106 witness pursuant to s. 458.3175.

107 (b) A physician may not provide expert testimony in a  
 108 criminal child abuse case regarding mental injury unless the  
 109 physician is a physician licensed under chapter 458 or chapter  
 110 459 who is board certified in psychiatry or has obtained  
 111 certification as an expert witness pursuant to s. 458.3175.

112 (c) A psychologist may not give expert testimony in a

113 criminal child abuse case regarding mental injury unless the  
 114 psychologist is licensed under chapter 490.

115 (d) The expert testimony requirements of this subsection  
 116 apply only to criminal child abuse cases and not to family court  
 117 or dependency court cases.

118 ~~(4) For purposes of this section, "maliciously" means~~  
 119 ~~wrongfully, intentionally, and without legal justification or~~  
 120 ~~excuse. Maliciousness may be established by circumstances from~~  
 121 ~~which one could conclude that a reasonable parent would not have~~  
 122 ~~engaged in the damaging acts toward the child for any valid~~  
 123 ~~reason and that the primary purpose of the acts was to cause the~~  
 124 ~~victim unjustifiable pain or injury.~~

125 Section 2. Paragraph (d) of subsection (1) of section  
 126 775.084, Florida Statutes, is amended to read:

127 775.084 Violent career criminals; habitual felony  
 128 offenders and habitual violent felony offenders; three-time  
 129 violent felony offenders; definitions; procedure; enhanced  
 130 penalties or mandatory minimum prison terms.-

131 (1) As used in this act:

132 (d) "Violent career criminal" means a defendant for whom  
 133 the court must impose imprisonment pursuant to paragraph (4)(d),  
 134 if it finds that:

135 1. The defendant has previously been convicted as an adult  
 136 three or more times for an offense in this state or other  
 137 qualified offense that is:

- 138 a. Any forcible felony, as described in s. 776.08;
- 139 b. Aggravated stalking, as described in s. 784.048(3) and
- 140 (4);

141 c. Aggravated child abuse, as described in s.  
 142 827.03(2) (a);

143 d. Aggravated abuse of an elderly person or disabled  
 144 adult, as described in s. 825.102(2);

145 e. Lewd or lascivious battery, lewd or lascivious  
 146 molestation, lewd or lascivious conduct, or lewd or lascivious  
 147 exhibition, as described in s. 800.04 or s. 847.0135(5);

148 f. Escape, as described in s. 944.40; or

149 g. A felony violation of chapter 790 involving the use or  
 150 possession of a firearm.

151 2. The defendant has been incarcerated in a state prison  
 152 or a federal prison.

153 3. The primary felony offense for which the defendant is  
 154 to be sentenced is a felony enumerated in subparagraph 1. and  
 155 was committed on or after October 1, 1995, and:

156 a. While the defendant was serving a prison sentence or  
 157 other sentence, or court-ordered or lawfully imposed supervision  
 158 that is imposed as a result of a prior conviction for an  
 159 enumerated felony; or

160 b. Within 5 years after the conviction of the last prior  
 161 enumerated felony, or within 5 years after the defendant's  
 162 release from a prison sentence, probation, community control,  
 163 control release, conditional release, parole, or court-ordered  
 164 or lawfully imposed supervision or other sentence that is  
 165 imposed as a result of a prior conviction for an enumerated  
 166 felony, whichever is later.

167 4. The defendant has not received a pardon for any felony  
 168 or other qualified offense that is necessary for the operation



169 of this paragraph.

170 5. A conviction of a felony or other qualified offense  
 171 necessary to the operation of this paragraph has not been set  
 172 aside in any postconviction proceeding.

173 Section 3. Subsection (1) of section 775.0877, Florida  
 174 Statutes, is amended to read:

175 775.0877 Criminal transmission of HIV; procedures;  
 176 penalties.—

177 (1) In any case in which a person has been convicted of or  
 178 has pled nolo contendere or guilty to, regardless of whether  
 179 adjudication is withheld, any of the following offenses, or the  
 180 attempt thereof, which offense or attempted offense involves the  
 181 transmission of body fluids from one person to another:

182 (a) Section 794.011, relating to sexual battery;

183 (b) Section 826.04, relating to incest;

184 (c) Section 800.04, relating to lewd or lascivious  
 185 offenses committed upon or in the presence of persons less than  
 186 16 years of age;

187 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),  
 188 relating to assault;

189 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),  
 190 relating to aggravated assault;

191 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),  
 192 relating to battery;

193 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),  
 194 relating to aggravated battery;

195 (h) Section 827.03(2)(c)~~(1)~~, relating to child abuse;

196 (i) Section 827.03(2)(a), relating to aggravated child

197 | abuse;

198 |       (j) Section 825.102(1), relating to abuse of an elderly

199 | person or disabled adult;

200 |       (k) Section 825.102(2), relating to aggravated abuse of an

201 | elderly person or disabled adult;

202 |       (l) Section 827.071, relating to sexual performance by

203 | person less than 18 years of age;

204 |       (m) Sections 796.03, 796.07, and 796.08, relating to

205 | prostitution; or

206 |       (n) Section 381.0041(11)(b), relating to donation of

207 | blood, plasma, organs, skin, or other human tissue,

208 |

209 | the court shall order the offender to undergo HIV testing, to be

210 | performed under the direction of the Department of Health in

211 | accordance with s. 381.004, unless the offender has undergone

212 | HIV testing voluntarily or pursuant to procedures established in

213 | s. 381.004(3)(h)6. or s. 951.27, or any other applicable law or

214 | rule providing for HIV testing of criminal offenders or inmates,

215 | subsequent to her or his arrest for an offense enumerated in

216 | paragraphs (a)-(n) for which she or he was convicted or to which

217 | she or he pled nolo contendere or guilty. The results of an HIV

218 | test performed on an offender pursuant to this subsection are

219 | not admissible in any criminal proceeding arising out of the

220 | alleged offense.

221 |       Section 4. Subsection (3) of section 782.07, Florida

222 | Statutes, is amended to read:

223 |       782.07 Manslaughter; aggravated manslaughter of an elderly

224 | person or disabled adult; aggravated manslaughter of a child;

225 aggravated manslaughter of an officer, a firefighter, an  
 226 emergency medical technician, or a paramedic.-

227 (3) A person who causes the death of any person under the  
 228 age of 18 by culpable negligence under s. 827.03(2)(b)~~(3)~~  
 229 commits aggravated manslaughter of a child, a felony of the  
 230 first degree, punishable as provided in s. 775.082, s. 775.083,  
 231 or s. 775.084.

232 Section 5. Paragraphs (f), (g), and (i) of subsection (3)  
 233 of section 921.0022, Florida Statutes, are amended to read:

234 921.0022 Criminal Punishment Code; offense severity  
 235 ranking chart.-

236 (3) OFFENSE SEVERITY RANKING CHART

237 (f) LEVEL 6

238

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(5)	2nd	Knowing sale or transfer of prescription

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			drug to unauthorized person.
243	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
244	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
245	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
246	784.041	3rd	Felony battery; domestic battery by strangulation.
247	784.048 (3)	3rd	Aggravated stalking; credible threat.
248	784.048 (5)	3rd	Aggravated stalking of person under 16.
249	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
250	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
251	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
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253	784.081(2)	2nd	Aggravated assault on specified official or employee.
254	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
255	784.083(2)	2nd	Aggravated assault on code inspector.
256	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
257	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
258	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
259	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
260	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
261	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.

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262	794.05(1)	2nd	Unlawful sexual activity with specified minor.
263	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
264	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
265	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
266	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
267	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
268	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
269	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or

			more; coordination of others.
270	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
271	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
272	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
273	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
274	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
275	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
276	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
277	<u>827.03(2)(c)</u>	3rd	Abuse of a child.
278	<del>827.03(1)</del>		

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279	<u>827.03(2)(d)</u> <del>827.03(3)(e)</del>	3rd	Neglect of a child.
280	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
281	836.05	2nd	Threats; extortion.
282	836.10	2nd	Written threats to kill or do bodily injury.
283	843.12	3rd	Aids or assists person to escape.
284	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
285	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
286	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
	914.23	2nd	Retaliation against a witness, victim,



or informant, with bodily injury.

287

944.35(3)(a)2. 3rd Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.

288

944.40 2nd Escapes.

289

944.46 3rd Harboring, concealing, aiding escaped prisoners.

290

944.47(1)(a)5. 2nd Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

291

951.22(1) 3rd Intoxicating drug, firearm, or weapon introduced into county facility.

292

293 (g) LEVEL 7

294

Florida	Felony	
Statute	Degree	Description

295

316.027(1)(b) 1st Accident involving death, failure to stop; leaving scene.

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297	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
	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.
298			
	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
299			
	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
300			
	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
301			
	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
302			
	456.065(2)	3rd	Practicing a health care profession without a license.
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304	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
305	458.327(1)	3rd	Practicing medicine without a license.
306	459.013(1)	3rd	Practicing osteopathic medicine without a license.
307	460.411(1)	3rd	Practicing chiropractic medicine without a license.
308	461.012(1)	3rd	Practicing podiatric medicine without a license.
309	462.17	3rd	Practicing naturopathy without a license.
310	463.015(1)	3rd	Practicing optometry without a license.
311	464.016(1)	3rd	Practicing nursing without a license.
312	465.015(2)	3rd	Practicing pharmacy without a license.
313	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.

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314	467.201	3rd	Practicing midwifery without a license.
315	468.366	3rd	Delivering respiratory care services without a license.
316	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
317	483.901(9)	3rd	Practicing medical physics without a license.
318	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
319	484.053	3rd	Dispensing hearing aids without a license.
320	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
321	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.

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322	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
323	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
324	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
325	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
326	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
327	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
328	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

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329	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
330	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
331	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
332	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
333	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
334	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
335	784.048 (7)	3rd	Aggravated stalking; violation of court order.
336	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.

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337	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
338	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
339	784.081 (1)	1st	Aggravated battery on specified official or employee.
340	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
341	784.083 (1)	1st	Aggravated battery on code inspector.
342	790.07 (4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07 (1) or (2).
343	790.16 (1)	1st	Discharge of a machine gun under specified circumstances.
344	790.165 (2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
345	790.165 (3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

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346	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
347	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
348	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
349	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.
350	796.03	2nd	Procuring any person under 16 years for prostitution.
351	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than



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			16 years; offender 18 years or older.
352	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
353	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
354	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
355	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
356	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
357	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.
358	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
359			

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360	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
361	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
362	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
363	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
364	812.131(2)(a)	2nd	Robbery by sudden snatching.
365	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
366	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
367	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
	817.234(11)(c)	1st	Insurance fraud; property value

\$100,000 or more.

368

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.

369

825.102(3) (b)

2nd

Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

370

825.103(2) (b)

2nd

Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.

371

827.03(2)  
~~827.03(3) (b)~~

2nd

Neglect of a child causing great bodily harm, disability, or disfigurement.

372

827.04(3)

3rd

Impregnation of a child under 16 years of age by person 21 years of age or older.

373

837.05(2)

3rd

Giving false information about alleged capital felony to a law enforcement officer.

374

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375	838.015	2nd	Bribery.
376	838.016	2nd	Unlawful compensation or reward for official behavior.
377	838.021(3)(a)	2nd	Unlawful harm to a public servant.
378	838.22	2nd	Bid tampering.
379	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
380	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
381	872.06	2nd	Abuse of a dead human body.
382	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
	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

state, county, or municipal park or publicly owned recreational facility or community center.

383

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.

384

893.13(4)(a) 1st Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

385

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

386

893.135 (1)(b)1.a. 1st Trafficking in cocaine, more than 28 grams, less than 200 grams.

387

893.135 (1)(c)1.a. 1st Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

388

893.135(1)(d)1. 1st Trafficking in phencyclidine, more than 28 grams, less than 200 grams.

389

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390	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
391	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
392	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
393	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
394	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
395	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
396	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
397	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.

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398	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
399	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
400	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
401	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
402	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
403	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
404	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.

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405	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
406	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
407	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
408	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
409	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
410	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

411 (i) LEVEL 9

412

Florida	Felony	
Statute	Degree	Description

413



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414	316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
415	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
416	409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
417	499.0051 (9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
418	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
419	560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
420	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
421	775.0844	1st	Aggravated white collar crime.

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- 422
782.04(1)
1st
Attempt, conspire, or solicit to commit premeditated murder.
- 423
782.04(3)
1st, PBL
Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
- 424
782.051(1)
1st
Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
- 425
782.07(2)
1st
Aggravated manslaughter of an elderly person or disabled adult.
- 426
787.01(1)(a)1.
1st, PBL
Kidnapping; hold for ransom or reward or as a shield or hostage.
- 427
787.01(1)(a)2.
1st, PBL
Kidnapping with intent to commit or facilitate commission of any felony.
- 428
787.01(1)(a)4.
1st, PBL
Kidnapping with intent to interfere with performance of any governmental or political function.
- 787.02(3)(a)
1st
False imprisonment; child under age

			13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
429	790.161	1st	Attempted capital destructive device offense.
430	790.166(2)	1st, PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
431	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
432	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
433	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
434	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
435			

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436	794.08 (2)	1st	Female genital mutilation; victim younger than 18 years of age.
437	800.04 (5) (b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
438	812.13 (2) (a)	1st, PBL	Robbery with firearm or other deadly weapon.
439	812.133 (2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.
440	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
441	817.568 (7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
442	<u>827.03 (2) (a)</u> <del>827.03 (2)</del>	1st	Aggravated child abuse.
443	847.0145 (1)	1st	Selling, or otherwise transferring custody or control, of a minor.

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444	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
445	859.01	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.
446	893.135	1st	Attempted capital trafficking offense.
447	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
448	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
449	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
450	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
451	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
	893.135	1st	Trafficking in amphetamine, more than

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- 452 (1) (f) 1.c. 200 grams.
- 893.135 1st Trafficking in gamma-hydroxybutyric  
453 (1) (h) 1.c. acid (GHB), 10 kilograms or more.
- 893.135 1st Trafficking in 1,4-Butanediol, 10  
454 (1) (j) 1.c. kilograms or more.
- 893.135 1st Trafficking in Phenethylamines, 400  
455 (1) (k) 2.c. grams or more.
- 896.101 (5) (c) 1st Money laundering, financial  
456 instruments totaling or exceeding  
\$100,000.
- 896.104 (4) (a) 3. 1st Structuring transactions to evade  
reporting or registration  
requirements, financial transactions  
totaling or exceeding \$100,000.

457  
458 Section 6. Subsection (1) of section 948.062, Florida  
459 Statutes, is amended to read:

460 948.062 Reviewing and reporting serious offenses committed  
461 by offenders placed on probation or community control.—

462 (1) The department shall review the circumstances related  
463 to an offender placed on probation or community control who has  
464 been arrested while on supervision for the following offenses:

465 (a) Any murder as provided in s. 782.04;

466 (b) Any sexual battery as provided in s. 794.011 or s.  
 467 794.023;

468 (c) Any sexual performance by a child as provided in s.  
 469 827.071;

470 (d) Any kidnapping, false imprisonment, or luring of a  
 471 child as provided in s. 787.01, s. 787.02, or s. 787.025;

472 (e) Any lewd and lascivious battery or lewd and lascivious  
 473 molestation as provided in s. 800.04(4) or (5);

474 (f) Any aggravated child abuse as provided in s.  
 475 827.03(2)(a) ~~s. 827.03(2)~~;

476 (g) Any robbery with a firearm or other deadly weapon,  
 477 home invasion robbery, or carjacking as provided in s.  
 478 812.13(2)(a), s. 812.135, or s. 812.133;

479 (h) Any aggravated stalking as provided in s. 784.048(3),  
 480 (4), or (5);

481 (i) Any forcible felony as provided in s. 776.08,  
 482 committed by a ~~any~~ person on probation or community control who  
 483 is designated as a sexual predator; or

484 (j) Any DUI manslaughter as provided in s. 316.193(3)(c),  
 485 or vehicular or vessel homicide as provided in s. 782.071 or s.  
 486 782.072, committed by a ~~any~~ person who is on probation or  
 487 community control for an offense involving death or injury  
 488 resulting from a driving incident.

489 Section 7. Paragraph (a) of subsection (3) and subsection  
 490 (14) of section 960.03, Florida Statutes, are amended to read:  
 491 960.03 Definitions; ss. 960.01-960.28.-As used in ss.  
 492 960.01-960.28, unless the context otherwise requires, the term:  
 493 (3) "Crime" means:

494 (a) A felony or misdemeanor offense committed by either an  
 495 adult or a juvenile which results in physical injury or death,  
 496 including a felony or misdemeanor offense committed by either an  
 497 adult or a juvenile which results in psychiatric or  
 498 psychological injury to a person younger than 18 years of age  
 499 who was not physically injured by the criminal act. The term  
 500 also includes any ~~such~~ criminal act that ~~which~~ is committed  
 501 within this state but that ~~which~~ falls exclusively within  
 502 federal jurisdiction.

503 (14) "Victim" means:

504 (a) A person who suffers personal physical injury or death  
 505 as a direct result of a crime;

506 (b) A person younger than 18 years of age who was present  
 507 at the scene of a crime, saw or heard the crime, and suffered a  
 508 psychiatric or psychological injury because of the crime, but  
 509 who was not physically injured; ~~or~~

510 (c) A person younger than 18 years of age who was the  
 511 victim of a felony or misdemeanor offense that resulted in a  
 512 psychiatric or psychological injury, but who was not physically  
 513 injured; or

514 (d) ~~(e)~~ A person against whom a forcible felony was  
 515 committed and who suffers a psychiatric or psychological injury  
 516 as a direct result of that crime but who does not otherwise  
 517 sustain a personal physical injury or death.

518 Section 8. This act shall take effect October 1, 2012.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1323 Metal Theft
SPONSOR(S): Criminal Justice Subcommittee; Drake and others
TIED BILLS: None IDEN./SIM. BILLS: SB 1324

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Rows include Criminal Justice Subcommittee, Justice Appropriations Subcommittee, and Judiciary Committee.

SUMMARY ANALYSIS

Throughout the industrialized world, stealing valuable metal has become a serious concern for police, businesses, public utilities, railroad companies, and the community at large. While efforts to combat metal theft have occurred for several decades, reports of dramatic increases in scrap metal theft are occurring throughout the United States.

In Florida, secondary metals recyclers are currently regulated under ch. 538, F.S. This chapter contains a variety of provisions that require or prohibit secondary metals recyclers to engage in certain acts. The chapter also imposes criminal penalties on secondary metals recyclers who do not comply with the chapter's provisions.

- Engage in a pattern of failing to keep records as required by s. 538.19, F.S.;
Fail to allow a law enforcement officer to inspect a recycler's records and purchased regulated metals property as required by s. 538.20, F.S.;
Fail, pursuant to a request from law enforcement, to hold regulated metals property as required by s. 538.21, F.S.;
Enter into any cash transaction in excess of \$1,000 for the purchase of regulated metals property; and
Purchase regulated metals property from a seller where the metals were not transported in a motor vehicle.

A third or subsequent violation of these offenses is a third degree felony.

The bill amends s. 538.23, F.S. to increase the criminal penalty for violations of s. 538.23(1)(a), F.S., from a first degree misdemeanor to a third degree felony. The bill also increases the penalty for third or subsequent violations of s. 528.23(1)(a), F.S., from a third degree felony to a first degree felony.

The bill also amends s. 812.145, F.S. (relating to theft of copper or other nonferrous metals), to make it a first degree felony for a person to knowingly and intentionally remove, or assist with the removal of, copper or other nonferrous metals from an electrical substation without authorization of the utility.

The Criminal Justice Impact Conference met on January 30, 2012, and determined this bill will have an insignificant impact on state prison beds.

The bill is effective October 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Metal Theft**

Throughout the industrialized world, stealing valuable metal has become a serious concern for police, businesses, public utilities, railroad companies, and the community at large.<sup>1</sup> While efforts to combat metal theft have occurred for several decades, reports of dramatic increases in scrap metal theft are occurring throughout the United States.<sup>2</sup> The stolen metals are usually sold to secondary metal recyclers at scrap yards.<sup>3</sup>

Florida has responded to this problem by enacting a variety of statutes that regulate secondary metal recyclers and that specifically criminalize theft of copper and other nonferrous metals.<sup>4</sup>

#### **Secondary Metals Recyclers**

Secondary metals recyclers<sup>5</sup> are currently regulated under ch. 538, F.S. This chapter contains a variety of provisions that require or prohibit secondary metals recyclers to engage in certain acts. Chapter 538, F.S., also imposes criminal penalties on secondary metals recyclers who do not comply with the chapter's provisions. For example, s. 538.23(1)(a), F.S., makes it a first degree misdemeanor<sup>6</sup> for a secondary metals recycler to knowingly and intentionally:

- Engage in a pattern of failing to keep records as required by s. 538.19, F.S.;
- Fail to allow a law enforcement officer to inspect a recycler's records and purchased regulated metals property as required by s. 538.20, F.S.;
- Fail, pursuant to a request from law enforcement, to hold regulated metals property as required by s. 538.21, F.S.;
- Enter into any cash transaction in excess of \$1,000 for the purchase of regulated metals property; or
- Purchase regulated metals property from a seller where the metals were not transported in a motor vehicle.

A secondary metals recycler who commits a third or subsequent violation of s. 538.23(1)(a), F.S., commits a third degree felony<sup>7, 8</sup>.

#### *Effect of the Bill*

The bill increases the criminal penalty for violations of s. 538.23(1)(a), F.S., from a first degree misdemeanor to a third degree felony. The bill also increases the penalty for a third or subsequent violations of s. 528.23(1)(a), F.S., from a third degree felony to a first degree felony.<sup>9</sup>

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<sup>1</sup> Kooi, Brandon R. (2010). Theft of Scrap Metal. *Center for Problem-Oriented Policing, Guide No. 58.* ([http://www.popcenter.org/problems/metal\\_theft/1](http://www.popcenter.org/problems/metal_theft/1))(last visited on January 20, 2012).

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

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

<sup>4</sup> *See, e.g.*, chapters 2008-69 and 2008-195, L.O.F.

<sup>5</sup> Section 538.18(8), F.S., defines the term "secondary metals recycler" as a person who:

- (a) Is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
- (b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

<sup>6</sup> A first degree misdemeanor is punishable by up to one year in county jail and a maximum \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>7</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>8</sup> Section 538.23(1)(b), F.S.

## **Theft of Copper or Other Nonferrous Metals**

In addition to enacting legislation to regulate secondary metals recyclers, Florida has responded to the growing problem of metal theft by enacting s. 812.145, F.S. This statute makes it a first degree felony for a person to knowingly and intentionally take copper or other nonferrous metals from a utility or communications services provider if the theft:

- Damages the facilities of a utility or communications services provider;
- Interrupts or interferes with utility service or communications services; or
- Interferes with the ability of a utility service or communications services provider to provide service.<sup>10</sup>

### *Effect of the Bill*

The bill amends s. 812.145, F.S., to provide that a person who knowingly and intentionally removes, or assists with the removal of, copper or other nonferrous metals from an electrical substation without authorization of the utility commits a first degree felony.

The bill defines an "electrical substation" as a facility that takes electricity from the transmission grid and converts it to a lower voltage so it can be distributed to customers in the local area on the local distribution grid through one or more distribution lines less than 69 kilovolts in size.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 538.23, F.S., relating to violations and penalties.

Section 2. Amends s. 812.145, F.S., relating to theft of copper or other nonferrous metals.

Section 3. Provides an effective date of October 1, 2012.

## **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 Criminal Justice Impact Conference met on January 30, 2012, and determined this bill will have an insignificant impact on state 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 increases the criminal penalty for a violation of s. 538.23(1)(a), F.S., from a first degree misdemeanor to a third degree felony. As a result, the bill may have an insignificant positive jail bed impact on local governments.

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<sup>9</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>10</sup> Section 812.145, F.S., defines the terms "copper or other nonferrous metals," "utility," "communications services provider," "utility service," and "communications services."

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:

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**

On January 25, 2012, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment defines an "electrical substation" as a facility that takes electricity from the transmission grid and converts it to a lower voltage so it can be distributed to customers in the local area on the local distribution grid through one or more distribution lines less than 69 kilovolts in size.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.



29 subsequent violation of paragraph (a) commits a felony of the  
 30 first ~~third~~ degree, punishable as provided in s. 775.082, s.  
 31 775.083, or s. 775.084.

32 Section 2. Paragraphs (d) and (e) of subsection (1) of  
 33 section 812.145, Florida Statutes, are redesignated as  
 34 paragraphs (e) and (f), respectively, a new paragraph (d) is  
 35 added to that subsection, and subsection (3) is added to that  
 36 section, to read:

37 812.145 Theft of copper or other nonferrous metals.—

38 (1) As used in this section, the terms:

39 (d) "Electrical substation" means a facility that takes  
 40 electricity from the transmission grid and converts it to a  
 41 lower voltage so it can be distributed to customers in the local  
 42 area on the local distribution grid through one or more  
 43 distribution lines less than 69 kilovolts in size.

44 (3) A person who knowingly and intentionally removes, or  
 45 assists with the removal of, copper or other nonferrous metals  
 46 from an electrical substation without authorization of the  
 47 utility commits a felony of the first degree, punishable as  
 48 provided in s. 775.082, s. 775.083, or s. 775.084.

49 Section 3. This act shall take effect October 1, 2012.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1385 Child Pornography  
**SPONSOR(S):** Trujillo  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1618

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		Toms <i>ST</i>	Jones Darity <i>Jones</i>
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 827.071, F.S., establishes four crimes that involve the sexual performance by a child. Two of these offenses are described below:

- Subsection (4) makes it a second degree felony for a person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.
- Subsection (5) makes it a third degree felony for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.

In 2011, Florida's Second District Court of Appeal reviewed a case in which the defendant pled no contest to multiple counts of possessing child pornography in violation of s. 827.071(5), F.S., and appealed. The images at issue were "morphed" images in which photographs of children's heads were pasted onto photographs of nude women engaged in sexual intercourse, deviate sexual intercourse, or masturbation. After extensively reviewing the definition of "sexual conduct" and the elements of the offense, the court reversed the lower court's decision holding that "no child engaged in the sexual conduct" and that "no matter how one parses the words, section 827.071 requires that the depicted sexual conduct be that of a child."

The bill amends s. 827.071(4) and (5), F.S., to add "child pornography" to the list of items that it is unlawful to possess, possess with the intent to promote, control, or intentionally view.

The bill provides the following definitions, which largely mirror the definitions found in federal law:

- "Child pornography" means any visual depiction, including, but not limited to, any photograph, film, video, picture, computer or computer-generated image or picture, or digitally created image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, where the production of such visual depiction involves the use of a minor engaging in sexual conduct, or such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexual conduct. Proof of the identity of the minor is not required in order to find a violation of this section.
- "Minor" means a person who had not attained the age of 18 years at the time the visual depiction was created, adapted, or modified, or whose image while a minor was used in creating, adapting, or modifying the visual depiction, and who is recognizable as an actual person by the person's facial features, likeness, or other distinguishing characteristics.

On January 30, 2012, the Criminal Justice Impact Conference determined that the bill would have an indeterminate prison bed impact on the Department of Corrections.

The bill is effective October 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Sexual Performance by a Child**

Section 827.071, F.S, establishes four crimes that involve the sexual performance by a child. Two of these offenses are described below:

- Subsection (4) makes it a second degree felony<sup>1</sup> for a person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.
- Subsection (5) makes it a third degree felony<sup>2</sup> for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.

The statute provides the following definitions that apply to the above-listed offenses:

- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”
- “Simulated” means the explicit depiction of conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.<sup>3</sup>

##### **Federal Law – Child Pornography**

18 U.S.C. 2256 defines “child pornography” as any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

- (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
- (B) Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
- (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

“Identifiable minor” is defined as a person:

- Who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction; and
- Who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristics, such as unique birthmark or other recognizable feature.<sup>4</sup>

The term “identifiable minor” shall not be construed to require proof of the actual identity of the identifiable minor.<sup>5</sup>

<sup>1</sup> A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 827.071(1), F.S.

<sup>4</sup> 18 U.S.C. 2256(9).

<sup>5</sup> *Id.*

## Recent Caselaw

In 2011, Florida's Second District Court of Appeal reviewed a case in which the defendant pled no contest to multiple counts of possessing child pornography in violation of s. 827.071(5), F.S., and appealed.<sup>6</sup> The images at issue were "morphed" images in which photographs of children's heads were pasted onto photographs of nude women engaged in sexual intercourse, deviate sexual intercourse, or masturbation. After extensively reviewing the definition of "sexual conduct" and the elements of the offense, the court reversed the lower court's decision holding that "no child engaged in the sexual conduct" and that "no matter how one parses the words, section 827.071 requires that the depicted sexual conduct be that of a child."<sup>7</sup>

The dissent noted that the definition of "sexual conduct" included "*simulated* sexual intercourse, sexual bestiality, and masturbation," and concluded that "simulated sexual conduct by a child" included composites made by attaching children's heads to adult bodies engaged in sexual activity. The majority disagreed, citing a United States Supreme Court decision construing the word "simulated," which held that "a reasonable viewer [must] believe that the actors actually engaged in that conduct on camera" and "although the sexual intercourse may be simulated, it must involve actual children."<sup>8</sup>

In reversing the trial court's decision, the Second District Court of Appeal also reviewed the legislative history of the relevant federal statutes. The court noted that Congress had enacted child pornography legislation three times (in 1994, 1996, and 2003), each time broadening the definition of child pornography.<sup>9</sup> The latest iteration,<sup>10</sup> defines child pornography to include not only images of actual children engaged in sexually explicit conduct, but also images created by computer that are "indistinguishable" from images of actual minors engaging in such conduct and images that are created or modified to appear as though an identifiable minor was involved in the production of the depiction.<sup>11</sup> After noting that Congress specifically removed the defense that no actual minor was involved in the production of the depiction, the court stated that "if our legislature wants to follow Congress's example and prohibit the possession of the types of photographs involved here, we are confident that it can, and perhaps should, craft an appropriate statute."<sup>12</sup>

## Effect of the Bill

The bill amends s. 827.071(4) and (5), F.S., to add "child pornography" to the list of items that it is unlawful to possess, possess with the intent to promote, control, or intentionally view. The bill provides the following definitions, which largely mirror the definitions found in federal law:

- "Child pornography" means any visual depiction, including, but not limited to, any photograph, film, video, picture, computer or computer-generated image or picture, or digitally created image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, where the production of such visual depiction involves the use of a minor engaging in sexual conduct, or such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexual conduct. Proof of the identity of the minor is not required in order to find a violation of this section.
- "Minor" means a person who had not attained the age of 18 years at the time the visual depiction was created, adapted, or modified, or whose image while a minor was used in creating, adapting, or modifying the visual depiction, and who is recognizable as an actual person by the person's facial features, likeness, or other distinguishing characteristics.

The bill amends s. 775.0847, F.S., which reclassifies violations of s. 827.071, F.S., (and other sexual offenses) to the next higher degree of felony in specified instances, to include the above-described definitions.

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<sup>6</sup> *Parker v. State*, 2011 WL 4467635 (Fla. 2<sup>nd</sup> DCA 2011).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 2, citing *United States v. Williams*, 553 U.S. 285 at 297 (2008).

<sup>9</sup> *Supra* note 4 at 4-5.

<sup>10</sup> The PROTECT Act of 2003, Public Law 108-21, April 30, 2003.

<sup>11</sup> *Supra* note 4 at 4-5. *Also see*, 18 U.S.C. 2256(8)(b) and (c).

<sup>12</sup> *Supra* note 4 at 4-5.

The bill also makes conforming changes to s. 921.0022, F.S. (the offense severity ranking chart), and reenacts s. 794.0115, F.S. (dangerous sexual felony offender; mandatory sentencing), to incorporate the bill's changes to s. 827.071, F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 775.0847, F.S., relating to possession or promotion of certain images of child pornography; reclassification.

Section 2. Amends s. 827.071, F.S., relating to sexual performance by a child; penalties.

Section 3. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. Reenacts s. 794.0115, F.S., relating to dangerous sexual felony offender; mandatory sentencing.

Section 5. Provides an effective date of October 1, 2012.

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

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

1. Revenues:

None.

2. Expenditures:

See "fiscal comments" section.

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

On January 30, 2012, the Criminal Justice Impact Conference determined that the bill would have an indeterminate prison bed impact on the Department of Corrections. In Fiscal Year 2010-11 there were 22 offenders sentenced, 10 of which were sentenced to prison with a similar charge as described in the bill. This bill may cause a fiscal impact to the Department of Corrections.

**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 First Amendment to the United States Constitution provides that "Congress shall make no law ...abridging the freedom of speech." However, the United States Supreme Court has held that child pornography is unprotected by the First Amendment and that states have greater leeway in regulating it than other obscenity or adult pornography. This is so because of the compelling state interest in the prevention of sexual exploitation of children and child abuse.<sup>13</sup> In contrast, "sexual expression which is indecent but not obscene is protected by the First Amendment...."<sup>14</sup>

As explained by the Florida Supreme Court, "the doctrines of overbreadth and vagueness are separate and distinct."<sup>15</sup> The overbreadth doctrine applies only if the legislation is susceptible of application to conduct protected by the First Amendment.<sup>16</sup> The overbreadth doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected expression.<sup>17</sup> As the United States Supreme Court has explained, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."<sup>18</sup> Put another way, statutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct.<sup>19</sup>

The vagueness doctrine has a broader application because it was developed to ensure compliance with the Due Process Clause in the Fifth Amendment of the United States Constitution.<sup>20</sup> A criminal law may violate due process if it fails to give a potential offender fair notice that his or her contemplated conduct is forbidden or if it encourages arbitrary enforcement and gives the police too much discretion in determining whether it is applicable to a particular individual.<sup>21</sup> When the law fails these tests, it is "void for vagueness."<sup>22</sup> Because of its imprecision, a vague statute may also invite arbitrary or discriminatory enforcement.<sup>23</sup> A statute is not void for vagueness if the language conveys a "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices."<sup>24</sup> However, the Supreme Court has indicated that a statute that lends itself to arbitrary enforcement can be void for vagueness even if it gives fair notice of what conduct it prohibits.<sup>25</sup> Further, the need for definiteness is even greater when the ordinance imposes criminal penalties on individual behavior or when it implicates constitutionally protected rights.<sup>26</sup>

As noted above, the definition of "child pornography" contained in 18 U.S.C. 2256 has been amended numerous times throughout the past fifteen years to broaden its reach. As expected, there has been extensive caselaw relating to these various versions of the definition. In many instances, the definition as applied to what is commonly referred to as "morphed" images of child pornography has been held to be unconstitutionally overbroad.<sup>27</sup> However, the most recent version of the definition as applied to such images has been upheld.<sup>28</sup>

<sup>13</sup> *State v. Beckman*, 547 So.2d 210 (Fla. 5<sup>th</sup> DCA 1989). Also see, *New York v. Ferber*, 458 U.S. 747 (1982).

<sup>14</sup> *Simmons v. State*, 944 So.2d 317, 323 (Fla. 2006)(quoting *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989)).

<sup>15</sup> *Southeastern Fisheries Ass'n v. Dep't of Natural Res.*, 453 So.2d 1351, 1353 (Fla.1984).

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

<sup>17</sup> *See City of Daytona Beach v. Del Percio*, 476 So.2d 197, 202 (Fla.1985).

<sup>18</sup> *NAACP v. Button*, 371 U.S. 415, 433 (1963).

<sup>19</sup> *Firestone v. News-Press Publ'g Co.*, 538 So.2d 457, 459 (Fla.1989).

<sup>20</sup> *See Simmons*, 944 So.2d at 324. Florida's Constitution includes a similar due process guarantee in Article I, Section 9.

<sup>21</sup> *See Simmons*, 944 So.2d at 324.

<sup>22</sup> *See Simmons*, 944 So.2d at 324 (quoting *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972)).

<sup>23</sup> *See Southeastern Fisheries*, 453 So.2d at 1353.

<sup>24</sup> *Hitchcock v. State*, 413 So.2d 741, 747 (Fla.1982)(quoting *United States v. Petrillo*, 332 U.S. 1, 8 (1947)).

<sup>25</sup> *See Kolender v. Lawson*, 461 U.S. 352, 358 (1983)(stating that the "more important aspect of the vagueness doctrine is not actual notice, but the ... requirement that a legislature establish minimal guidelines to govern law enforcement").

<sup>26</sup> *See Simmons*, 944 So.2d at 324.

<sup>27</sup> *See Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

<sup>28</sup> *See, e.g., United States v. Hotaling*, 599 F.Supp.2d 306 (N.D.N.Y 2008)(holding that federal statute prohibiting possession of morphed images was not unconstitutionally overbroad or vague); *affirmed by*, 634 F.3d 725; *cert. denied*, 2011 WL 2174374 (2011).

The bill amends s. 827.071, F.S., to add "child pornography" to the list of items that it is unlawful to possess, possess with the intent to promote, control, or intentionally view, and defines "child pornography" as:

Any visual depiction, including, but not limited to, any photograph, film, video, picture, computer or computer-generated image or picture, or digitally created image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, where the production of such visual depiction involves the use of a minor engaging in sexual conduct, or such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexual conduct. Proof of the identity of the minor is not required in order to find a violation of this section.

Although this definition largely mirrors the definition found in 18 U.S.C. 2256, which has thus far been upheld, it may subject the offenses in s. 827.071, F.S., that involve "child pornography" to overbreadth and vagueness challenges. As noted in a decision by Florida's 2<sup>nd</sup> DCA interpreting the current definition of child pornography in s. 827.071, F.S.,<sup>29</sup> "[i]f the legislature had intended to proscribe the possession of composite images that simulate lewd and lascivious exhibition of the genitals, it could have included a provision doing so. We leave for another day a discussion of the constitutionality of such a provision."

**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**

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<sup>29</sup> *Stelmack v. State*, 58 So.3d 874, at 876 (Fla. 2<sup>nd</sup> DCA 2010).

1                                   A bill to be entitled  
 2           An act relating to child pornography; amending s.  
 3           775.0847, F.S.; revising the definition of the term  
 4           "child pornography" to include visual depictions in  
 5           which it appears that a minor is engaging in sexual  
 6           conduct; providing that proof of the identity of a  
 7           minor is not required; defining the term "minor";  
 8           amending s. 827.071, F.S.; defining the terms "child  
 9           pornography" and "minor"; conforming cross-references;  
 10          including possession of child pornography within  
 11          specified offenses; providing penalties; amending s.  
 12          921.0022, F.S.; conforming provisions of the offense  
 13          severity ranking chart of the Criminal Punishment Code  
 14          to changes made by the act; reenacting s. 794.0115(2),  
 15          F.S., relating to dangerous sexual felony offenders  
 16          and mandatory sentencing thereof, to incorporate the  
 17          amendment to s. 827.071, F.S., in references thereto;  
 18          providing an effective date.

19  
 20   Be It Enacted by the Legislature of the State of Florida:

21  
 22           Section 1. Paragraph (b) of subsection (1) of section  
 23           775.0847, Florida Statutes, is amended, a new paragraph (c) is  
 24           added to that subsection, and present paragraphs (c) through (f)  
 25           of that subsection are redesignated as paragraphs (d) through  
 26           (g), respectively, to read:

27           775.0847   Possession or promotion of certain images of  
 28           child pornography; reclassification.—

29 (1) For purposes of this section:

30 (b) "Child pornography" means any image depicting a minor  
 31 engaged in sexual conduct or such visual depiction that has been  
 32 created, adapted, or modified to appear that a minor is engaging  
 33 in sexual conduct. Proof of the identity of the minor is not  
 34 required in order to find a violation of this section.

35 (c) "Minor" means a person who had not attained the age of  
 36 18 years at the time the visual depiction was created, adapted,  
 37 or modified, or whose image while a minor was used in creating,  
 38 adapting, or modifying the visual depiction, and who is  
 39 recognizable as an actual person by the person's facial  
 40 features, likeness, or other distinguishing characteristics.

41 Section 2. New paragraphs (a) and (d) are added to  
 42 subsection (1) of section 827.071, Florida Statutes, present  
 43 paragraphs (a) through (j) of that subsection are redesignated  
 44 as paragraphs (b), (c), and (e) through (l) of that subsection,  
 45 respectively, and present paragraph (j) of subsection (1),  
 46 subsection (4), and paragraph (a) of subsection (5) of that  
 47 section are amended, to read:

48 827.071 Sexual performance by a child; penalties.—

49 (1) As used in this section, the following definitions  
 50 shall apply:

51 (a) "Child pornography" means any visual depiction,  
 52 including, but not limited to, any photograph, film, video,  
 53 picture, computer or computer-generated image or picture, or  
 54 digitally created image or picture, whether made or produced by  
 55 electronic, mechanical, or other means, of sexual conduct, where  
 56 the production of such visual depiction involves the use of a



57 minor engaging in sexual conduct, or such visual depiction has  
 58 been created, adapted, or modified to appear that a minor is  
 59 engaging in sexual conduct. Proof of the identity of the minor  
 60 is not required in order to find a violation of this section.

61 (d) "Minor" has the same meaning as provided in s.  
 62 775.0847.

63 (1)-(j) "Simulated" means the explicit depiction of conduct  
 64 set forth in paragraph (j) ~~(h)~~ which creates the appearance of  
 65 such conduct and which exhibits any uncovered portion of the  
 66 breasts, genitals, or buttocks.

67 (4) It is unlawful for any person to possess with the  
 68 intent to promote any child pornography or any other photograph,  
 69 motion picture, exhibition, show, representation, or other  
 70 presentation which, in whole or in part, includes any sexual  
 71 conduct by a child. The possession of three or more copies of  
 72 such photograph, motion picture, representation, or presentation  
 73 is prima facie evidence of an intent to promote. Whoever  
 74 violates this subsection commits ~~is guilty of~~ a felony of the  
 75 second degree, punishable as provided in s. 775.082, s. 775.083,  
 76 or s. 775.084.

77 (5)(a) It is unlawful for any person to knowingly possess,  
 78 control, or intentionally view child pornography or any other a  
 79 photograph, motion picture, exhibition, show, representation,  
 80 image, data, computer depiction, or other presentation which, in  
 81 whole or in part, he or she knows to include any sexual conduct  
 82 by a child. The possession, control, or intentional viewing of  
 83 each such photograph, motion picture, exhibition, show, image,  
 84 data, computer depiction, representation, or presentation is a

85 separate offense. A person who violates this paragraph  
 86 ~~subsection~~ commits a felony of the third degree, punishable as  
 87 provided in s. 775.082, s. 775.083, or s. 775.084.

88 Section 3. Paragraph (e) of subsection (3) of section  
 89 921.0022, Florida Statutes, is amended to read:

90 921.0022 Criminal Punishment Code; offense severity  
 91 ranking chart.—

- 92 (3) OFFENSE SEVERITY RANKING CHART
- 93 (e) LEVEL 5

94

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.

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100	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
101	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
102	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
103	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
104	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
105	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
106	790.01(2)	3rd	Carrying a concealed firearm.
	790.162	2nd	Threat to throw or discharge

107			destructive device.
108	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
109	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
110	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
111	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
112	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
113	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
114	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

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115	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
116	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
117	812.131 (2) (b)	3rd	Robbery by sudden snatching.
118	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
119	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
120	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
121	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
	817.568 (2) (b)	2nd	Fraudulent use of personal

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identification information;  
 value of benefit, services  
 received, payment avoided, or  
 amount of injury or fraud,  
 \$5,000 or more or use of  
 personal identification  
 information of 10 or more  
 individuals.

122

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

123

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

124

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

125

827.071(5)                      3rd      Possess, control, or  
 intentionally view any child  
pornography or other  
 photographic material, motion

			picture, etc., which includes sexual conduct by a child.
126	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
127	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
128	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
129	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
130	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
131	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent

132			offense.
133	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).
134	893.13(1)(c)2.	2nd	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) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
135	893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.



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136	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.</p>
137	893.13(1)(f)1.	1st	<p>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.</p>
138	893.13(4)(b)	2nd	<p>Deliver to minor 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).</p>
	893.1351(1)	3rd	<p>Ownership, lease, or rental for trafficking in or manufacturing</p>

of controlled substance.

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Section 4. For the purpose of incorporating the amendment made by this act to section 827.071, Florida Statutes, in references thereto, subsection (2) of section 794.0115, Florida Statutes, is reenacted to read:

794.0115 Dangerous sexual felony offender; mandatory sentencing.--

(2) Any person who is convicted of a violation of s. 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); or s. 847.0145; or of any similar offense under a former designation, which offense the person committed when he or she was 18 years of age or older, and the person:

(a) Caused serious personal injury to the victim as a result of the commission of the offense;

(b) Used or threatened to use a deadly weapon during the commission of the offense;

(c) Victimized more than one person during the course of the criminal episode applicable to the offense;

(d) Committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in this state; or

(e) Has previously been convicted of a violation of s. 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or

166 (4); s. 847.0145; of any offense under a former statutory  
167 designation which is similar in elements to an offense described  
168 in this paragraph; or of any offense that is a felony in another  
169 jurisdiction, or would be a felony if that offense were  
170 committed in this state, and which is similar in elements to an  
171 offense described in this paragraph,

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
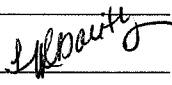
173 is a dangerous sexual felony offender, who must be sentenced to  
174 a mandatory minimum term of 25 years imprisonment up to, and  
175 including, life imprisonment.

176 Section 5. This act shall take effect October 1, 2012.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7047      PCB CRJS 12-01      Sex Offenses  
**SPONSOR(S):** Criminal Justice Subcommittee, Harrell and others  
**TIED BILLS:**            **IDEN./SIM. BILLS:** CS/HB 455, SB 1812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	15 Y, 0 N	Cunningham	Cunningham
1) Justice Appropriations Subcommittee		Toms 	Jones Darity 
2) Judiciary Committee			

**SUMMARY ANALYSIS**

HB 7047 amends a variety of statutes related to sexual offenders to bring them further in line with the federal Adam Walsh Act. Specifically, the bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to add the following offenses to the list of offenses that qualify a person as a sexual predator and sexual offender:

- 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)
- Section 796.045, F.S. (sex trafficking)
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client)

The bill also:

- Requires sexual predators and offenders to provide the sheriff and Florida Department of Law Enforcement any Internet identifier the offender uses and defines the term "Internet identifier."
- Requires sexual offenders and predators to provide information about their passport, immigration status, vehicles, professional licenses, and other specified information to the sheriff as part of the registration process.
- Permits specified sexual offenders to petition the court for removal from the requirement to register as a sexual offender if 15 years have elapsed since the offender's registration period began and if other criteria are met.
- Expands the victim age criteria that must be met before a person can be removed from the sexual offender registry pursuant to s. 943.04354, F.S.
- Requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work at specified locations, to conduct a search of that person's name or other identifying information through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.
- Increases the penalty for third or subsequent violations of s. 800.03, F.S. (exposure of sexual organs), from a 1<sup>st</sup> degree misdemeanor to a 3<sup>rd</sup> degree felony.
- Requires sexual offenders who are arrested for another offense (other than a misdemeanor offender under ch. 316, F.S.), to be held until first appearance in order to ensure the full participation of the prosecutor and the protection of the public.
- Makes technical corrections to the Criminal Punishment Code; offense severity ranking chart.

On January 30, 2012, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections. The bill may have an insignificant negative jail bed impact on local governments. See fiscal section.

The bill is effective October 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Sexual Predator Qualifying Offenses (Section 1)**

Section 775.21, F.S., which contains various registration requirements for sexual predators, provides in part that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

1. 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
  - 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. (selling or buying of minors); or
2. Any felony violation, or attempt thereof, of:
  - Sections 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.<sup>1</sup>
  - Section 794.05, F.S. (unlawful activity with certain minors)
  - Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
  - Section 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 825.1025, F.S. (lewd or lascivious offenses committed 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(5), F.S. (computer pornography)
  - Section 847.0145, F.S. (selling or buying of minors)
  - 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).

#### *Effect of the Bill*

The bill amends s. 775.21, F.S., to add the following qualifying offenses to the list of offenses contained in 2. (enumerated above):

- 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)
- Section 796.045, F.S. (sex trafficking)
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client)

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<sup>1</sup> Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

## **Sexual Offender Qualifying Offenses (Sections 4, 8 and 9)**

Section 943.0435, F.S., which contains various registration requirements for sexual offenders, defines the term "sexual offender," in part, as a person who:

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
  - Sections 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.
  - Section 794.05, F.S. (unlawful activity with certain minors)
  - Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
  - Section 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 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)
  - Section 827.071, F.S. (sexual performance by a child)
  - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity)
  - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.
  - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment)
  - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment)
  - Section 847.0145, F.S. (selling or buying of minors)
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
2. Has been released on or after October 1, 1997, from the sanction<sup>2</sup> imposed for any conviction of an offense described above.

Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections (DOC), also contain definitions of the term "sexual offender" that include the list of qualifying offenses enumerated above.

### *Effect of the BILL*

The BILL amends the definition of the term "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S., to add the following qualifying offenses:

- 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)
- Section 796.045, F.S. (sex trafficking)
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client)

## **Sexual Predator and Sexual Offender Registration (Sections 1, 4, 8, 9, 12 and 13)**

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>3</sup> A sexual predator or sexual offender must comply

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<sup>2</sup> A sanction imposed in this state or in any other jurisdiction 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. Section 943.0435(1)(a), F.S.

<sup>3</sup> See generally, ss. 775.21, 943.0435, and 944.607, F.S.

with a number of statutory registration requirements.<sup>4</sup> Failure to comply with these requirements is generally a third degree felony.<sup>5</sup>

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>6</sup> During initial registration, a sexual predator or sexual offender is required to provide certain information, including their name, address, e-mail address, home and cellular telephone number, and instant message name, to the sheriff's department.<sup>7</sup> The sheriff's department then provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.<sup>8</sup>

A sexual predator or sexual offender is also required to re-register at specified intervals and to immediately report any changes to his or her registration information.<sup>9</sup> For example, a predator or offender who changes his or her residence or name must, within 48 hours after such change, report in person to a Department of Highway Safety and Motor Vehicles (DHSMV) driver license office.<sup>10</sup> In addition, predators or offenders who intend to establish a residence in another state or jurisdiction other than Florida are required to report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave the state.<sup>11</sup>

#### *Effect of the BILL*

The bill amends ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815 F.S., to require sexual predators and offenders to provide the following registration information:

- Information about any tattoos or other identifying marks the offender may have.
- All e-mail addresses, home telephone numbers, and cellular telephone numbers (current law only requires offenders to provide *one* of each).
- The make, model, color, registration numbers, and license tag number of all vehicles the offender owns.
- Palm prints.
- Information about the offender's passport, if the offender has one.
- Documents establishing the offender's immigration status, if the offender is an alien.
- Information about any professional licenses the offender may have.
- Whether the offender is volunteering at an institution of higher education.

The bill amends ss. 775.21 and 943.0435, F.S., to:

- Require sexual predators and offenders who are unable to obtain or update a driver license or state identification card with DHSMV to report any change in the offender's residence or name within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to DHSMV.
- Require sexual predators and offenders to report to the sheriff of the county of current residence within 21 days before his or her planned departure if the intended residence of five days or more is outside of the United States.
- Require sexual predators and offenders who intend to establish a residence in another country to provide the sheriff the address, municipality, county, state, and *country* of the offender's intended residence.
- Require FDLE to notify the applicable law enforcement agency in the country where the offender intends to reside.

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

<sup>5</sup> Sections 775.21(10) and 943.0435(14), F.S.

<sup>6</sup> *See* ss. 775.21 and 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively.

<sup>7</sup> *See* generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

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

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

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

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



- Provides that an offender who knowingly provides false registration information by act or omission commits a 3<sup>rd</sup> degree felony (this provision is also added to ss. 944.607 and 985.4815, F.S.).

### **Sexual Predator / Offender Registration - Instant Message Name (Sections 1, 4, 7, 8, and 9)**

In addition to providing the above-described information during initial registration, sexual predators and offenders are required to provide the sheriff any instant message name the offender wants to use.<sup>12</sup> Sexual predators and offenders must also register any instant message name with FDLE prior to using such name.<sup>13</sup>

Sections 775.21, 943.0435, 944.606, and 944.607, F.S., define the term “instant message name” as “an identifier that allows a person to communicate in real time with another person using the Internet.”

#### *Effect of the Bill*

The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to replace the term “instant message name” with “Internet identifier.” The bill defines the term “Internet identifier” as “all electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN).” The bill specifies that an offender’s voluntary disclosure of his or her date of birth, social security number, or PIN as an Internet identifier waives the disclosure exemption for such personal information. As a result, sexual predators and offenders will be required to register their Internet identifiers with the sheriff and with FDLE.

The bill also replaces the term “instant message name” with the term “Internet identifier” in s. 943.0437, F.S., which authorizes FDLE to provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sex offender registry to commercial social networking websites.<sup>14</sup>

### **Search of Registration Information (Section 5)**

Section 943.04351, F.S., requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at specified locations,<sup>15</sup> to conduct a search of that person’s name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE.

#### *Effect of the Bill*

The bill amends s. 943.04351, F.S., to require states agencies and governmental subdivisions to also search the person’s name through the Dru Sjojin National Sex Offender Public Website maintained by the United States Department of Justice.

### **Removal of the Requirement to Register as a Sexual Offender (Sections 4 and 6)**

Generally, sexual predators and offenders must maintain registration with FDLE for the duration of the offender’s life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.<sup>16</sup> However, there are ways in which the registration requirement can be removed.

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<sup>12</sup> See generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

<sup>13</sup> FDLE maintains an online system through which sexual predators and offenders can update their instant message name information. Sections 775.21 and 943.0435, F.S.

<sup>14</sup> Such websites can use this information for the purpose of comparing users and potential users of the website against the list provided by FDLE. Section 943.0437(2), F.S.

<sup>15</sup> These locations include parks, playgrounds, day care centers, or other places where children regularly congregate.

<sup>16</sup> Sections 775.21(6) and 943.0435(11), F.S.

Section 943.0435(11), F.S.

Section 943.0435(11)(a), F.S., currently permits sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and have not been arrested for any felony or misdemeanor offense since release to petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender, provided that the offender's requirement to register was not based on an adult conviction:

- For a violation of ss. 787.01 or 787.02, F.S.;
- For a violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;
- For a violation of s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- For a violation of s. 800.04(5)(b), F.S.;
- For a violation of s. 800.04(5)c.2., F.S., where the court finds the offense involved unclothed genitals or genital area;
- For any attempt or conspiracy to commit any such offense; or
- For a violation of similar law of another jurisdiction.<sup>17</sup>

*Effect of the Bill*

The bill amends s. 943.0435(11)(a), F.S., to modify and expand the instances in which specified sexual offenders can petition the court to have the registration requirement removed. These changes bring the statute in line with the federal Adam Walsh Act.

1. Sexual offenders may petition the criminal division of the circuit court in the circuit in which the offender resides for removal from the requirement to register if:
  - 25 years have elapsed since the offender's registration period for the most recent conviction requiring registration began;
  - The offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than one year imprisonment for 25 years prior to petitioning the court;
  - The offender has successfully completed all sanctions imposed for all offenses that required the offender to register;
  - The offender's requirement to register was not based upon an adult conviction:
    - For a violation of ss. 787.01, F.S.;
    - For a violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;
    - For a violation of s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
    - For a violation of s. 800.04(5)(b), F.S.;
    - For a violation of s. 800.04(5)c.2., F.S., where the court finds the offense involved unclothed genitals or genital area;
    - For any attempt or conspiracy to commit any of the above-described offenses; or
    - For a violation of similar law of another jurisdiction.
  - For offenders whose requirement to register is based upon a conviction in another state, the offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.

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<sup>17</sup> The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief. Section 943.0435(11)(a), F.S.

2. Sexual offenders whose requirement to register was based upon an adult conviction for a violation of ss. 787.02 or 827.071(5), F.S., for any attempt or conspiracy to commit such offenses, or for a violation of a similar law in another jurisdiction, may petition the criminal division of the circuit court in the circuit in which the offender resides for removal from the requirement to register if:
  - 15 years have elapsed since the offender's registration period for the most recent conviction requiring registration began;
  - The offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than one year imprisonment for 10 years prior to petitioning the court;
  - The offender has successfully completed all sanctions imposed for all offenses that required the offender to register;
  - For offenders whose requirement to register is based upon a conviction in another state, the offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.
3. Sexual offenders required to register pursuant to s. 943.0435(1)(a)1.d., F.S. (specified juvenile sexual offenders), may petition the criminal division of the circuit court in the circuit in which the offender resides for removal from the requirement to register if:
  - 25 years have elapsed since the offender's registration period for the most recent adjudication requiring registration began;
  - The offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than one year imprisonment for 25 years prior to petitioning the court;
  - The offender has successfully completed all sanctions imposed for all offenses that required the offender to register.

The bill specifies that the registration period of a sexual offender sentenced to a term of incarceration or committed to a residential program begins upon release for the most recent conviction that required the offender to register. Additionally, an offender's registration period is tolled during any period in which the offender is incarcerated, civilly committed, detained pursuant to ch. 985, F.S, or committed to a residential program.

The bill also requires FDLE to be given notice of the petition at least 3 weeks prior to the hearing on the matter (currently only the state attorney is required to be given notice), and requires the court to instruct the petitioner to provide FDLE with a certified copy of the order granting relief.

These changes will likely have the effect of increasing the number of persons eligible to have the requirement to register as a sexual predator or offender removed pursuant to s. 943.04354, F.S.

#### Section 943.04354, F.S.

Currently, s. 943.04354(1), F.S., provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person:

1. Was or will be convicted or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or the person committed a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., for which adjudication of guilt was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S.;
2. Is required to register as a sexual offender or predator solely on the basis of this violation; and
3. Is not more than 4 years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation.

Subsection (2) of the statute provides that if a person meets the above criteria, and the violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., was committed on or after July 1, 2007, the person may move the court that will sentence or dispose of this violation to remove the requirement that the person register as a sexual offender or predator.<sup>18</sup> At sentencing or disposition of this violation, the court must rule on this motion and, if the court determines the person meets the above criteria and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement.<sup>19</sup>

Subsection (3) of the statute specifies that a person who meets the above criteria and who is subject to registration as a sexual offender or sexual predator for a violation of ss. 794.011, 800.04, or 827.071, F.S., that occurred before July 1, 2007, may petition the court in which the sentence or disposition for the violation of ss. 794.011, 800.04, or 827.071, F.S., occurred for removal of the requirement to register as a sexual offender or predator.<sup>20</sup> The court shall rule on the petition and, if the court determines the person meets the above criteria and removal of the registration requirement will not conflict with federal law, it may grant the petition and order the removal of the registration requirement.<sup>21</sup>

#### *Effect of the Bill*

The bill makes a variety of changes to s. 943.04354(1), F.S., to bring the statute in line with the federal Adam Walsh Act. Specifically, the bill provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person:

1. Was convicted, regardless of adjudication, or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or a similar offense in another jurisdiction, and the person does not have any other conviction, regardless of adjudication, or adjudication of delinquency for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or a similar offense in another jurisdiction;
2. (a) Was required to register as a sexual offender or predator solely on the basis of the conviction or adjudication described in 1.; or  
(b) Was convicted, regardless of adjudication, or adjudicated delinquent of an offense in another jurisdiction that is similar to an offense listed in 1. and no longer meets the criteria for registration as a sexual offender under the laws of the jurisdiction where the similar offense occurred; and
3. Is not more than 4 years older than the victim of this violation who was 13 years of age or older but less than 18 years of age at the time the person committed this violation.

The bill amends s. 943.04354(2), F.S., to:

- Specify that the motion must be filed in the *sentencing* court, or for persons convicted or adjudicated delinquent in another jurisdiction, the criminal circuit court of the circuit in which the petitioner resides.
- Require persons convicted or adjudicated delinquent of an offense in another jurisdiction to provide the court written confirmation that he or she is not required to register in the state where the conviction or adjudication occurred.

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<sup>18</sup> The person must allege in the motion that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of this violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. Section 943.04354(2), F.S.

<sup>19</sup> If the court denies the motion, the person is not authorized under this section to petition for removal of the registration requirement. Section 943.04354(2), F.S.

<sup>20</sup> The person must allege in the petition that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the petition at least 21 days before the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why the petition should be denied. Section 943.04354(3)(a) and (b), F.S.

<sup>21</sup> If the court denies the petition, the person is not authorized under this section to file any further petition for removal of the registration requirement. Section 943.04354(3)(b), F.S.

- Require that FDLE be given notice of the motion at least 3 weeks prior to the date of sentencing, disposition of the violation, or hearing on the motion (currently only the state attorney is required to be given notice).
- Require the court to instruct the moving party to provide FDLE with a certified copy of the order granting relief.

The bill also amends s. 943.04354(2), F.S., to remove the language requiring that the offense be committed on or after July 1, 2007, and repeals s. 943.04354(3), F.S. As a result, the registration removal provisions of s. 943.04354, F.S., will apply to all eligible sexual offenders, regardless of their offense date.

These changes will likely have the effect of increasing the number of persons eligible to have the requirement to register as a sexual predator or offender removed pursuant to s. 943.04354, F.S.

### **Definition of Risk Assessment (Section 10)**

Section 947.1405(7), F.S., requires the Parole Commission (Commission) to impose specified special conditions of supervision on certain conditional releasees. One of these conditions prohibits contact with children under the age of 18, if the victim was under the age of 18, without review and approval by the Commission. The Commission may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment.

Section 947.005, F.S., currently defines the term “risk assessment” as “an assessment completed by an independent qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child.”

In 2010, the definition of the term “risk assessment” in s. 948.001, F.S. (relating to probation), was amended to remove the requirement that the assessment be completed by *an independent* qualified practitioner.<sup>22</sup> However, this change was not made to the definition contained in s. 947.005, F.S.

### *Effect of the Bill*

The bill amends the definition of the term “risk assessment” in s. 947.005, F.S., to remove the requirement that the assessment be completed by *an independent* qualified practitioner.

### **Conditions of Supervision – Sex Offender Treatment (Section 11)**

Since 1995, there has been a condition of probation requiring sexual offenders convicted of specified offenses to successfully complete sexual offender treatment.<sup>23</sup> Currently, this condition of probation, found in s. 948.30(1)(c), F.S., is a standard condition of probation and only applies to probationers whose crime was committed on or after October 1, 1995, and who are placed under supervision for violation of ch. 794, F.S., s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, F.S.

Section 948.31, F.S., mandates that courts require an evaluation by a qualified practitioner to determine the need of a probationer for treatment. If the court determines that such a need is established by the evaluation process, the court must require sex offender treatment as a term or condition of probation for any person who is required to register as a sexual predator or sexual offender. The court is required to impose a restriction against contact with minors if sexual offender treatment is recommended.<sup>24</sup> This section of statute applies to all sexual offenders on probation – not just those convicted of specified offenses.

<sup>22</sup> Chapter 2010-92, L.O.F.

<sup>23</sup> Chapter 1995-283, L.O.F.

<sup>24</sup> Section 948.30, F.S., currently contains standard conditions of probation that require sex offender treatment for certain offenders and that prohibit certain sex offenders from having contact with minors if the victim of the offender’s offense was under 18. The bill requires courts to impose a restriction against contact with minors regardless of whether the offender’s victim was a minor.

### *Effect of the Bill*

The bill amends s. 948.31, F.S., to authorize (rather than mandate) a court to require probationers who are required to register as a sexual offender to undergo an evaluation by a qualified practitioner to determine whether the offender needs sex offender treatment. If the practitioner recommends treatment, the offender must successfully complete and pay for such treatment, which must be provided by a qualified practitioner.

The bill also amends s. 948.31, F.S., to remove the requirement that the court impose a restriction against contact with minors if sexual offender treatment is recommended. This prohibition is not needed in s. 948.31, F.S., as there is already a standard condition of supervision in s. 948.30(1)(e), F.S., prohibiting specified sexual offenders from having contact with minors.

### **Exposure of Sexual Organs (Section 2)**

Section 800.03, F.S., makes it a first degree misdemeanor<sup>25</sup> for a person to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.

### *Effect of the Bill*

The bill makes third or subsequent violations of s. 800.03, F.S., third degree felonies.<sup>26</sup>

### **Bail Determinations (Section 3)**

#### Pretrial Release

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.<sup>27</sup> Generally, pretrial release is granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.<sup>28</sup>

Bail requires an accused to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. Section 903.046, F.S., currently states that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. The statute further specifies that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, courts must consider the following:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.<sup>29</sup>

<sup>25</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>26</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>27</sup> Report No. 10-08, "Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed," Office of Program Policy Analysis & Government Accountability, January 2010.

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

<sup>29</sup> Section 903.046(2)(d), F.S., specifies that any defendant who failed to appear on the day of any required court proceeding in the case at issue, but who later voluntarily appeared or surrendered, is not eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested is not eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Section 903.046(2)(d), F.S., also specifies that notwithstanding anything in s. 903.046, F.S., the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear; and that s. 903.046, F.S., may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.

- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.<sup>30</sup>
- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.
- Whether the crime charged is a violation of ch. 874, F.S.,<sup>31</sup> or alleged to be subject to enhanced punishment under ch. 874, F.S. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.<sup>32</sup>

#### *Effect of the Bill*

The bill amends s. 903.046, F.S., to add the following to the list of factors a court must consider when determining whether to release a defendant on bail or other conditions:

- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S.,<sup>33</sup> is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance<sup>34</sup> on the case in order to ensure the full participation of the prosecutor and the protection of the public.

#### **The Criminal Punishment Code - Offense Severity Ranking Chart**

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.<sup>35</sup> Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the legislature.<sup>36</sup> A defendant's sentence is calculated based on points and are added in order to determine the "lowest permissible sentence" for the offense.

A violation of s. 796.03, F.S. (procuring person under age of 18 for prostitution), is currently ranked in Level 7 of the ranking chart but is incorrectly described in the chart as "procuring any person under 16 years for prostitution."<sup>37</sup> Similarly, a violation of s. 787.02(3)(a), F.S. (false imprisonment of a child under 13 while committing other specified offenses) is currently ranked in Level 9 of the ranking chart, but is incorrectly listed as a 1<sup>st</sup> degree felony (the offense is a 1<sup>st</sup> degree felony punishable for life imprisonment).

#### *Effect of the Bill*

The bill amends the ranking chart to correct the above-described inaccuracies.

<sup>30</sup> Section 903.046(2)(d), F.S., specifies that it is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.

<sup>31</sup> Chapter 874, F.S., relates to criminal gang enforcement and prevention.

<sup>32</sup> Section 903.046, F.S.

<sup>33</sup> Chapter 316, F.S., is the State Uniform Traffic Control chapter.

<sup>34</sup> See Rule 3.130, Fla. R. Crim. Proc.

<sup>35</sup> Section 921.002, F.S.

<sup>36</sup> Section 921.0022, F.S.

<sup>37</sup> Section 921.0022(3)(g), F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 775.21, F.S., relating to The Florida Sexual Predators Act.

Section 2. Amends s. 800.03, F.S., relating to exposure of sexual organs.

Section 3. Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

Section 4. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 5. Amends s. 943.04351, F.S., relating to search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

Section 6. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 7. Amends s. 943.0437, F.S., relating to commercial social networking websites.

Section 8. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 9. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 10. Amends s. 947.005, F.S., relating to definitions.

Section 11. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and sexual offenders on probation or community control.

Section 12. Amends s. 985.481, F.S., relating to sexual offender adjudicated delinquent; notification upon release.

Section 13. Amends s. 985.4815, F.S., relating to notification to the Department of Law Enforcement of information on juvenile sexual offenders.

Section 14. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 15. The bill is effective October 1, 2012.

**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:**

On January 30, 2012, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

This bill would require the Department of Juvenile Justice to update their Juvenile Justice Information System. The current system does not capture and store every aspect this bill requires. The department has estimated a \$17,600 nonrecurring cost and can be absorbed within existing



resources.<sup>38</sup> The department can request federal funding through the State Advisory Group to implement the required changes.<sup>39</sup>

The Florida Department of Law Enforcement has stated that the proposed legislation will have an estimated fiscal impact of \$57,050 in non-recurring expenditures and can be handled within existing resources.<sup>40</sup>

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

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

In January 2012, there were 48,700 registered sexual offenders and 9,289 registered sexual predators in Florida. It is unknown how many of these persons are arrested each year. The bill prohibits such persons from being released on bail or surety bond until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill:

- Does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities; and
- 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

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<sup>38</sup> Department of Juvenile Justice, 2012 Legislative Session Bill Analysis, HB 455, November 4, 2011

<sup>39</sup> E-mail from Vickie Harris, Budget Director, Department of Juvenile Justice, February 3, 2012, on file with Justice Appropriations Staff

<sup>40</sup> Florida Department of Law Enforcement, HB 455 Relating to Criminal Offenders, February 2, 2012

1                                   A bill to be entitled  
 2       An act relating to sex offenses; amending s. 775.21,  
 3       F.S.; replacing the definition of the term "instant  
 4       message name" with the definition of the term  
 5       "Internet identifier"; providing that voluntary  
 6       disclosure of specified information waives a  
 7       disclosure exemption for such information; conforming  
 8       provisions; adding additional offenses to the list of  
 9       sexual predator qualifying offenses; requiring  
 10      disclosure of additional information during the sexual  
 11      predator registration process; requiring that a sexual  
 12      predator who is unable to secure or update a driver  
 13      license or identification card within a specified  
 14      period must report specified information to the local  
 15      sheriff's office within a specified period after such  
 16      change with confirmation that he or she also reported  
 17      such information to the Department of Highway Safety  
 18      and Motor Vehicles; revising reporting requirements if  
 19      a sexual predator plans to leave the United States for  
 20      more than a specified period; providing criminal  
 21      penalties for knowingly providing false registration  
 22      information by act or omission; amending s. 800.03,  
 23      F.S.; providing enhanced penalties for third or  
 24      subsequent indecent exposure violations; amending s.  
 25      903.046, F.S.; requiring a court considering whether  
 26      to release a defendant on bail to determine whether  
 27      the defendant is subject to registration as a sexual  
 28      offender or sexual predator and, if so, to hold the

29 defendant without bail until the first appearance on  
 30 the case; providing an exception; amending s.  
 31 943.0435, F.S.; adding additional offenses to the list  
 32 of sexual offender qualifying offenses; replacing the  
 33 definition of the term "instant message name" with the  
 34 definition of the term "Internet identifier";  
 35 conforming provisions; requiring disclosure of  
 36 additional sexual offender registration information;  
 37 requiring that a sexual offender who is unable to  
 38 secure or update a driver license or identification  
 39 card within a specified period must report specified  
 40 information to the local sheriff's office within a  
 41 specified period of such change with confirmation that  
 42 he or she also reported such information to the  
 43 Department of Highway Safety and Motor Vehicles;  
 44 providing additional requirements for sexual offenders  
 45 intending to reside outside of the United States;  
 46 revising criteria applicable to provisions allowing  
 47 removal from the requirement to register as a sexual  
 48 offender; providing criminal penalties for knowingly  
 49 providing false registration information by act or  
 50 omission; amending s. 943.04351, F.S.; requiring a  
 51 specified national search of registration information  
 52 regarding sexual predators and sexual offenders prior  
 53 to appointment or employment of persons by state  
 54 agencies and governmental subdivisions; amending s.  
 55 943.04354, F.S.; revising the criteria applicable to  
 56 provisions allowing removal of the requirement to

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57 register as a sexual offender or sexual predator;  
58 amending s. 943.0437, F.S.; replacing the term  
59 "instant message name" with the term "Internet  
60 identifier"; amending ss. 944.606 and 944.607, F.S.;  
61 adding additional offenses to the list of sexual  
62 offender qualifying offenses; replacing the definition  
63 of the term "instant message name" with the definition  
64 of the term "Internet identifier"; conforming  
65 provisions; requiring disclosure of additional  
66 registration information; providing criminal penalties  
67 for knowingly providing false registration information  
68 by act or omission; amending s. 947.005, F.S.;  
69 revising the definition of the term "risk assessment";  
70 amending s. 948.31, F.S.; authorizing the court to  
71 require sexual offenders and sexual predators who are  
72 on probation or community control to undergo an  
73 evaluation to determine whether the offender or  
74 predator needs sexual offender treatment; requiring  
75 the probationer or community controllee to pay for the  
76 treatment; removing a provision prohibiting contact  
77 with minors if sexual offender treatment is  
78 recommended; amending ss. 985.481 and 985.4815, F.S.;  
79 requiring disclosure of additional registration  
80 information by certain sexual offenders adjudicated  
81 delinquent and certain juvenile sexual offenders;  
82 providing criminal penalties for knowingly providing  
83 false registration information by act or omission;

84 amending s. 921.0022, F.S.; correcting references;  
 85 providing an effective date.

86

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

88

89 Section 1. Paragraph (i) of subsection (2), paragraph (a)  
 90 of subsection (4), subsections (6) and (8), and paragraph (a) of  
 91 subsection (10) of section 775.21, Florida Statutes, are amended  
 92 to read:

93 775.21 The Florida Sexual Predators Act.—

94 (2) DEFINITIONS.—As used in this section, the term:

95 (i) "Internet identifier ~~Instant message name~~" means all  
 96 electronic mail, chat, instant messenger, social networking, or  
 97 similar name used for Internet communication, but does not  
 98 include a date of birth, social security number, or personal  
 99 identification number (PIN). Voluntary disclosure by the sexual  
 100 predator of his or her date of birth, social security number, or  
 101 personal identification number (PIN) as an Internet identifier  
 102 waives the disclosure exemption in this paragraph for such  
 103 personal information ~~an identifier that allows a person to~~  
 104 ~~communicate in real time with another person using the Internet.~~

105 (4) SEXUAL PREDATOR CRITERIA.—

106 (a) For a current offense committed on or after October 1,  
 107 1993, upon conviction, an offender shall be designated as a  
 108 "sexual predator" under subsection (5), and subject to  
 109 registration under subsection (6) and community and public  
 110 notification under subsection (7) if:

111 1. The felony is:

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112 a. A capital, life, or first-degree felony violation, or  
 113 any attempt thereof, of s. 787.01 or s. 787.02, where the victim  
 114 is a minor and the defendant is not the victim's parent or  
 115 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a  
 116 violation of a similar law of another jurisdiction; or

117 b. Any felony violation, or any attempt thereof, of s.  
 118 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 119 787.025(2)(c), where the victim is a minor and the defendant is  
 120 not the victim's parent or guardian; s. 794.011, excluding s.  
 121 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 796.045; s.  
 122 800.04; s. 825.1025 ~~825.1025(2)(b)~~; s. 827.071; s. 847.0135(5);  
 123 s. 847.0145; s. 916.1075(2); or s. 985.701(1); or a violation of  
 124 a similar law of another jurisdiction, and the offender has  
 125 previously been convicted of or found to have committed, or has  
 126 pled nolo contendere or guilty to, regardless of adjudication,  
 127 any violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
 128 787.02, or s. 787.025(2)(c), where the victim is a minor and the  
 129 defendant is not the victim's parent or guardian; s. 794.011,  
 130 excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.  
 131 796.045; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.  
 132 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 916.1075(2);  
 133 or s. 985.701(1); or a violation of a similar law of another  
 134 jurisdiction;

135 2. The offender has not received a pardon for any felony  
 136 or similar law of another jurisdiction that is necessary for the  
 137 operation of this paragraph; and

138 3. A conviction of a felony or similar law of another  
 139 jurisdiction necessary to the operation of this paragraph has

140 | not been set aside in any postconviction proceeding.

141 |       (6) REGISTRATION.—

142 |       (a) A sexual predator must register with the department

143 | through the sheriff's office by providing the following

144 | information to the department:

145 |       1. Name; social security number; age; race; sex; date of

146 | birth; height; weight; tattoos or other identifying marks; hair

147 | and eye color; photograph; address of legal residence and

148 | address of any current temporary residence, within the state or

149 | out of state, including a rural route address and a post office

150 | box; if no permanent or temporary address, any transient

151 | residence within the state; address, location or description,

152 | and dates of any current or known future temporary residence

153 | within the state or out of state; all ~~any~~ electronic mail

154 | addresses ~~address~~ and all Internet identifiers ~~any instant~~

155 | ~~message name~~ required to be provided pursuant to subparagraph

156 | (g)4.; all home telephone numbers ~~number~~ and ~~any~~ cellular

157 | telephone numbers ~~number~~; date and place of any employment; the

158 | make, model, color, registration number, and license tag number

159 | of all vehicles owned; date and place of each conviction;

160 | fingerprints; palm prints; and a brief description of the crime

161 | or crimes committed by the offender. A post office box shall not

162 | be provided in lieu of a physical residential address. The

163 | sexual predator must also produce his or her passport, if he or

164 | she has a passport, and, if he or she is an alien, must produce

165 | or provide information about documents establishing his or her

166 | immigration status. The sexual predator must also provide

167 | information about any professional licenses he or she may have.

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168 a. If the sexual predator's place of residence is a motor  
169 vehicle, trailer, mobile home, or manufactured home, as defined  
170 in chapter 320, the sexual predator shall also provide to the  
171 department written notice of the vehicle identification number;  
172 the license tag number; the registration number; and a  
173 description, including color scheme, of the motor vehicle,  
174 trailer, mobile home, or manufactured home. If a sexual  
175 predator's place of residence is a vessel, live-aboard vessel,  
176 or houseboat, as defined in chapter 327, the sexual predator  
177 shall also provide to the department written notice of the hull  
178 identification number; the manufacturer's serial number; the  
179 name of the vessel, live-aboard vessel, or houseboat; the  
180 registration number; and a description, including color scheme,  
181 of the vessel, live-aboard vessel, or houseboat.

182 b. If the sexual predator is enrolled, employed,  
183 volunteering, or carrying on a vocation at an institution of  
184 higher education in this state, the sexual predator shall also  
185 provide to the department the name, address, and county of each  
186 institution, including each campus attended, and the sexual  
187 predator's enrollment, volunteer, or employment status. Each  
188 change in enrollment or employment status shall be reported in  
189 person at the sheriff's office, or the Department of Corrections  
190 if the sexual predator is in the custody or control of or under  
191 the supervision of the Department of Corrections, within 48  
192 hours after any change in status. The sheriff or the Department  
193 of Corrections shall promptly notify each institution of the  
194 sexual predator's presence and any change in the sexual  
195 predator's enrollment, volunteer, or employment status.



196           2. Any other information determined necessary by the  
197 department, including criminal and corrections records;  
198 nonprivileged personnel and treatment records; and evidentiary  
199 genetic markers when available.

200           (b) If the sexual predator is in the custody or control  
201 of, or under the supervision of, the Department of Corrections,  
202 or is in the custody of a private correctional facility, the  
203 sexual predator must register with the Department of  
204 Corrections. A sexual predator who is under the supervision of  
205 the Department of Corrections but who is not incarcerated must  
206 register with the Department of Corrections within 3 business  
207 days after the court finds the offender to be a sexual predator.  
208 The Department of Corrections shall provide to the department  
209 registration information and the location of, and local  
210 telephone number for, any Department of Corrections office that  
211 is responsible for supervising the sexual predator. In addition,  
212 the Department of Corrections shall notify the department if the  
213 sexual predator escapes or absconds from custody or supervision  
214 or if the sexual predator dies.

215           (c) If the sexual predator is in the custody of a local  
216 jail, the custodian of the local jail shall register the sexual  
217 predator within 3 business days after intake of the sexual  
218 predator for any reason and upon release, and shall forward the  
219 registration information to the department. The custodian of the  
220 local jail shall also take a digitized photograph of the sexual  
221 predator while the sexual predator remains in custody and shall  
222 provide the digitized photograph to the department. The  
223 custodian shall notify the department if the sexual predator

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224 escapes from custody or dies.

225 (d) If the sexual predator is under federal supervision,  
 226 the federal agency responsible for supervising the sexual  
 227 predator may forward to the department any information regarding  
 228 the sexual predator which is consistent with the information  
 229 provided by the Department of Corrections under this section,  
 230 and may indicate whether use of the information is restricted to  
 231 law enforcement purposes only or may be used by the department  
 232 for purposes of public notification.

233 (e)1. If the sexual predator is not in the custody or  
 234 control of, or under the supervision of, the Department of  
 235 Corrections or is not in the custody of a private correctional  
 236 facility, the sexual predator shall register in person:

237 a. At the sheriff's office in the county where he or she  
 238 establishes or maintains a residence within 48 hours after  
 239 establishing or maintaining a residence in this state; and

240 b. At the sheriff's office in the county where he or she  
 241 was designated a sexual predator by the court within 48 hours  
 242 after such finding is made.

243 2. Any change in the sexual predator's permanent or  
 244 temporary residence, name, or all any electronic mail addresses  
 245 ~~address~~ and all Internet identifiers ~~any instant message name~~  
 246 required to be provided pursuant to subparagraph (g)4., after  
 247 the sexual predator registers in person at the sheriff's office  
 248 as provided in subparagraph 1., shall be accomplished in the  
 249 manner provided in paragraphs (g), (i), and (j). When a sexual  
 250 predator registers with the sheriff's office, the sheriff shall  
 251 take a photograph, and a set of fingerprints, and palm prints of

252 the predator and forward the photographs, palm prints, and  
 253 fingerprints to the department, along with the information that  
 254 the predator is required to provide pursuant to this section.

255 (f) Within 48 hours after the registration required under  
 256 paragraph (a) or paragraph (e), a sexual predator who is not  
 257 incarcerated and who resides in the community, including a  
 258 sexual predator under the supervision of the Department of  
 259 Corrections, shall register in person at a driver ~~driver's~~  
 260 license office of the Department of Highway Safety and Motor  
 261 Vehicles and shall present proof of registration. At the driver  
 262 ~~driver's~~ license office the sexual predator shall:

263 1. If otherwise qualified, secure a Florida driver  
 264 ~~driver's~~ license, renew a Florida driver ~~driver's~~ license, or  
 265 secure an identification card. The sexual predator shall  
 266 identify himself or herself as a sexual predator who is required  
 267 to comply with this section, provide his or her place of  
 268 permanent, temporary, or transient residence, including a rural  
 269 route address and a post office box, and submit to the taking of  
 270 a photograph for use in issuing a driver ~~driver's~~ license,  
 271 renewed license, or identification card, and for use by the  
 272 department in maintaining current records of sexual predators. A  
 273 post office box shall not be provided in lieu of a physical  
 274 residential address. If the sexual predator's place of residence  
 275 is a motor vehicle, trailer, mobile home, or manufactured home,  
 276 as defined in chapter 320, the sexual predator shall also  
 277 provide to the Department of Highway Safety and Motor Vehicles  
 278 the vehicle identification number; the license tag number; the  
 279 registration number; and a description, including color scheme,

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280 of the motor vehicle, trailer, mobile home, or manufactured  
 281 home. If a sexual predator's place of residence is a vessel,  
 282 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 283 sexual predator shall also provide to the Department of Highway  
 284 Safety and Motor Vehicles the hull identification number; the  
 285 manufacturer's serial number; the name of the vessel, live-  
 286 aboard vessel, or houseboat; the registration number; and a  
 287 description, including color scheme, of the vessel, live-aboard  
 288 vessel, or houseboat.

289 2. Pay the costs assessed by the Department of Highway  
 290 Safety and Motor Vehicles for issuing or renewing a driver  
 291 ~~driver's~~ license or identification card as required by this  
 292 section. The driver ~~driver's~~ license or identification card  
 293 issued to the sexual predator must be in compliance with s.  
 294 322.141(3).

295 3. Provide, upon request, any additional information  
 296 necessary to confirm the identity of the sexual predator,  
 297 including a set of fingerprints.

298 (g)1. Each time a sexual predator's driver ~~driver's~~  
 299 license or identification card is subject to renewal, and,  
 300 without regard to the status of the predator's driver ~~driver's~~  
 301 license or identification card, within 48 hours after any change  
 302 of the predator's residence or change in the predator's name by  
 303 reason of marriage or other legal process, the predator shall  
 304 report in person to a driver ~~driver's~~ license office and shall  
 305 be subject to the requirements specified in paragraph (f). The  
 306 Department of Highway Safety and Motor Vehicles shall forward to  
 307 the department and to the Department of Corrections all

308 | photographs and information provided by sexual predators.  
 309 | Notwithstanding the restrictions set forth in s. 322.142, the  
 310 | Department of Highway Safety and Motor Vehicles is authorized to  
 311 | release a reproduction of a color-photograph or digital-image  
 312 | license to the Department of Law Enforcement for purposes of  
 313 | public notification of sexual predators as provided in this  
 314 | section. A sexual predator who is unable to secure or update a  
 315 | driver license or identification card with the Department of  
 316 | Highway Safety and Motor Vehicles as provided in paragraph (f)  
 317 | and this paragraph must also report any change of the predator's  
 318 | residence or change in the predator's name by reason of marriage  
 319 | or other legal process within 48 hours after the change to the  
 320 | sheriff's office in the county where the predator resides or is  
 321 | located and provide confirmation that he or she reported such  
 322 | information to the Department of Highway Safety and Motor  
 323 | Vehicles.

324 |         2. A sexual predator who vacates a permanent, temporary,  
 325 | or transient residence and fails to establish or maintain  
 326 | another permanent, temporary, or transient residence shall,  
 327 | within 48 hours after vacating the permanent, temporary, or  
 328 | transient residence, report in person to the sheriff's office of  
 329 | the county in which he or she is located. The sexual predator  
 330 | shall specify the date upon which he or she intends to or did  
 331 | vacate such residence. The sexual predator must provide or  
 332 | update all of the registration information required under  
 333 | paragraph (a). The sexual predator must provide an address for  
 334 | the residence or other place that he or she is or will be  
 335 | located during the time in which he or she fails to establish or

336 maintain a permanent or temporary residence.

337           3. A sexual predator who remains at a permanent,  
 338 temporary, or transient residence after reporting his or her  
 339 intent to vacate such residence shall, within 48 hours after the  
 340 date upon which the predator indicated he or she would or did  
 341 vacate such residence, report in person to the sheriff's office  
 342 to which he or she reported pursuant to subparagraph 2. for the  
 343 purpose of reporting his or her address at such residence. When  
 344 the sheriff receives the report, the sheriff shall promptly  
 345 convey the information to the department. An offender who makes  
 346 a report as required under subparagraph 2. but fails to make a  
 347 report as required under this subparagraph commits a felony of  
 348 the second degree, punishable as provided in s. 775.082, s.  
 349 775.083, or s. 775.084.

350           4. A sexual predator must register all ~~any~~ electronic mail  
 351 addresses and Internet identifiers ~~address or instant message~~  
 352 ~~name~~ with the department prior to using such electronic mail  
 353 addresses and Internet identifiers ~~address or instant message~~  
 354 ~~name on or after October 1, 2007~~. The department shall establish  
 355 an online system through which sexual predators may securely  
 356 access and update all electronic mail address and Internet  
 357 identifier ~~instant message name~~ information.

358           (h) The department must notify the sheriff and the state  
 359 attorney of the county and, if applicable, the police chief of  
 360 the municipality, where the sexual predator maintains a  
 361 residence.

362           (i) A sexual predator who intends to establish a  
 363 permanent, temporary, or transient residence in another state or

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364 jurisdiction other than the State of Florida shall report in  
365 person to the sheriff of the county of current residence within  
366 48 hours before the date he or she intends to leave this state  
367 to establish residence in another state or jurisdiction or  
368 within 21 days before his or her planned departure date if the  
369 intended residence of 5 days or more is outside of the United  
370 States. The sexual predator must provide to the sheriff the  
371 address, municipality, county, ~~and~~ state, and country of  
372 intended residence. The sheriff shall promptly provide to the  
373 department the information received from the sexual predator.  
374 The department shall notify the statewide law enforcement  
375 agency, or a comparable agency, in the intended state, ~~or~~  
376 jurisdiction, or country of residence of the sexual predator's  
377 intended residence. The failure of a sexual predator to provide  
378 his or her intended place of residence is punishable as provided  
379 in subsection (10).

380 (j) A sexual predator who indicates his or her intent to  
381 establish a permanent, temporary, or transient residence in  
382 another state, a ~~or~~ jurisdiction other than the State of  
383 Florida, or another country and later decides to remain in this  
384 state shall, within 48 hours after the date upon which the  
385 sexual predator indicated he or she would leave this state,  
386 report in person to the sheriff to which the sexual predator  
387 reported the intended change of residence, and report his or her  
388 intent to remain in this state. If the sheriff is notified by  
389 the sexual predator that he or she intends to remain in this  
390 state, the sheriff shall promptly report this information to the  
391 department. A sexual predator who reports his or her intent to

392 establish a permanent, temporary, or transient residence in  
 393 another state, a ~~ex~~ jurisdiction other than the State of  
 394 Florida, or another country, but who remains in this state  
 395 without reporting to the sheriff in the manner required by this  
 396 paragraph, commits a felony of the second degree, punishable as  
 397 provided in s. 775.082, s. 775.083, or s. 775.084.

398 (k)1. The department is responsible for the online  
 399 maintenance of current information regarding each registered  
 400 sexual predator. The department must maintain hotline access for  
 401 state, local, and federal law enforcement agencies to obtain  
 402 instantaneous locator file and offender characteristics  
 403 information on all released registered sexual predators for  
 404 purposes of monitoring, tracking, and prosecution. The  
 405 photograph and fingerprints do not have to be stored in a  
 406 computerized format.

407 2. The department's sexual predator registration list,  
 408 containing the information described in subparagraph (a)1., is a  
 409 public record. The department is authorized to disseminate this  
 410 public information by any means deemed appropriate, including  
 411 operating a toll-free telephone number for this purpose. When  
 412 the department provides information regarding a registered  
 413 sexual predator to the public, department personnel must advise  
 414 the person making the inquiry that positive identification of a  
 415 person believed to be a sexual predator cannot be established  
 416 unless a fingerprint comparison is made, and that it is illegal  
 417 to use public information regarding a registered sexual predator  
 418 to facilitate the commission of a crime.

419 3. The department shall adopt guidelines as necessary



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420 regarding the registration of sexual predators and the  
421 dissemination of information regarding sexual predators as  
422 required by this section.

423 (1) A sexual predator must maintain registration with the  
424 department for the duration of his or her life, unless the  
425 sexual predator has received a full pardon or has had a  
426 conviction set aside in a postconviction proceeding for any  
427 offense that met the criteria for the sexual predator  
428 designation.

429 (8) VERIFICATION.—The department and the Department of  
430 Corrections shall implement a system for verifying the addresses  
431 of sexual predators. The system must be consistent with the  
432 provisions of the federal Adam Walsh Child Protection and Safety  
433 Act of 2006 and any other federal standards applicable to such  
434 verification or required to be met as a condition for the  
435 receipt of federal funds by the state. The Department of  
436 Corrections shall verify the addresses of sexual predators who  
437 are not incarcerated but who reside in the community under the  
438 supervision of the Department of Corrections and shall report to  
439 the department any failure by a sexual predator to comply with  
440 registration requirements. County and local law enforcement  
441 agencies, in conjunction with the department, shall verify the  
442 addresses of sexual predators who are not under the care,  
443 custody, control, or supervision of the Department of  
444 Corrections. Local law enforcement agencies shall report to the  
445 department any failure by a sexual predator to comply with  
446 registration requirements.

447 (a) A sexual predator must report in person each year

448 during the month of the sexual predator's birthday and during  
 449 every third month thereafter to the sheriff's office in the  
 450 county in which he or she resides or is otherwise located to  
 451 reregister. The sheriff's office may determine the appropriate  
 452 times and days for reporting by the sexual predator, which shall  
 453 be consistent with the reporting requirements of this paragraph.  
 454 Reregistration shall include any changes to the following  
 455 information:

456 1. Name; social security number; age; race; sex; date of  
 457 birth; height; weight; tattoos or other identifying marks; hair  
 458 and eye color; address of any permanent residence and address of  
 459 any current temporary residence, within the state or out of  
 460 state, including a rural route address and a post office box; if  
 461 no permanent or temporary address, any transient residence  
 462 within the state; address, location or description, and dates of  
 463 any current or known future temporary residence within the state  
 464 or out of state; all any electronic mail addresses address and  
 465 all Internet identifiers any instant message name required to be  
 466 provided pursuant to subparagraph (6)(g)4.; all home telephone  
 467 numbers number and any cellular telephone numbers number; date  
 468 and place of any employment; the vehicle make, model, color,  
 469 registration number, and license tag number of all vehicles  
 470 owned; fingerprints; palm prints; and photograph. A post office  
 471 box shall not be provided in lieu of a physical residential  
 472 address. The sexual predator must also produce his or her  
 473 passport, if he or she has a passport, and, if he or she is an  
 474 alien, must produce or provide information about documents  
 475 establishing his or her immigration status. The sexual predator

476 must also provide information about any professional licenses he  
 477 or she may have.

478 2. If the sexual predator is enrolled, employed,  
 479 volunteering, or carrying on a vocation at an institution of  
 480 higher education in this state, the sexual predator shall also  
 481 provide to the department the name, address, and county of each  
 482 institution, including each campus attended, and the sexual  
 483 predator's enrollment, volunteer, or employment status.

484 3. If the sexual predator's place of residence is a motor  
 485 vehicle, trailer, mobile home, or manufactured home, as defined  
 486 in chapter 320, the sexual predator shall also provide the  
 487 vehicle identification number; the license tag number; the  
 488 registration number; and a description, including color scheme,  
 489 of the motor vehicle, trailer, mobile home, or manufactured  
 490 home. If the sexual predator's place of residence is a vessel,  
 491 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 492 sexual predator shall also provide the hull identification  
 493 number; the manufacturer's serial number; the name of the  
 494 vessel, live-aboard vessel, or houseboat; the registration  
 495 number; and a description, including color scheme, of the  
 496 vessel, live-aboard vessel, or houseboat.

497 (b) The sheriff's office shall, within 2 working days,  
 498 electronically submit and update all information provided by the  
 499 sexual predator to the department in a manner prescribed by the  
 500 department.

501 (10) PENALTIES.—

502 (a) Except as otherwise specifically provided, a sexual  
 503 predator who fails to register; who fails, after registration,

504 to maintain, acquire, or renew a driver ~~driver's~~ license or  
 505 identification card; who fails to provide required location  
 506 information, electronic mail address information, Internet  
 507 identifier ~~instant message name~~ information, all home telephone  
 508 numbers ~~number~~ and any cellular telephone numbers ~~number~~, or  
 509 change-of-name information; who fails to make a required report  
 510 in connection with vacating a permanent residence; who fails to  
 511 reregister as required; who fails to respond to any address  
 512 verification correspondence from the department within 3 weeks  
 513 of the date of the correspondence; who knowingly provides false  
 514 registration information by act or omission; or who otherwise  
 515 fails, by act or omission, to comply with the requirements of  
 516 this section, commits a felony of the third degree, punishable  
 517 as provided in s. 775.082, s. 775.083, or s. 775.084.

518 Section 2. Section 800.03, Florida Statutes, is amended to  
 519 read:

520 800.03 Exposure of sexual organs.—

521 (1) It is unlawful to expose or exhibit one's sexual  
 522 organs in public or on the private premises of another, or so  
 523 near thereto as to be seen from such private premises, in a  
 524 vulgar or indecent manner, or to be naked in public except in  
 525 any place provided or set apart for that purpose.

526 (2) (a) Except as provided in paragraph (b), a violation of  
 527 this section is a misdemeanor of the first degree, punishable as  
 528 provided in s. 775.082 or s. 775.083.

529 (b) A third or subsequent violation of this section is a  
 530 felony of the third degree, punishable as provided in s.  
 531 775.082, s. 775.083, or s. 775.084.

532           (3) A mother's breastfeeding of her baby does not under  
 533 any circumstance violate this section.

534           Section 3. Paragraph (m) is added to subsection (2) of  
 535 section 903.046, Florida Statutes, to read:

536           903.046 Purpose of and criteria for bail determination.—

537           (2) When determining whether to release a defendant on  
 538 bail or other conditions, and what that bail or those conditions  
 539 may be, the court shall consider:

540           (m) Whether the defendant, other than a defendant whose  
 541 only criminal charge is a misdemeanor offense under chapter 316,  
 542 is required to register as a sexual offender under s. 943.0435  
 543 or a sexual predator under s. 775.21; and, if so, he or she is  
 544 not eligible for release on bail or surety bond until the first  
 545 appearance on the case in order to ensure the full participation  
 546 of the prosecutor and the protection of the public.

547           Section 4. Paragraphs (a) and (g) of subsection (1),  
 548 subsection (2), paragraphs (a) and (d) of subsection (4),  
 549 subsections (7), (8), and (11), and paragraph (c) of subsection  
 550 (14) of section 943.0435, Florida Statutes, are amended to read:

551           943.0435 Sexual offenders required to register with the  
 552 department; penalty.—

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

554           (a)1. "Sexual offender" means a person who meets the  
 555 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
 556 subparagraph c., or sub-subparagraph d., as follows:

557           a.(I) Has been convicted of committing, or attempting,  
 558 soliciting, or conspiring to commit, any of the criminal  
 559 offenses proscribed in the following statutes in this state or

560 similar offenses in another jurisdiction: s. 393.135(2); s.  
 561 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
 562 the victim is a minor and the defendant is not the victim's  
 563 parent or guardian; s. 794.011, excluding s. 794.011(10); s.  
 564 794.05; s. 796.03; s. 796.035; s. 796.045; s. 800.04; s.  
 565 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
 566 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.  
 567 916.1075(2); or s. 985.701(1); or any similar offense committed  
 568 in this state which has been redesignated from a former statute  
 569 number to one of those listed in this sub-sub-subparagraph; and  
 570 (II) Has been released on or after October 1, 1997, from  
 571 the sanction imposed for any conviction of an offense described  
 572 in sub-sub-subparagraph (I). For purposes of sub-sub-  
 573 subparagraph (I), a sanction imposed in this state or in any  
 574 other jurisdiction includes, but is not limited to, a fine,  
 575 probation, community control, parole, conditional release,  
 576 control release, or incarceration in a state prison, federal  
 577 prison, private correctional facility, or local detention  
 578 facility;  
 579 b. Establishes or maintains a residence in this state and  
 580 who has not been designated as a sexual predator by a court of  
 581 this state but who has been designated as a sexual predator, as  
 582 a sexually violent predator, or by another sexual offender  
 583 designation in another state or jurisdiction and was, as a  
 584 result of such designation, subjected to registration or  
 585 community or public notification, or both, or would be if the  
 586 person were a resident of that state or jurisdiction, without  
 587 regard to whether the person otherwise meets the criteria for

588 registration as a sexual offender;

589 c. Establishes or maintains a residence in this state who  
 590 is in the custody or control of, or under the supervision of,  
 591 any other state or jurisdiction as a result of a conviction for  
 592 committing, or attempting, soliciting, or conspiring to commit,  
 593 any of the criminal offenses proscribed in the following  
 594 statutes or similar offense in another jurisdiction: s.  
 595 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 596 787.025(2)(c), where the victim is a minor and the defendant is  
 597 not the victim's parent or guardian; s. 794.011, excluding s.  
 598 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 796.045; s.  
 599 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,  
 600 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;  
 601 s. 916.1075(2); or s. 985.701(1); or any similar offense  
 602 committed in this state which has been redesignated from a  
 603 former statute number to one of those listed in this sub-  
 604 subparagraph; or

605 d. On or after July 1, 2007, has been adjudicated  
 606 delinquent for committing, or attempting, soliciting, or  
 607 conspiring to commit, any of the criminal offenses proscribed in  
 608 the following statutes in this state or similar offenses in  
 609 another jurisdiction when the juvenile was 14 years of age or  
 610 older at the time of the offense:

- 611 (I) Section 794.011, excluding s. 794.011(10);
- 612 (II) Section 800.04(4)(b) where the victim is under 12
- 613 years of age or where the court finds sexual activity by the use
- 614 of force or coercion;
- 615 (III) Section 800.04(5)(c)1. where the court finds

616 molestation involving unclothed genitals; or  
 617 (IV) Section 800.04(5)(d) where the court finds the use of  
 618 force or coercion and unclothed genitals.

619 2. For all qualifying offenses listed in sub-subparagraph  
 620 (1)(a)1.d., the court shall make a written finding of the age of  
 621 the offender at the time of the offense.

622  
 623 For each violation of a qualifying offense listed in this  
 624 subsection, except for a violation of s. 794.011, the court  
 625 shall make a written finding of the age of the victim at the  
 626 time of the offense. For a violation of s. 800.04(4), the court  
 627 shall additionally make a written finding indicating that the  
 628 offense did or did not involve sexual activity and indicating  
 629 that the offense did or did not involve force or coercion. For a  
 630 violation of s. 800.04(5), the court shall additionally make a  
 631 written finding that the offense did or did not involve  
 632 unclothed genitals or genital area and that the offense did or  
 633 did not involve the use of force or coercion.

634 (g) "Internet identifier ~~Instant message name~~" has the  
 635 same meaning as provided in s. 775.21 ~~means an identifier that~~  
 636 ~~allows a person to communicate in real time with another person~~  
 637 ~~using the Internet.~~

638 (2) A sexual offender shall:

639 (a) Report in person at the sheriff's office:

640 1. In the county in which the offender establishes or  
 641 maintains a permanent, temporary, or transient residence within  
 642 48 hours after:

643 a. Establishing permanent, temporary, or transient



644 residence in this state; or

645       b. Being released from the custody, control, or  
 646 supervision of the Department of Corrections or from the custody  
 647 of a private correctional facility; or

648       2. In the county where he or she was convicted within 48  
 649 hours after being convicted for a qualifying offense for  
 650 registration under this section if the offender is not in the  
 651 custody or control of, or under the supervision of, the  
 652 Department of Corrections, or is not in the custody of a private  
 653 correctional facility.

654

655 Any change in the information required to be provided pursuant  
 656 to paragraph (b), including, but not limited to, any change in  
 657 the sexual offender's permanent, temporary, or transient  
 658 residence, name, all ~~any~~ electronic mail addresses ~~address~~ and  
 659 all Internet identifiers ~~any instant message name~~ required to be  
 660 provided pursuant to paragraph (4)(d), after the sexual offender  
 661 reports in person at the sheriff's office, shall be accomplished  
 662 in the manner provided in subsections (4), (7), and (8).

663       (b) Provide his or her name; date of birth; social  
 664 security number; race; sex; height; weight; hair and eye color;  
 665 tattoos or other identifying marks; occupation and place of  
 666 employment; address of permanent or legal residence or address  
 667 of any current temporary residence, within the state or out of  
 668 state, including a rural route address and a post office box; if  
 669 no permanent or temporary address, any transient residence  
 670 within the state, address, location or description, and dates of  
 671 any current or known future temporary residence within the state

672 or out of state; the make, model, color, registration number,  
 673 and license tag number of all vehicles owned; all home telephone  
 674 numbers ~~number~~ and any cellular telephone numbers ~~number~~; all  
 675 any electronic mail addresses ~~address~~ and all Internet  
 676 identifiers ~~any instant message name~~ required to be provided  
 677 pursuant to paragraph (4)(d); fingerprints; palm prints;  
 678 photograph; date and place of each conviction; and a brief  
 679 description of the crime or crimes committed by the offender. A  
 680 post office box shall not be provided in lieu of a physical  
 681 residential address. The sexual offender must also produce his  
 682 or her passport, if he or she has a passport, and, if he or she  
 683 is an alien, must produce or provide information about documents  
 684 establishing his or her immigration status. The sexual offender  
 685 must also provide information about any professional licenses he  
 686 or she may have.

687 1. If the sexual offender's place of residence is a motor  
 688 vehicle, trailer, mobile home, or manufactured home, as defined  
 689 in chapter 320, the sexual offender shall also provide to the  
 690 department through the sheriff's office written notice of the  
 691 vehicle identification number; the license tag number; the  
 692 registration number; and a description, including color scheme,  
 693 of the motor vehicle, trailer, mobile home, or manufactured  
 694 home. If the sexual offender's place of residence is a vessel,  
 695 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 696 sexual offender shall also provide to the department written  
 697 notice of the hull identification number; the manufacturer's  
 698 serial number; the name of the vessel, live-aboard vessel, or  
 699 houseboat; the registration number; and a description, including

700 color scheme, of the vessel, live-aboard vessel, or houseboat.

701 2. If the sexual offender is enrolled, employed,  
 702 volunteering, or carrying on a vocation at an institution of  
 703 higher education in this state, the sexual offender shall also  
 704 provide to the department through the sheriff's office the name,  
 705 address, and county of each institution, including each campus  
 706 attended, and the sexual offender's enrollment or employment  
 707 status. Each change in enrollment, volunteer, or employment  
 708 status shall be reported in person at the sheriff's office,  
 709 within 48 hours after any change in status. The sheriff shall  
 710 promptly notify each institution of the sexual offender's  
 711 presence and any change in the sexual offender's enrollment,  
 712 volunteer, or employment status.

713 (c) Provide any other information determined necessary by  
 714 the department, including criminal and corrections records;  
 715 nonprivileged personnel and treatment records; and evidentiary  
 716 genetic markers, when available.

717  
 718 When a sexual offender reports at the sheriff's office, the  
 719 sheriff shall take a photograph, and a set of fingerprints, and  
 720 palm prints of the offender and forward the photographs, palm  
 721 prints, and fingerprints to the department, along with the  
 722 information provided by the sexual offender. The sheriff shall  
 723 promptly provide to the department the information received from  
 724 the sexual offender.

725 (4) (a) Each time a sexual offender's driver ~~driver's~~  
 726 license or identification card is subject to renewal, and,  
 727 without regard to the status of the offender's driver ~~driver's~~

728 | license or identification card, within 48 hours after any change  
 729 | in the offender's permanent, temporary, or transient residence  
 730 | or change in the offender's name by reason of marriage or other  
 731 | legal process, the offender shall report in person to a driver  
 732 | ~~driver's~~ license office, and shall be subject to the  
 733 | requirements specified in subsection (3). The Department of  
 734 | Highway Safety and Motor Vehicles shall forward to the  
 735 | department all photographs and information provided by sexual  
 736 | offenders. Notwithstanding the restrictions set forth in s.  
 737 | 322.142, the Department of Highway Safety and Motor Vehicles is  
 738 | authorized to release a reproduction of a color-photograph or  
 739 | digital-image license to the Department of Law Enforcement for  
 740 | purposes of public notification of sexual offenders as provided  
 741 | in this section and ss. 943.043 and 944.606. A sexual offender  
 742 | who is unable to secure or update a driver license or  
 743 | identification card with the Department of Highway Safety and  
 744 | Motor Vehicles as provided in subsection (3) and this subsection  
 745 | must also report any change in the sexual offender's permanent,  
 746 | temporary, or transient residence or change in the offender's  
 747 | name by reason of marriage or other legal process within 48  
 748 | hours after the change to the sheriff's office in the county  
 749 | where the offender resides or is located and provide  
 750 | confirmation that he or she reported such information to the  
 751 | Department of Highway Safety and Motor Vehicles.

752 | (d) A sexual offender must register all ~~any~~ electronic  
 753 | mail addresses and Internet identifiers ~~address or instant~~  
 754 | ~~message name~~ with the department prior to using such electronic  
 755 | mail addresses and Internet identifiers ~~address or instant~~

756 ~~message name on or after October 1, 2007.~~ The department shall  
 757 establish an online system through which sexual offenders may  
 758 securely access and update all electronic mail address and  
 759 Internet identifier ~~instant message name~~ information.

760 (7) A sexual offender who intends to establish a  
 761 permanent, temporary, or transient residence in another state or  
 762 jurisdiction other than the State of Florida shall report in  
 763 person to the sheriff of the county of current residence within  
 764 48 hours before the date he or she intends to leave this state  
 765 to establish residence in another state or jurisdiction or  
 766 within 21 days before his or her planned departure date if the  
 767 intended residence of 5 days or more is outside of the United  
 768 States. The notification must include the address, municipality,  
 769 county, ~~and state,~~ and country of intended residence. The  
 770 sheriff shall promptly provide to the department the information  
 771 received from the sexual offender. The department shall notify  
 772 the statewide law enforcement agency, or a comparable agency, in  
 773 the intended state, ~~or~~ jurisdiction, or country of residence of  
 774 the sexual offender's intended residence. The failure of a  
 775 sexual offender to provide his or her intended place of  
 776 residence is punishable as provided in subsection (9).

777 (8) A sexual offender who indicates his or her intent to  
 778 establish a permanent, temporary, or transient residence in  
 779 another state, a ~~or~~ jurisdiction other than the State of  
 780 Florida, or another country and later decides to remain in this  
 781 state shall, within 48 hours after the date upon which the  
 782 sexual offender indicated he or she would leave this state,  
 783 report in person to the sheriff to which the sexual offender

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784 reported the intended change of permanent, temporary, or  
 785 transient residence, and report his or her intent to remain in  
 786 this state. The sheriff shall promptly report this information  
 787 to the department. A sexual offender who reports his or her  
 788 intent to establish a permanent, temporary, or transient  
 789 residence in another state, a ~~ex~~ jurisdiction other than the  
 790 State of Florida, or another country but who remains in this  
 791 state without reporting to the sheriff in the manner required by  
 792 this subsection commits a felony of the second degree,  
 793 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

794 (11) Except as provided in this subsection and s.  
 795 943.04354, a sexual offender must maintain registration with the  
 796 department for the duration of his or her life, unless the  
 797 sexual offender has received a full pardon or has had a  
 798 conviction set aside in a postconviction proceeding for any  
 799 offense that meets the criteria for classifying the person as a  
 800 sexual offender for purposes of registration. ~~However, a sexual~~  
 801 ~~offender:~~

802 (a)1. A sexual offender may petition the criminal division  
 803 of the circuit court of the circuit in which the sexual offender  
 804 resides for the purpose of removing the requirement for  
 805 registration as a sexual offender if ~~Who has been lawfully~~  
 806 ~~released from confinement, supervision, or sanction, whichever~~  
 807 ~~is later, for at least 25 years and has not been arrested for~~  
 808 ~~any felony or misdemeanor offense since release, provided that~~  
 809 ~~the sexual offender's requirement to register was not based upon~~  
 810 ~~an adult conviction:~~

811 a. Twenty-five years have elapsed since the sexual

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812 offender's registration period for the most recent conviction  
 813 that required the offender to register began;

814 b. The sexual offender has not been convicted or  
 815 adjudicated delinquent of any felony offense or of an offense  
 816 punishable by more than 1 year of imprisonment during the 25  
 817 years preceding the petition to the court;

818 c. The sexual offender has successfully completed all  
 819 sanctions imposed for all offenses that required the offender to  
 820 register;

821 d. The sexual offender's requirement to register was not  
 822 based upon an adult conviction for a violation of s. 787.01, s.  
 823 794.011, excluding s. 794.011(10), s. 800.04(4)(b) where the  
 824 court finds the offense involved a victim under 12 years of age  
 825 or sexual activity by the use of force or coercion, s.  
 826 800.04(5)(b), or s. 800.04(5)(c)2. where the court finds the  
 827 offense involved unclothed genitals or genital area; for any  
 828 attempt or conspiracy to commit any offense listed in this sub-  
 829 subparagraph; or for a violation of similar law of another  
 830 jurisdiction; and

831 e. For sexual offenders whose requirement to register is  
 832 based upon a conviction in another state, the sexual offender is  
 833 not required to register as a sexual offender pursuant to the  
 834 laws of the state where the conviction occurred.

835 ~~a. For a violation of s. 787.01 or s. 787.02;~~

836 ~~b. For a violation of s. 794.011, excluding s.~~  
 837 ~~794.011(10);~~

838 ~~c. For a violation of s. 800.04(4)(b) where the court~~  
 839 ~~finds the offense involved a victim under 12 years of age or~~

840 ~~sexual activity by the use of force or coercion;~~  
 841 ~~d. For a violation of s. 800.04(5)(b);~~  
 842 ~~e. For a violation of s. 800.04(5)c.2. where the court~~  
 843 ~~finds the offense involved unclothed genitals or genital area;~~  
 844 ~~f. For any attempt or conspiracy to commit any such~~  
 845 ~~offense; or~~  
 846 ~~g. For a violation of similar law of another jurisdiction,~~  
 847  
 848 ~~may petition the criminal division of the circuit court of the~~  
 849 ~~circuit in which the sexual offender resides for the purpose of~~  
 850 ~~removing the requirement for registration as a sexual offender.~~  
 851 2. A sexual offender whose requirement to register was  
 852 based upon an adult conviction for a violation of s. 787.02 or  
 853 s. 827.071(5), for any attempt or conspiracy to commit any  
 854 offense listed in this subparagraph, or for a violation of  
 855 similar law of another jurisdiction may petition the criminal  
 856 division of the circuit court of the circuit in which the sexual  
 857 offender resides for the purpose of removing the requirement for  
 858 registration as a sexual offender if:  
 859 a. Fifteen years have elapsed since the sexual offender's  
 860 registration period for the most recent conviction that required  
 861 the offender to register began;  
 862 b. The sexual offender has not been convicted or  
 863 adjudicated delinquent of any felony offense or of an offense  
 864 punishable by more than 1 year of imprisonment during the 10  
 865 years preceding the petition to the court;  
 866 c. The sexual offender has successfully completed all  
 867 sanctions imposed for all offenses that required the offender to



868 register; and

869 d. For sexual offenders whose requirement to register is  
 870 based upon a conviction in another state, the sexual offender is  
 871 not required to register as a sexual offender pursuant to the  
 872 laws of the state where the conviction occurred.

873 3. A sexual offender required to register under sub-  
 874 subparagraph (1)(a)1.d. may petition the criminal division of  
 875 the circuit court of the circuit in which the sexual offender  
 876 resides for the purpose of removing the requirement for  
 877 registration as a sexual offender if:

878 a. Twenty-five years have elapsed since the sexual  
 879 offender's registration period for the most recent adjudication  
 880 that required the offender to register began;

881 b. The sexual offender has not been convicted or  
 882 adjudicated delinquent of any felony offense or of an offense  
 883 punishable by more than 1 year of imprisonment during the 25  
 884 years preceding the petition to the court; and

885 c. The sexual offender has successfully completed all  
 886 sanctions imposed for any offense that required the offender to  
 887 register.

888 4.2- The court may grant or deny relief if the offender  
 889 demonstrates to the court that ~~he or she has not been arrested~~  
 890 ~~for any crime since release;~~ the requested relief complies with  
 891 this paragraph, ~~the provisions of~~ the federal Adam Walsh Child  
 892 Protection and Safety Act of 2006, and any other federal  
 893 standards applicable to the removal of registration requirements  
 894 for a sexual offender or required to be met as a condition for  
 895 the receipt of federal funds by the state; and the court is

896 otherwise satisfied that the offender is not a current or  
 897 potential threat to public safety. The state attorney in the  
 898 circuit in which the petition is filed and the department must  
 899 be given notice of the petition at least 3 weeks before the  
 900 hearing on the matter. The state attorney may present evidence  
 901 in opposition to the requested relief or may otherwise  
 902 demonstrate the reasons why the petition should be denied. If  
 903 the court grants the petition, the court shall instruct the  
 904 petitioner to provide the department with a certified copy of  
 905 the order granting relief. If the court denies the petition, the  
 906 court may set a future date at which the sexual offender may  
 907 again petition the court for relief, subject to the standards  
 908 for relief provided in this subsection.

909 ~~5.3.~~ The department shall remove an offender from  
 910 classification as a sexual offender for purposes of registration  
 911 if the offender provides to the department a certified copy of  
 912 the court's written findings or order that indicates that the  
 913 offender is no longer required to comply with the requirements  
 914 for registration as a sexual offender.

915 6. For purposes of this paragraph:

916 a. The registration period of a sexual offender sentenced  
 917 to a term of incarceration or committed to a residential program  
 918 begins upon the offender's release for the most recent  
 919 conviction that required the offender to register.

920 b. A sexual offender's registration period is tolled  
 921 during any period in which the offender is incarcerated, civilly  
 922 committed, detained pursuant to chapter 985, or committed to a  
 923 residential program.

924 (b) A sexual offender as defined in sub-subparagraph  
 925 (1)(a)1.b. must maintain registration with the department for  
 926 the duration of his or her life until the person provides the  
 927 department with an order issued by the court that designated the  
 928 person as a sexual predator, as a sexually violent predator, or  
 929 by another sexual offender designation in the state or  
 930 jurisdiction in which the order was issued which states that  
 931 such designation has been removed or demonstrates to the  
 932 department that such designation, if not imposed by a court, has  
 933 been removed by operation of law or court order in the state or  
 934 jurisdiction in which the designation was made, and provided  
 935 such person no longer meets the criteria for registration as a  
 936 sexual offender under the laws of this state.

937 (14)

938 (c) The sheriff's office may determine the appropriate  
 939 times and days for reporting by the sexual offender, which shall  
 940 be consistent with the reporting requirements of this  
 941 subsection. Reregistration shall include any changes to the  
 942 following information:

943 1. Name; social security number; age; race; sex; date of  
 944 birth; height; weight; hair and eye color; address of any  
 945 permanent residence and address of any current temporary  
 946 residence, within the state or out of state, including a rural  
 947 route address and a post office box; if no permanent or  
 948 temporary address, any transient residence within the state;  
 949 address, location or description, and dates of any current or  
 950 known future temporary residence within the state or out of  
 951 state; all ~~any~~ electronic mail addresses ~~address~~ and all

952 | Internet identifiers ~~any instant message name~~ required to be  
 953 | provided pursuant to paragraph (4) (d); all home telephone  
 954 | numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; date  
 955 | and place of any employment; ~~the~~ ~~vehicle~~ make, model, color,  
 956 | registration number, and license tag number of all vehicles  
 957 | owned; fingerprints; palm prints; and photograph. A post office  
 958 | box ~~may shall~~ not be provided in lieu of a physical residential  
 959 | address. The sexual offender must also produce his or her  
 960 | passport, if he or she has a passport, and, if he or she is an  
 961 | alien, must produce or provide information about documents  
 962 | establishing his or her immigration status. The sexual offender  
 963 | must also provide information about any professional licenses he  
 964 | or she may have.

965 |         2. If the sexual offender is enrolled, volunteering,  
 966 | employed, or carrying on a vocation at an institution of higher  
 967 | education in this state, the sexual offender shall also provide  
 968 | to the department the name, address, and county of each  
 969 | institution, including each campus attended, and the sexual  
 970 | offender's enrollment, volunteer, or employment status.

971 |         3. If the sexual offender's place of residence is a motor  
 972 | vehicle, trailer, mobile home, or manufactured home, as defined  
 973 | in chapter 320, the sexual offender shall also provide the  
 974 | vehicle identification number; the license tag number; the  
 975 | registration number; and a description, including color scheme,  
 976 | of the motor vehicle, trailer, mobile home, or manufactured  
 977 | home. If the sexual offender's place of residence is a vessel,  
 978 | live-aboard vessel, or houseboat, as defined in chapter 327, the  
 979 | sexual offender shall also provide the hull identification

980 number; the manufacturer's serial number; the name of the  
 981 vessel, live-aboard vessel, or houseboat; the registration  
 982 number; and a description, including color scheme, of the  
 983 vessel, live-aboard vessel or houseboat.

984 4. Any sexual offender who fails to report in person as  
 985 required at the sheriff's office, ~~or~~ who fails to respond to any  
 986 address verification correspondence from the department within 3  
 987 weeks of the date of the correspondence, ~~or~~ who fails to report  
 988 all electronic mail addresses and all Internet identifiers ~~or~~  
 989 ~~instant message names,~~ or who knowingly provides false  
 990 registration information by act or omission commits a felony of  
 991 the third degree, punishable as provided in s. 775.082, s.  
 992 775.083, or s. 775.084.

993 Section 5. Section 943.04351, Florida Statutes, is amended  
 994 to read:

995 943.04351 Search of registration information regarding  
 996 sexual predators and sexual offenders required prior to  
 997 appointment or employment.—A state agency or governmental  
 998 subdivision, prior to making any decision to appoint or employ a  
 999 person to work, whether for compensation or as a volunteer, at  
 1000 any park, playground, day care center, or other place where  
 1001 children regularly congregate, must conduct a search of that  
 1002 person's name or other identifying information against the  
 1003 registration information regarding sexual predators and sexual  
 1004 offenders maintained by the Department of Law Enforcement under  
 1005 s. 943.043. The agency or governmental subdivision may conduct  
 1006 the search using the Internet site maintained by the Department  
 1007 of Law Enforcement. Also, a national search must be conducted

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1008 through the Dru Sjodin National Sex Offender Public Website  
 1009 maintained by the United States Department of Justice. This  
 1010 section does not apply to those positions or appointments within  
 1011 a state agency or governmental subdivision for which a state and  
 1012 national criminal history background check is conducted.

1013 Section 6. Section 943.04354, Florida Statutes, is amended  
 1014 to read:

1015 943.04354 Removal of the requirement to register as a  
 1016 sexual offender or sexual predator in special circumstances.—

1017 (1) For purposes of this section, a person shall be  
 1018 considered for removal of the requirement to register as a  
 1019 sexual offender or sexual predator only if the person:

1020 (a) Was ~~or will be~~ convicted, regardless of adjudication,  
 1021 or adjudicated delinquent of a violation of s. 794.011, s.  
 1022 800.04, s. 827.071, or s. 847.0135(5), or a similar offense in  
 1023 another jurisdiction, ~~or the person committed a violation of s.~~  
 1024 ~~794.011, s. 800.04, s. 827.071, or s. 847.0135(5) for which~~  
 1025 ~~adjudication of guilt was or will be withheld,~~ and the person  
 1026 does not have any other conviction, regardless of adjudication,  
 1027 ~~or adjudication of delinquency, or withhold of adjudication of~~  
 1028 ~~guilt~~ for a violation of s. 794.011, s. 800.04, s. 827.071, or  
 1029 s. 847.0135(5), or a similar offense in another jurisdiction;

1030 (b)1. Was convicted, regardless of adjudication, or  
 1031 adjudicated delinquent of an offense listed in paragraph (a) and  
 1032 is required to register as a sexual offender or sexual predator  
 1033 solely on the basis of this conviction or adjudication  
 1034 violation; or and

1035 2. Was convicted, regardless of adjudication, or

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1036 adjudicated delinquent of an offense in another jurisdiction  
 1037 that is similar to an offense listed in paragraph (a) and no  
 1038 longer meets the criteria for registration as a sexual offender  
 1039 or sexual predator under the laws of the jurisdiction where the  
 1040 similar offense occurred; and

1041 (c) Is not more than 4 years older than the victim of this  
 1042 violation who was 13 ~~14~~ years of age or older but less ~~not more~~  
 1043 than 18 ~~17~~ years of age at the time the person committed this  
 1044 violation.

1045 (2) If a person meets the criteria in subsection (1) ~~and~~  
 1046 ~~the violation of s. 794.011, s. 800.04, s. 827.071, or s.~~  
 1047 ~~847.0135(5) was committed on or after July 1, 2007, the person~~  
 1048 may move the sentencing court or, for persons convicted or  
 1049 adjudicated delinquent of a qualifying offense in another  
 1050 jurisdiction, the criminal circuit court of the circuit in which  
 1051 the person resides ~~that will sentence or dispose of this~~  
 1052 ~~violation~~ to remove the requirement that the person register as  
 1053 a sexual offender or sexual predator. The person must allege in  
 1054 the motion that he or she meets the criteria in subsection (1)  
 1055 and that removal of the registration requirement will not  
 1056 conflict with federal law. Persons convicted or adjudicated  
 1057 delinquent of an offense in another jurisdiction that is similar  
 1058 to an offense listed in paragraph (1)(a) must provide the court  
 1059 written confirmation that he or she is not required to register  
 1060 in the state where the conviction or adjudication occurred. The  
 1061 state attorney and the department must be given notice of the  
 1062 motion at least 21 days before the date of sentencing, ~~or~~  
 1063 disposition of the ~~this~~ violation, or hearing on the motion and

1064 may present evidence in opposition to the requested relief or  
 1065 may otherwise demonstrate why the motion should be denied. At  
 1066 sentencing, ~~or~~ disposition of the ~~this~~ violation, or hearing on  
 1067 the motion, the court shall rule on this motion and, if the  
 1068 court determines the person meets the criteria in subsection (1)  
 1069 and the removal of the registration requirement will not  
 1070 conflict with federal law, it may grant the motion and order the  
 1071 removal of the registration requirement. The court shall  
 1072 instruct the person to provide the department a certified copy  
 1073 of the order granting relief. If the court denies the motion,  
 1074 the person is not authorized under this section to petition for  
 1075 removal of the registration requirement.

1076 ~~(3)(a) This subsection applies to a person who:~~  
 1077 ~~1. Is not a person described in subsection (2) because the~~  
 1078 ~~violation of s. 794.011, s. 800.04, or s. 827.071 was not~~  
 1079 ~~committed on or after July 1, 2007;~~  
 1080 ~~2. Is subject to registration as a sexual offender or~~  
 1081 ~~sexual predator for a violation of s. 794.011, s. 800.04, or s.~~  
 1082 ~~827.071; and~~  
 1083 ~~3. Meets the criteria in subsection (1).~~

1084 ~~(b) A person may petition the court in which the sentence~~  
 1085 ~~or disposition for the violation of s. 794.011, s. 800.04, or s.~~  
 1086 ~~827.071 occurred for removal of the requirement to register as a~~  
 1087 ~~sexual offender or sexual predator. The person must allege in~~  
 1088 ~~the petition that he or she meets the criteria in subsection (1)~~  
 1089 ~~and removal of the registration requirement will not conflict~~  
 1090 ~~with federal law. The state attorney must be given notice of the~~  
 1091 ~~petition at least 21 days before the hearing on the petition and~~



1092 ~~may present evidence in opposition to the requested relief or~~  
 1093 ~~may otherwise demonstrate why the petition should be denied. The~~  
 1094 ~~court shall rule on the petition and, if the court determines~~  
 1095 ~~the person meets the criteria in subsection (1) and removal of~~  
 1096 ~~the registration requirement will not conflict with federal law,~~  
 1097 ~~it may grant the petition and order the removal of the~~  
 1098 ~~registration requirement. If the court denies the petition, the~~  
 1099 ~~person is not authorized under this section to file any further~~  
 1100 ~~petition for removal of the registration requirement.~~

1101 (3)~~(4)~~ If a person provides to the Department of Law  
 1102 Enforcement a certified copy of the court's order removing the  
 1103 requirement that the person register as a sexual offender or  
 1104 sexual predator for the violation of s. 794.011, s. 800.04, s.  
 1105 827.071, or s. 847.0135(5), or a similar offense in another  
 1106 jurisdiction, the registration requirement will not apply to the  
 1107 person and the department shall remove all information about the  
 1108 person from the public registry of sexual offenders and sexual  
 1109 predators maintained by the department. However, the removal of  
 1110 this information from the public registry does not mean that the  
 1111 public is denied access to information about the person's  
 1112 criminal history or record that is otherwise available as a  
 1113 public record.

1114 Section 7. Subsection (2) and paragraph (a) of subsection  
 1115 (3) of section 943.0437, Florida Statutes, are amended to read:  
 1116 943.0437 Commercial social networking websites.—

1117 (2) The department may provide information relating to  
 1118 electronic mail addresses and Internet identifiers ~~instant~~  
 1119 ~~message names~~ maintained as part of the sexual offender registry

1120 to commercial social networking websites or third parties  
 1121 designated by commercial social networking websites. The  
 1122 commercial social networking website may use this information  
 1123 for the purpose of comparing registered users and screening  
 1124 potential users of the commercial social networking website  
 1125 against the list of electronic mail addresses and Internet  
 1126 identifiers ~~instant message names~~ provided by the department.

1127 (3) This section shall not be construed to impose any  
 1128 civil liability on a commercial social networking website for:

1129 (a) Any action voluntarily taken in good faith to remove  
 1130 or disable any profile of a registered user associated with an  
 1131 electronic mail address or Internet identifier ~~instant message~~  
 1132 ~~name~~ contained in the sexual offender registry.

1133 Section 8. Paragraphs (b) and (d) of subsection (1) and  
 1134 paragraph (a) of subsection (3) of section 944.606, Florida  
 1135 Statutes, are amended to read:

1136 944.606 Sexual offenders; notification upon release.—

1137 (1) As used in this section:

1138 (b) "Sexual offender" means a person who has been  
 1139 convicted of committing, or attempting, soliciting, or  
 1140 conspiring to commit, any of the criminal offenses proscribed in  
 1141 the following statutes in this state or similar offenses in  
 1142 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,  
 1143 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and  
 1144 the defendant is not the victim's parent or guardian; s.  
 1145 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.  
 1146 796.045; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s.  
 1147 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.

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1148 847.0138; s. 847.0145; s. 916.1075(2); or s. 985.701(1); or any  
 1149 similar offense committed in this state which has been  
 1150 redesignated from a former statute number to one of those listed  
 1151 in this subsection, when the department has received verified  
 1152 information regarding such conviction; an offender's  
 1153 computerized criminal history record is not, in and of itself,  
 1154 verified information.

1155 (d) "Internet identifier ~~Instant message name~~" has the  
 1156 same meaning as provided in s. 775.21 ~~means an identifier that~~  
 1157 ~~allows a person to communicate in real time with another person~~  
 1158 ~~using the Internet.~~

1159 (3)(a) The department must provide information regarding  
 1160 any sexual offender who is being released after serving a period  
 1161 of incarceration for any offense, as follows:

1162 1. The department must provide: the sexual offender's  
 1163 name, any change in the offender's name by reason of marriage or  
 1164 other legal process, and any alias, if known; the correctional  
 1165 facility from which the sexual offender is released; the sexual  
 1166 offender's social security number, race, sex, date of birth,  
 1167 height, weight, and hair and eye color; address of any planned  
 1168 permanent residence or temporary residence, within the state or  
 1169 out of state, including a rural route address and a post office  
 1170 box; if no permanent or temporary address, any transient  
 1171 residence within the state; address, location or description,  
 1172 and dates of any known future temporary residence within the  
 1173 state or out of state; date and county of sentence and each  
 1174 crime for which the offender was sentenced; a copy of the  
 1175 offender's fingerprints, palm prints, and a digitized photograph

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1176 taken within 60 days before release; the date of release of the  
 1177 sexual offender; all ~~any~~ electronic mail addresses ~~address~~ and  
 1178 all Internet identifiers ~~any instant message name~~ required to be  
 1179 provided pursuant to s. 943.0435(4) (d); all ~~and~~ home telephone  
 1180 numbers ~~number~~ and any cellular telephone numbers; information  
 1181 about any professional licenses the offender may have, if known;  
 1182 and passport information, if he or she has a passport, and, if  
 1183 he or she is an alien, information about documents establishing  
 1184 his or her immigration status ~~number~~. The department shall  
 1185 notify the Department of Law Enforcement if the sexual offender  
 1186 escapes, absconds, or dies. If the sexual offender is in the  
 1187 custody of a private correctional facility, the facility shall  
 1188 take the digitized photograph of the sexual offender within 60  
 1189 days before the sexual offender's release and provide this  
 1190 photograph to the Department of Corrections and also place it in  
 1191 the sexual offender's file. If the sexual offender is in the  
 1192 custody of a local jail, the custodian of the local jail shall  
 1193 register the offender within 3 business days after intake of the  
 1194 offender for any reason and upon release, and shall notify the  
 1195 Department of Law Enforcement of the sexual offender's release  
 1196 and provide to the Department of Law Enforcement the information  
 1197 specified in this paragraph and any information specified in  
 1198 subparagraph 2. that the Department of Law Enforcement requests.  
 1199         2. The department may provide any other information deemed  
 1200 necessary, including criminal and corrections records,  
 1201 nonprivileged personnel and treatment records, when available.

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1202 Section 9. Paragraphs (a) and (f) of subsection (1),  
 1203 subsection (4), and paragraph (c) of subsection (13) of section  
 1204 944.607, Florida Statutes, are amended to read:

1205 944.607 Notification to Department of Law Enforcement of  
 1206 information on sexual offenders.—

1207 (1) As used in this section, the term:

1208 (a) "Sexual offender" means a person who is in the custody  
 1209 or control of, or under the supervision of, the department or is  
 1210 in the custody of a private correctional facility:

1211 1. On or after October 1, 1997, as a result of a  
 1212 conviction for committing, or attempting, soliciting, or  
 1213 conspiring to commit, any of the criminal offenses proscribed in  
 1214 the following statutes in this state or similar offenses in  
 1215 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,  
 1216 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and  
 1217 the defendant is not the victim's parent or guardian; s.  
 1218 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.  
 1219 796.035; s. 796.045; s. 800.04; s. 825.1025; s. 827.071; s.  
 1220 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.  
 1221 847.0138; s. 847.0145; s. 916.1075(2); or s. 985.701(1); or any  
 1222 similar offense committed in this state which has been  
 1223 redesignated from a former statute number to one of those listed  
 1224 in this paragraph; or

1225 2. Who establishes or maintains a residence in this state  
 1226 and who has not been designated as a sexual predator by a court  
 1227 of this state but who has been designated as a sexual predator,  
 1228 as a sexually violent predator, or by another sexual offender  
 1229 designation in another state or jurisdiction and was, as a

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1230 result of such designation, subjected to registration or  
 1231 community or public notification, or both, or would be if the  
 1232 person were a resident of that state or jurisdiction, without  
 1233 regard as to whether the person otherwise meets the criteria for  
 1234 registration as a sexual offender.

1235 (f) "Internet identifier ~~Instant message name~~" has the  
 1236 same meaning as provided in s. 775.21 ~~means an identifier that~~  
 1237 ~~allows a person to communicate in real time with another person~~  
 1238 ~~using the Internet.~~

1239 (4) A sexual offender, as described in this section, who  
 1240 is under the supervision of the Department of Corrections but is  
 1241 not incarcerated must register with the Department of  
 1242 Corrections within 3 business days after sentencing for a  
 1243 registrable offense and otherwise provide information as  
 1244 required by this subsection.

1245 (a) The sexual offender shall provide his or her name;  
 1246 date of birth; social security number; race; sex; height;  
 1247 weight; hair and eye color; tattoos or other identifying marks;  
 1248 all any electronic mail addresses ~~address~~ and all Internet  
 1249 identifiers ~~any instant message name~~ required to be provided  
 1250 pursuant to s. 943.0435(4)(d); the make, model, color,  
 1251 registration number, and license tag number of all vehicles  
 1252 owned; permanent or legal residence and address of temporary  
 1253 residence within the state or out of state while the sexual  
 1254 offender is under supervision in this state, including any rural  
 1255 route address or post office box; if no permanent or temporary  
 1256 address, any transient residence within the state; and address,  
 1257 location or description, and dates of any current or known

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1258 | future temporary residence within the state or out of state. The  
 1259 | sexual offender must also produce his or her passport, if he or  
 1260 | she has a passport, and, if he or she is an alien, must produce  
 1261 | or provide information about documents establishing his or her  
 1262 | immigration status. The sexual offender must also provide  
 1263 | information about any professional licenses he or she may have.  
 1264 | The Department of Corrections shall verify the address of each  
 1265 | sexual offender in the manner described in ss. 775.21 and  
 1266 | 943.0435. The department shall report to the Department of Law  
 1267 | Enforcement any failure by a sexual predator or sexual offender  
 1268 | to comply with registration requirements.

1269 |         (b) If the sexual offender is enrolled, employed,  
 1270 | volunteering, or carrying on a vocation at an institution of  
 1271 | higher education in this state, the sexual offender shall  
 1272 | provide the name, address, and county of each institution,  
 1273 | including each campus attended, and the sexual offender's  
 1274 | enrollment, volunteer, or employment status. Each change in  
 1275 | enrollment, volunteer, or employment status shall be reported to  
 1276 | the department within 48 hours after the change in status. The  
 1277 | Department of Corrections shall promptly notify each institution  
 1278 | of the sexual offender's presence and any change in the sexual  
 1279 | offender's enrollment, volunteer, or employment status.

1280 |         (13)

1281 |         (c) The sheriff's office may determine the appropriate  
 1282 | times and days for reporting by the sexual offender, which shall  
 1283 | be consistent with the reporting requirements of this  
 1284 | subsection. Reregistration shall include any changes to the  
 1285 | following information:

1286 1. Name; social security number; age; race; sex; date of  
 1287 birth; height; weight; hair and eye color; address of any  
 1288 permanent residence and address of any current temporary  
 1289 residence, within the state or out of state, including a rural  
 1290 route address and a post office box; if no permanent or  
 1291 temporary address, any transient residence; address, location or  
 1292 description, and dates of any current or known future temporary  
 1293 residence within the state or out of state; all ~~any~~ electronic  
 1294 mail addresses ~~address~~ and all Internet identifiers ~~any instant~~  
 1295 ~~message name~~ required to be provided pursuant to s.  
 1296 943.0435(4) (d); date and place of any employment; the ~~vehicle~~  
 1297 make, model, color, registration number, and license tag number  
 1298 of all vehicles owned; fingerprints; palm prints; and  
 1299 photograph. A post office box shall not be provided in lieu of a  
 1300 physical residential address. The sexual offender must also  
 1301 produce his or her passport, if he or she has a passport, and,  
 1302 if he or she is an alien, must produce or provide information  
 1303 about documents establishing his or her immigration status. The  
 1304 sexual offender must also provide information about any  
 1305 professional licenses he or she may have.

1306 2. If the sexual offender is enrolled, employed,  
 1307 volunteering, or carrying on a vocation at an institution of  
 1308 higher education in this state, the sexual offender shall also  
 1309 provide to the department the name, address, and county of each  
 1310 institution, including each campus attended, and the sexual  
 1311 offender's enrollment, volunteer, or employment status.

1312 3. If the sexual offender's place of residence is a motor  
 1313 vehicle, trailer, mobile home, or manufactured home, as defined



1314 in chapter 320, the sexual offender shall also provide the  
 1315 vehicle identification number; the license tag number; the  
 1316 registration number; and a description, including color scheme,  
 1317 of the motor vehicle, trailer, mobile home, or manufactured  
 1318 home. If the sexual offender's place of residence is a vessel,  
 1319 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 1320 sexual offender shall also provide the hull identification  
 1321 number; the manufacturer's serial number; the name of the  
 1322 vessel, live-aboard vessel, or houseboat; the registration  
 1323 number; and a description, including color scheme, of the  
 1324 vessel, live-aboard vessel or houseboat.

1325 4. Any sexual offender who fails to report in person as  
 1326 required at the sheriff's office, ~~or~~ who fails to respond to any  
 1327 address verification correspondence from the department within 3  
 1328 weeks of the date of the correspondence, ~~or~~ who fails to report  
 1329 all electronic mail addresses and all Internet identifiers ~~or~~  
 1330 ~~instant message names,~~ or who knowingly provides false  
 1331 registration information by act or omission commits a felony of  
 1332 the third degree, punishable as provided in s. 775.082, s.  
 1333 775.083, or s. 775.084.

1334 Section 10. Subsection (11) of section 947.005, Florida  
 1335 Statutes, is amended to read:

1336 947.005 Definitions.—As used in this chapter, unless the  
 1337 context clearly indicates otherwise:

1338 (11) "Risk assessment" means an assessment completed by a  
 1339 ~~an independent~~ qualified practitioner to evaluate the level of  
 1340 risk associated when a sex offender has contact with a child.

1341 Section 11. Section 948.31, Florida Statutes, is amended  
 1342 to read:

1343 948.31 Evaluation and treatment of sexual predators and  
 1344 offenders on probation or community control.—The court may ~~shall~~  
 1345 require an evaluation by a qualified practitioner to determine  
 1346 ~~the need of a probationer or community controllee for treatment.~~  
 1347 ~~If the court determines that a need therefor is established by~~  
 1348 ~~the evaluation process, the court shall require sexual offender~~  
 1349 ~~treatment as a term or condition of probation or community~~  
 1350 ~~control for any probationer or community controllee person who~~  
 1351 is required to register as a sexual predator under s. 775.21 or  
 1352 sexual offender under s. 943.0435, s. 944.606, or s. 944.607 to  
 1353 undergo an evaluation, at the probationer or community  
 1354 controllee's expense, by a qualified practitioner to determine  
 1355 whether such person needs sexual offender treatment. If the  
 1356 qualified practitioner determines that sexual offender treatment  
 1357 is needed and recommends treatment, the probationer or community  
 1358 controllee must successfully complete and pay for the treatment.  
 1359 Such treatment must ~~shall be required to~~ be obtained from a  
 1360 qualified practitioner as defined in s. 948.001. Treatment may  
 1361 not be administered by a qualified practitioner who has been  
 1362 convicted or adjudicated delinquent of committing, or  
 1363 attempting, soliciting, or conspiring to commit, any offense  
 1364 that is listed in s. 943.0435(1)(a)1.a.(I). ~~The court shall~~  
 1365 ~~impose a restriction against contact with minors if sexual~~  
 1366 ~~offender treatment is recommended. The evaluation and~~  
 1367 ~~recommendations for treatment of the probationer or community~~  
 1368 ~~controllee shall be provided to the court for review.~~

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1369 Section 12. Paragraph (a) of subsection (3) of section  
 1370 985.481, Florida Statutes, is amended to read:

1371 985.481 Sexual offenders adjudicated delinquent;  
 1372 notification upon release.—

1373 (3) (a) The department must provide information regarding  
 1374 any sexual offender who is being released after serving a period  
 1375 of residential commitment under the department for any offense,  
 1376 as follows:

1377 1. The department must provide the sexual offender's name,  
 1378 any change in the offender's name by reason of marriage or other  
 1379 legal process, and any alias, if known; the correctional  
 1380 facility from which the sexual offender is released; the sexual  
 1381 offender's social security number, race, sex, date of birth,  
 1382 height, weight, and hair and eye color; the make, model, color,  
 1383 registration number, and license tag number of all vehicles  
 1384 owned, if known; address of any planned permanent residence or  
 1385 temporary residence, within the state or out of state, including  
 1386 a rural route address and a post office box; if no permanent or  
 1387 temporary address, any transient residence within the state;  
 1388 address, location or description, and dates of any known future  
 1389 temporary residence within the state or out of state; date and  
 1390 county of disposition and each crime for which there was a  
 1391 disposition; a copy of the offender's fingerprints and a  
 1392 digitized photograph taken within 60 days before release; the  
 1393 date of release of the sexual offender; all ~~and~~ home telephone  
 1394 numbers ~~number~~ and ~~any~~ cellular telephone numbers; information  
 1395 about any professional licenses the offender may have, if known;  
 1396 and passport information, if he or she has a passport, and, if

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1397 he or she is an alien, information about documents establishing  
 1398 his or her immigration status number. The department shall  
 1399 notify the Department of Law Enforcement if the sexual offender  
 1400 escapes, absconds, or dies. If the sexual offender is in the  
 1401 custody of a private correctional facility, the facility shall  
 1402 take the digitized photograph of the sexual offender within 60  
 1403 days before the sexual offender's release and also place it in  
 1404 the sexual offender's file. If the sexual offender is in the  
 1405 custody of a local jail, the custodian of the local jail shall  
 1406 register the offender within 3 business days after intake of the  
 1407 offender for any reason and upon release, and shall notify the  
 1408 Department of Law Enforcement of the sexual offender's release  
 1409 and provide to the Department of Law Enforcement the information  
 1410 specified in this subparagraph and any information specified in  
 1411 subparagraph 2. which the Department of Law Enforcement  
 1412 requests.

1413         2. The department may provide any other information  
 1414 considered necessary, including criminal and delinquency  
 1415 records, when available.

1416         Section 13. Subsection (4) and paragraph (b) of subsection  
 1417 (13) of section 985.4815, Florida Statutes, are amended to read:  
 1418         985.4815 Notification to Department of Law Enforcement of  
 1419 information on juvenile sexual offenders.—

1420         (4) A sexual offender, as described in this section, who  
 1421 is under the supervision of the department but who is not  
 1422 committed must register with the department within 3 business  
 1423 days after adjudication and disposition for a registrable  
 1424 offense and otherwise provide information as required by this

1425 subsection.

1426 (a) The sexual offender shall provide his or her name;  
 1427 date of birth; social security number; race; sex; height;  
 1428 weight; hair and eye color; tattoos or other identifying marks;  
 1429 the make, model, color, registration number, and license tag  
 1430 number of all vehicles owned; permanent or legal residence and  
 1431 address of temporary residence within the state or out of state  
 1432 while the sexual offender is in the care or custody or under the  
 1433 jurisdiction or supervision of the department in this state,  
 1434 including any rural route address or post office box; if no  
 1435 permanent or temporary address, any transient residence;  
 1436 address, location or description, and dates of any current or  
 1437 known future temporary residence within the state or out of  
 1438 state; and the name and address of each school attended. The  
 1439 sexual offender must also produce his or her passport, if he or  
 1440 she has a passport, and, if he or she is an alien, must produce  
 1441 or provide information about documents establishing his or her  
 1442 immigration status. The offender must also provide information  
 1443 about any professional licenses he or she may have. The  
 1444 department shall verify the address of each sexual offender and  
 1445 shall report to the Department of Law Enforcement any failure by  
 1446 a sexual offender to comply with registration requirements.

1447 (b) If the sexual offender is enrolled, employed,  
 1448 volunteering, or carrying on a vocation at an institution of  
 1449 higher education in this state, the sexual offender shall  
 1450 provide the name, address, and county of each institution,  
 1451 including each campus attended, and the sexual offender's  
 1452 enrollment, volunteer, or employment status. Each change in

1453 enrollment, volunteer, or employment status shall be reported to  
 1454 the department within 48 hours after the change in status. The  
 1455 department shall promptly notify each institution of the sexual  
 1456 offender's presence and any change in the sexual offender's  
 1457 enrollment, volunteer, or employment status.

1458 (13)

1459 (b) The sheriff's office may determine the appropriate  
 1460 times and days for reporting by the sexual offender, which shall  
 1461 be consistent with the reporting requirements of this  
 1462 subsection. Reregistration shall include any changes to the  
 1463 following information:

1464 1. Name; social security number; age; race; sex; date of  
 1465 birth; height; weight; hair and eye color; fingerprints; palm  
 1466 prints; address of any permanent residence and address of any  
 1467 current temporary residence, within the state or out of state,  
 1468 including a rural route address and a post office box; if no  
 1469 permanent or temporary address, any transient residence;  
 1470 address, location or description, and dates of any current or  
 1471 known future temporary residence within the state or out of  
 1472 state; passport information, if he or she has a passport, and,  
 1473 if he or she is an alien, information about documents  
 1474 establishing his or her immigration status; name and address of  
 1475 each school attended; date and place of any employment; the  
 1476 ~~vehicle~~ make, model, color, registration number, and license tag  
 1477 number of all vehicles owned; ~~fingerprints;~~ and photograph. A  
 1478 post office box shall not be provided in lieu of a physical  
 1479 residential address. The offender must also provide information  
 1480 about any professional licenses he or she may have.

1481           2. If the sexual offender is enrolled, employed,  
 1482 volunteering, or carrying on a vocation at an institution of  
 1483 higher education in this state, the sexual offender shall also  
 1484 provide to the department the name, address, and county of each  
 1485 institution, including each campus attended, and the sexual  
 1486 offender's enrollment, volunteer, or employment status.

1487           3. If the sexual offender's place of residence is a motor  
 1488 vehicle, trailer, mobile home, or manufactured home, as defined  
 1489 in chapter 320, the sexual offender shall also provide the  
 1490 vehicle identification number; the license tag number; the  
 1491 registration number; and a description, including color scheme,  
 1492 of the motor vehicle, trailer, mobile home, or manufactured  
 1493 home. If the sexual offender's place of residence is a vessel,  
 1494 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 1495 sexual offender shall also provide the hull identification  
 1496 number; the manufacturer's serial number; the name of the  
 1497 vessel, live-aboard vessel, or houseboat; the registration  
 1498 number; and a description, including color scheme, of the  
 1499 vessel, live-aboard vessel, or houseboat.

1500           4. Any sexual offender who fails to report in person as  
 1501 required at the sheriff's office, ~~or~~ who fails to respond to any  
 1502 address verification correspondence from the department within 3  
 1503 weeks after the date of the correspondence, or who knowingly  
 1504 provides false registration information by act or omission  
 1505 commits a felony of the third degree, punishable as provided in  
 1506 ss. 775.082, 775.083, and 775.084.

1507           Section 14. Paragraphs (g) and (i) of subsection (3) of  
 1508 section 921.0022, Florida Statutes, are amended to read:

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1509 921.0022 Criminal Punishment Code; offense severity  
 1510 ranking chart.—

1511 (3) OFFENSE SEVERITY RANKING CHART

1512 (g) LEVEL 7

1513

Florida	Felony	
Statute	Degree	Description

1514

316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
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1515

316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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1516

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.
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1517

327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
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1518

402.319(2)	2nd	Misrepresentation and
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			negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
1519	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
1520	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
1521	456.065 (2)	3rd	Practicing a health care profession without a license.
1522	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
1523	458.327 (1)	3rd	Practicing medicine without a license.
1524	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
1525	460.411 (1)	3rd	Practicing chiropractic

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			medicine without a license.
1526	461.012(1)	3rd	Practicing podiatric medicine without a license.
1527	462.17	3rd	Practicing naturopathy without a license.
1528	463.015(1)	3rd	Practicing optometry without a license.
1529	464.016(1)	3rd	Practicing nursing without a license.
1530	465.015(2)	3rd	Practicing pharmacy without a license.
1531	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
1532	467.201	3rd	Practicing midwifery without a license.
1533	468.366	3rd	Delivering respiratory care services without a license.
1534	483.828(1)	3rd	Practicing as clinical

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laboratory personnel without a license.

1535

483.901(9) 3rd Practicing medical physics without a license.

1536

484.013(1)(c) 3rd Preparing or dispensing optical devices without a prescription.

1537

484.053 3rd Dispensing hearing aids without a license.

1538

494.0018(2) 1st Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.

1539

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.

1540

560.125(5)(a) 3rd Money services business by unauthorized person, currency or payment instruments

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			exceeding \$300 but less than \$20,000.
1541	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
1542	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew <u>driver</u> <del>driver's</del> license or identification card; other registration violations.
1543	775.21 (10) (b)	3rd	Sexual predator working where children regularly congregate.
1544	775.21 (10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
1545	782.051 (3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
1546			

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1547	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
1548	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
1549	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
1550	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
1551	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
1552	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
	784.048(4)	3rd	Aggravated stalking; violation

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			of injunction or court order.
1553	784.048(7)	3rd	Aggravated stalking; violation of court order.
1554	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
1555	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
1556	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
1557	784.081(1)	1st	Aggravated battery on specified official or employee.
1558	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
1559	784.083(1)	1st	Aggravated battery on code inspector.
1560	790.07(4)	1st	Specified weapons violation subsequent to previous

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			conviction of s. 790.07(1) or (2).
1561	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
1562	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
1563	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
1564	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
1565	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
1566	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided

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			for in s. 874.04.
1567	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.
1568	796.03	2nd	Procuring any person under <u>18</u> <del>16</del> years for prostitution.
1569	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
1570	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
1571	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
1572	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
1573			



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1574	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
1575	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
1576	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
1577	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.
1578	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
1579	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.

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1580	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
1581	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
1582	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
1583	812.131 (2) (a)	2nd	Robbery by sudden snatching.
1584	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
1585	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
1586	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1587	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.

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	817.2341	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.
	(2) (b) &		
	(3) (b)		
1588	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
1589	825.103 (2) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
1590	827.03 (3) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
1591	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
1592	837.05 (2)	3rd	Giving false information about

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1593			alleged capital felony to a law enforcement officer.
1594	838.015	2nd	Bribery.
1595	838.016	2nd	Unlawful compensation or reward for official behavior.
1596	838.021(3)(a)	2nd	Unlawful harm to a public servant.
1597	838.22	2nd	Bid tampering.
1598	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
1599	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
1600	872.06	2nd	Abuse of a dead human body.
1601	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

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1602	893.13(1)(c)1.	1st	<p>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 state, county, or municipal park or publicly owned recreational facility or community center.</p>
1603	893.13(1)(e)1.	1st	<p>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.</p>
1604	893.13(4)(a)	1st	<p>Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).</p>
1604	893.135(1)(a)1.	1st	<p>Trafficking in cannabis, more</p>

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than 25 lbs., less than 2,000 lbs.

1605

893.135  
(1)(b)1.a.

1st

Trafficking in cocaine, more than 28 grams, less than 200 grams.

1606

893.135  
(1)(c)1.a.

1st

Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

1607

893.135(1)(d)1.

1st

Trafficking in phencyclidine, more than 28 grams, less than 200 grams.

1608

893.135(1)(e)1.

1st

Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.

1609

893.135(1)(f)1.

1st

Trafficking in amphetamine, more than 14 grams, less than 28 grams.

1610

893.135  
(1)(g)1.a.

1st

Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

1611

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1612	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
1613	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
1614	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
1615	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
1616	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
1617	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.

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1618	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
1619	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
1620	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
1621	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1622	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
1623	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.



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1624	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1625	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1626	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
1627	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1628	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1629	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

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1630  
1631  
1632  
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1636  
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1638

	(i) LEVEL 9		
	Florida Statute	Felony Degree	Description
	316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
	409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
	499.0051 (9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
	560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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1639	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
1640	775.0844	1st	Aggravated white collar crime.
1641	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
1642	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
1643	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
1644	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
1645	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.

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1646	787.01(1)(a)2.	1st, PBL	Kidnapping with intent to commit or facilitate commission of any felony.
1647	787.01(1)(a)4.	1st, PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
1648	787.02(3)(a)	1st, <u>PBL</u>	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
1649	790.161	1st	Attempted capital destructive device offense.
1650	790.166(2)	1st, PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
1651	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.

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1652	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
1653	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
1654	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
1655	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
1656	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
1657	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.
1658	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.

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1659	812.135(2)(b)	1st	Home-invasion robbery with weapon.
1660	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
1661	827.03(2)	1st	Aggravated child abuse.
1662	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
1663	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
1664	859.01	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.

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1665	893.135	1st	Attempted capital trafficking offense.
1666	893.135 (1) (a) 3.	1st	Trafficking in cannabis, more than 10,000 lbs.
1667	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
1668	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
1669	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
1670	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
1671	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams.
1672	893.135 (1) (h) 1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.

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1673

893.135 (1)(j)1.c. 1st Trafficking in 1,4-Butanediol,  
10 kilograms or more.

1674

893.135 (1)(k)2.c. 1st Trafficking in Phenethylamines,  
400 grams or more.

1675

896.101(5)(c) 1st Money laundering, financial  
instruments totaling or  
exceeding \$100,000.

1676

896.104(4)(a)3. 1st Structuring transactions to  
evade reporting or registration  
requirements, financial  
transactions totaling or  
exceeding \$100,000.

1677

Section 15. This act shall take effect October 1, 2012.