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# **Criminal Justice Subcommittee**

**January 17, 2012**

**8:30 AM**

**404 HOB**

**Dean Cannon  
Speaker**

**Gayle Harrell  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Tuesday, January 17, 2012 08:30 am

**End Date and Time:** Tuesday, January 17, 2012 10:30 am

**Location:** 404 HOB

**Duration:** 2.00 hrs

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

HB 117 Military Veterans Convicted of Criminal Offenses by Nelson, Abruzzo, Gaetz

HB 367 Restraint of Incarcerated Pregnant Women by Reed

HB 583 Murder of a Child 17 Years Of Age or Younger by Oliva

HB 667 Murder by Corcoran

HB 1175 Controlled Substances by Ingram

HB 1193 Pub. Rec./Victims of Violence by Jones

**NOTICE FINALIZED on 01/12/2012 16:15 by hudson.jessica**




## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 117 Military Veterans Convicted of Criminal Offenses

**SPONSOR(S):** Nelson; Abruzzo; Gaetz and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 138

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

### SUMMARY ANALYSIS

HB 117 creates the "T. Patt Maney Veterans' Treatment Intervention Act." It requires a judge to hold a "veteran's status hearing" before sentencing a defendant found to have committed any crime (other than a capital felony) if the defendant alleges that he or she committed the offense as a result of posttraumatic stress disorder (PTSD), traumatic brain injury (TBI), substance use disorder, or psychological problems stemming from service with the United States military in a combat theater. Although the defendant must allege the crime was committed "as a result of" any of the listed conditions stemming from service in a combat theater, the court's inquiry does not require any finding that the allegation is true or established by the evidence. The purpose of the hearing is limited to determining whether the defendant:

- Was a member of the United States military who served in combat; and
- Suffers from PTSD, TBI, substance abuse, or psychological problems as a result of that service.

The bill authorizes the court to order the person into a local, state, federal, or private nonprofit treatment program as a condition of probation or community control if:

- The court concludes that the defendant is a person described above who is eligible for probation or community control;
- The court places such person on county or state probation or community control;
- The defendant agrees to participate in the program; and
- The court determines that an appropriate treatment program exists.

The bill also creates felony and misdemeanor pre-trial intervention programs for current or former military servicemembers suffering from PTSD, TBI, a substance use disorder, or psychological problems resulting from service in a combat theater. Veterans who have not been charged with specified offenses are eligible to voluntarily participate in such programs in lieu of being processed through the criminal justice system. The bill provides instances in which a veteran may be denied admission into such programs

At the end of the intervention program, the court must consider recommendations for disposition made by the state attorney, program administrator, and the treatment program. After considering these recommendations, the court must dismiss the charges if it finds that the veteran successfully completed the intervention program. If the court finds that the veteran did not successfully complete the program, it can either order the veteran to continue in education and treatment or order that the charges revert to normal channels for prosecution. Veterans whose charges are dismissed after successful completion of a pretrial veterans' treatment intervention program, if otherwise eligible, may have his or her arrest record and a plea of nolo contendere to the dismissed charges expunged under s. 943.0585, F.S.

The bill may have a fiscal impact on state and local governments. See fiscal section.

The bill is effective July 1, 2012.

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

STORAGE NAME: h0117.CRJS.DOCX

DATE: 1/10/2012

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

In 2008, the Florida Department of Veterans' Affairs and the Florida Office of Drug Control issued a paper examining the issue of mental health and substance abuse needs of returning veterans and their families.<sup>1</sup> The study noted that combat medical advances are enabling veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) to survive wounds that would have been fatal in previous conflicts, and thus some are returning with "more complex physical and emotional disorders, such as Traumatic Brain Injuries (TBI) and Post-Traumatic Stress Disorder (PTSD), substance abuse and depression."<sup>2</sup> The study also estimated that approximately 29,000 returning veterans residing in Florida may suffer from PTSD or some form of major depression.<sup>3</sup>

A 2008 Rand Center report indicated that preliminary studies showed that 5 to 15 percent of OIF and OEF service members are returning with PTSD, 2 to 10 percent with depression, and an unknown number with TBI.<sup>4</sup> A person with any of these disorders also has a greater likelihood of experiencing other psychiatric diagnoses than do other persons.<sup>5</sup>

A report by the Center for Mental Health Services National GAINS Center of the federal Substance Abuse and Mental Health Services Administration (SAMHSA) noted that many veterans coming into contact with the criminal justice system may have unmet service needs.<sup>6</sup> Veterans' courts have been established across the country as some judges have begun to recognize a correlation between the commission of offenses by veterans and substance abuse issues, mental health issues, and cognitive functioning problems.

Veterans' courts have the goal of identifying veterans who would benefit from a treatment program instead of incarceration or other sanctions. They are typically patterned after successful specialty courts such as drug courts and mental health courts. Since 2008, legislation authorizing the establishment of veterans' courts has been adopted or at least considered in California, Colorado, Illinois, Oregon, Texas and Virginia, and has been considered in Connecticut, Minnesota, Nevada, New Mexico, New York and Oklahoma.<sup>7</sup>

##### Veterans' Courts in Florida

There are several veterans' court and veterans' jail diversion initiatives in Florida.

The veterans' court program in Miami-Dade County is available to veterans who are facing minor drug offenses and do not have a violent or extensive criminal history. In its initial stages, the program has drawn participants from defendants who are already involved with traditional drug court. They receive

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<sup>1</sup> Florida Department of Veterans' Affairs and Florida Office of Drug Control Green Paper, *Returning Veterans and Their Families with Substance Abuse and Mental Health Needs: Florida's Action Plan*, January 2009, page 5, [http://www.helppromotehope.com/documents/Veterans\\_Green\\_Paper.pdf](http://www.helppromotehope.com/documents/Veterans_Green_Paper.pdf) (last visited on January 10, 2012).

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

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

<sup>4</sup> Rand Center for Military Health Policy Research, Benjamin R. Karney, Rajeev Ramchand, Karen Chan Osilla, Leah B. Caldarone, and Rachel M. Burns, *Invisible Wounds, Predicting the Immediate and Long-Term Consequences of Mental Health Problems in Veterans of Operation Enduring Freedom and Operation Iraqi Freedom*, April 2008, page 127, at [http://www.rand.org/pubs/working\\_papers/2008/RAND\\_WR546.pdf](http://www.rand.org/pubs/working_papers/2008/RAND_WR546.pdf) (last visited on January 10, 2012).

<sup>5</sup> *Id.*

<sup>6</sup> GAINS Center, *Responding to the Needs of Justice-Involved Combat Veterans with Service-Related Trauma and Mental Health Conditions*, August 2008, page 6, at [http://gainscenter.samhsa.gov/pdfs/veterans/CVTJS\\_Report.pdf](http://gainscenter.samhsa.gov/pdfs/veterans/CVTJS_Report.pdf) (last visited on January 10, 2012).

<sup>7</sup> National Association of Drug Court Professionals website at <http://www.nadcp.org/learn/veterans-treatment-courts/veterans-treatment-court-studies-and-statistics> (last visited on January 10, 2012).

similar treatment, but also are assisted by a United States Department of Veterans Affairs (VA) psychologist and outreach coordinator.<sup>8</sup>

The Palm Beach County veterans' docket began operating in November 2010.<sup>9</sup> A feature of the program is the assignment of a VA social worker supervisor to act as the court's VA liaison. This VA employee has oversight of screening and case management services for eligible veterans. In addition to receiving any needed mental health and substance abuse treatment, participating veterans also have access to VA programs that address homelessness and unemployment.

In April 2011, the Okaloosa County Commission approved creation of a veterans' court for the county that is expected to begin operation later this year. Although there is currently no formal veterans' court, many cases of veterans in the county are already being referred to a court docket with special knowledge of veterans and veterans' issues. To determine eligibility, offenders are asked at initial booking if they have ever served in the military and what type of discharge they received. Veterans are further asked if they will sign a release in order to share information with the VA. Further screening is conducted through the Pre-Trial Services Office, and the program uses drug court case managers to monitor participants.

The 12th Judicial Circuit (DeSoto, Sarasota and Manatee Counties) has established a program called "Courts Assisting Veterans." While not a true veterans' court, it seeks to achieve similar goals through the use of existing programs, including referral of veterans to existing drug and mental health courts.<sup>10</sup>

In October, 2009, the Department of Children and Families Mental Health Program Office (department) was awarded over \$1.8 million from SAMHSA over the next five years to provide services and support for Florida's returning veterans who served in Iraq and Afghanistan and who suffer from PTSD and other behavioral health disorders. The department describes the grant and the project as follows:

The project will redesign the state's response to the needs of veterans and their family members by helping returning veterans learn to cope with the trauma of war and the adjustments of coming home and avoiding unnecessary involvement with the criminal justice system. Florida's project is based on a foundation of evidence-based screening, assessment, treatment and recovery practices. The grant will enable the Department to implement two veteran's jail diversion pilot projects for 240 veterans over the next five years. This grant will expand the Department's existing jail diversion programs by identifying veterans who have an initial contact with the criminal justice system, helping them enroll in Veteran's Administration benefits for those who are eligible, providing trauma-related treatment services, linking them with support services in their community, and providing specialized peer support services. Additionally, this grant enables the Department to include family members as recipients of services. One unique aspect of this grant is Florida's creation and implementation of a new state-level Veteran Peer Support Specialist credential, possible through the Department's ongoing partnership with the Florida Certification Board. Certification of trained veterans will professionalize what we know works - trained veterans who've been there helping other returning veterans adjust to their home and community. In the first year, the grant from the federal Substance Abuse and Mental Health Services Administration (SAMHSA) will provide DCF with \$268,849. Hillsborough County is one of two sites that will launch Florida's Jail Diversion and Trauma Recovery Program. The location of the other pilot project has not yet been determined.<sup>11</sup>

<sup>8</sup> "Miami-Dade starts specialized drug court for military veterans," May 4, 2011, <http://vetlawyers.com/vetblog/index.php/2011/05/miami-dade-starts-specialized-drug-court-for-military-veterans/> (last visited on January 10, 2012).

<sup>9</sup> The Veteran's Docket was established by Administrative Order No. 4.905-11/10 of the Fifteenth Judicial Circuit for Palm Beach County, which can be downloaded from <http://15thcircuit.co.palm-beach.fl.us/web/guest/adminorders/series4> (last visited on January 10, 2012).

<sup>10</sup> Courts Assisting Veterans, 12th Judicial Circuit, <http://12circuit.state.fl.us/ProgramsServices.aspx> (last visited on January 10, 2012).

<sup>11</sup> Florida Department of Children and Families' description of the Veterans Jail Diversion Grant at <http://www.dcf.state.fl.us/programs/samh/mentalhealth/consumerfamilyaffairs/currinitatives.shtml> (last visited on January 10, 2012).

## Statistics

The Department of Corrections (DOC) does not have statistics of how many of the approximately 150,000 offenders on community supervision are military veterans. However, DOC reports that 6,726 state prison inmates (approximately 6.6% of the total prison population) were identified as military veterans as of September 23, 2011. This includes 4,986 inmates whose claim of veteran status is unverified and 1,740 whose claim has been verified by submission of a Certificate of Release or Discharge from Active Duty (Department of Defense Form 214). The types of offenses for which these veterans are incarcerated are reflected in the following table:

<b>Primary Offense</b>	<b>Claimed Veteran Status</b>	<b>Verified Veteran Status</b>	<b>Total</b>	<b>%</b>
Murder/Manslaughter	683	408	1091	16.2%
Sexual/Lewd Behavior	1177	609	1786	26.6%
Robbery	464	142	606	9.0%
Aggravated Battery/Assault, Kidnapping, Other Violent Crimes	588	136	724	10.8%
Burglary	521	144	665	9.9%
Property Theft/Fraud/Damage	467	78	545	8.1%
Drugs	671	128	799	11.9%
Weapons	120	32	152	2.3%
Other	295	63	358	5.3%
<b>Total</b>	<b>4986</b>	<b>1740</b>	<b>6726</b>	<b>100%</b>

The table indicates that a majority of veteran inmates in Florida are incarcerated for violent crimes and a lesser number for property and drug offenses. There is no comprehensive data on the number of veterans among the approximate 57,000 adults either serving sentences or awaiting trial or hearing in county jails throughout Florida.

## Terms and Conditions of Probation

Probation is a form of community supervision requiring specified contacts with parole and probation officers and compliance with court-ordered conditions of supervision.<sup>12</sup> When someone is sentenced to probation, the court determines the terms and conditions of his or her supervision.<sup>13</sup> Section 948.03, F.S., sets forth standard conditions of supervision that a court may impose on offenders sentenced probation. These include conditions such as a requirement that the offender report to the probation and parole supervisors as directed, permit such supervisors to visit him or her at his or her home or elsewhere, work faithfully at suitable employment insofar as may be possible, remain within a specified place, submit written monthly reports, abide by the laws of the state, etc.<sup>14</sup> In addition to the standard conditions of supervision, the court can impose any other special condition of supervision it considers proper (e.g., a condition requiring an offender to participate in treatment).<sup>15</sup>

## **Effect of the Bill** **Veterans' Court**

The bill creates s. 921.00242, F.S., which requires a court that has found that a defendant committed a criminal offense to hold a pre-sentencing veterans' status hearing if the defendant alleges that he or she committed the offense because of PTSD, TBI, substance use disorder, or psychological problems stemming from service in a combat theater in the United States military. At the hearing, the court must:

<sup>12</sup> Section 948.001(8), F.S.

<sup>13</sup> Section 948.03, F.S.

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

<sup>15</sup> Section 948.03(2), F.S.

- Determine whether the defendant was a member of the United States military who served in a combat theater; and
- Assess whether the veteran suffers from PTSD, TBI, substance use disorder, or psychological problems as a result of that service.

The convicted veteran bears the burden of proving the relevant issues. The court is not required to determine whether the defendant's PTSD, TBI, substance abuse disorder, or psychological problems contributed to commission of the offense.

The bill authorizes the court to order the person into a local, state, federal, or private nonprofit treatment program as a condition of probation or community control if:

- The court concludes that the defendant is a person described above who is eligible for probation or community control;
- The court places such person on county or state probation or community control;
- The defendant agrees to participate in the program; and
- The court determines that an appropriate treatment program exists.

Whenever possible, the court must place the veteran in a treatment program that has a history of successfully treating combat veterans who suffer from PTSD, TBI, substance use disorder, or psychological problems as a result of such service. Preference must also be given to treatment programs of the United States Department of Veterans Affairs (VA) or Florida Department of Veterans Affairs (FDVA) for which the veteran is eligible.

The bill requires defendants who are placed on county or state probation or community control and committed to a residential treatment program to earn sentence credits for the actual time he or she serves in the residential treatment program if the court makes a written finding that it would have otherwise sentenced the defendant to incarceration except for the fact that the defendant is a person described above. These credits would be applied to reduce any remaining sentence in the event that the veteran is committed to jail or prison as a result of violating the terms of community supervision.

#### Pretrial Veterans' Treatment Intervention Program

The bill also creates felony and misdemeanor pre-trial intervention programs for current or former United States military service members suffering from PTSD, TBI, a substance use disorder, or psychological problems resulting from service in a combat theater. The bill makes such veterans eligible for voluntary admission in veterans' treatment intervention program (that is approved by the chief judge of the circuit) in lieu of being processed through the criminal justice system.

Section 3 of the bill amends s. 948.08, F.S., to create the *felony* pretrial veterans' treatment intervention program. It applies to the above-described veterans who are charged with a felony that is not a disqualifying offense. The following offenses are disqualifying offenses:

- Kidnapping or attempted kidnapping under s. 787.01, F.S., false imprisonment of a child under the age of 13 under s. 787.02(3), F.S., or luring or enticing a child under s. 787.025(2)(b) or (c), F.S.
- Murder or attempted murder under s. 782.04, F.S., attempted felony murder under s. 782.051, F.S., or manslaughter under s. 782.07, F.S.
- Aggravated battery or attempted aggravated battery under s. 784.045, F.S.
- Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c), F.S.
- Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), F.S., lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., F.S., lewd or lascivious conduct under s. 800.04(6)(b), F.S., lewd or lascivious exhibition under s. 800.04(7)(b), F.S., or lewd or lascivious exhibition on computer under s. 847.0135(5)(b), F.S.
- Robbery or attempted robbery under s. 812.13, F.S., carjacking or attempted carjacking under s. 812.133, F.S., or home invasion robbery or attempted home invasion robbery under s. 812.135, F.S.



- Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025, F.S.
- Sexual performance or attempted sexual performance by a child under s. 827.071, F.S.
- Computer pornography under s. 847.0135(2) or (3), F.S., transmission of child pornography under s. 847.0137, F.S., or selling or buying of minors under s. 847.0145, F.S.
- Poisoning food or water under s. 859.01, F.S.
- Abuse of a dead human body under s. 872.06, F.S.
- Any burglary or attempted burglary offense that is a first-degree or second-degree felony under s. 810.02(2) or (3), F.S.
- Arson or attempted arson under s. 806.01(1), F.S.
- Aggravated assault under s. 784.021, F.S.
- Aggravated stalking under s. 784.048(3), (4), (5), or (7), F.S.
- Aircraft piracy under s. 860.16, F.S.
- Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4), F.S.
- Treason under s. 876.32, F.S.

The bill establishes the following circumstances under which an otherwise eligible veteran could be denied admission into a program:

- The court may deny admission if the veteran rejected an offer of admission to a pretrial veterans' treatment intervention program on the record at any time prior to trial.
- The court may deny admission if the veteran previously entered a court-ordered veterans' treatment program.
- The court must deny admission to the program if the state attorney demonstrates by a preponderance of the evidence that the veteran was involved in selling controlled substances. The court must hold a preadmission hearing at the request of the state attorney if the state attorney believes that the veteran was involved in selling controlled substances in the case.

Section 4 of the bill amends s. 948.16, F.S., to create the *misdemeanor* pretrial veterans' treatment intervention program. The above-described veterans who are charged with a misdemeanor would be eligible to be admitted voluntarily into a misdemeanor pretrial veterans treatment intervention program if one has been approved by the chief judge of the circuit. However, the court can deny admission if the defendant had previously entered a court-ordered veterans' treatment program.

The bill requires that a veterans' treatment intervention team develop an individualized coordinated strategy for any veteran who is to be admitted to either a felony or misdemeanor pretrial veterans' treatment intervention program. This coordinated strategy must be provided to the veteran in writing before he or she agrees to enter the program. The strategy is to be modeled after the ten therapeutic jurisprudence principles and key components for treatment-based drug court programs that are found in s. 397.334(4), F.S.

The coordinated strategy can include a system of sanctions for non-compliance. The sanctions can include placement in a residential or jail-based treatment program or incarceration for up to the length of time that is allowed for contempt of court.

At the end of the intervention program, the court must consider recommendations for disposition made by the state attorney and the program administrator (felony diversion programs) or the treatment program (misdemeanor diversion programs). After considering these recommendations, the court must dismiss the charges if it finds that the veteran successfully completed the intervention program. If the court finds the veteran did not successfully complete the program, it can order the veteran to continue in education and treatment or order that the charges revert to normal channels for prosecution.

The bill provides that any veteran whose charges are dismissed after successful completion of the pretrial veterans' treatment intervention program, if otherwise eligible, may have his or her arrest record and a plea of nolo contendere to the dismissed charges expunged under s. 943.0585, F.S.

The felony and misdemeanor treatment-based drug court program statutes on which the pretrial veterans' treatment intervention program are modeled include requirements for the county or appropriate government entity to enter into a contract with any public or private entity that provides felony or pretrial diversion services. However, the bill does not include this requirement for felony pretrial veterans' treatment intervention programs and provides an exception for VA and FDVA programs in the statute that creates misdemeanor pretrial veterans' treatment intervention programs.

## B. SECTION DIRECTORY:

Section 1. Entitles the act, the "T. Patt Maney Veterans' Treatment Intervention Act."

Section 2. Creates s. 921.00242, F.S., relating to convicted military veterans; posttraumatic stress disorder, traumatic brain injury, substance use disorder, or psychological problems from service; treatment services.

Section 3. Amends s. 948.08, F.S., relating to pretrial intervention program.

Section 4. Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program.

Section 5. 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:

The bill may have a fiscal impact on the courts in that it requires a veterans' status hearing be held any time a defendant alleges he or she committed the offense as a result of PTSD, TBI, substance abuse disorder, or psychological problems stemming from military service in combat theater.

On December 14, 2012, the Criminal Justice Impact Conference determined that this bill would have no impact on the Department of Correction's prison bed population.

### 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 creates a misdemeanor pre-trial intervention programs for current or former military servicemembers suffering from PTSD, TBI, a substance use disorder, or psychological problems resulting from service in a combat theater. Veterans who have not been charged with specified offenses are eligible to voluntarily participate in such programs in lieu of being processed through the criminal justice system. At the end of the intervention program, the court must dismiss the charges if it finds that the veteran successfully completed the intervention program. This program could have a positive fiscal impact on local jails.

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

This bill would have an impact on the private sector to the extent that participants may be diverted from incarceration into private treatment programs.

**D. FISCAL COMMENTS:**

The bill is not clear who bears the costs for providing veteran services.

**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:**

The bill uses a variety of terms without providing definitions (e.g., "combat theater," "psychological problems," "United States military," etc.).

Although a defendant must allege that he or she committed the crime due to his or her PTSD, TBI, etc., there is no requirement that the court make this finding at the veteran status hearing.

The bill requires the court to conduct a veteran status hearing if a judge "finds" that the defendant "committed" a crime. It might be clearer to refer instances in which a defendant is "convicted" of a crime.

The bill creates a new process whereby a hearing must be held and judges must make certain findings where the ultimate outcome of the process is a court imposing a condition of supervision requiring an offender to undergo treatment. It is unclear why this new process is necessary since s. 948.03, F.S., currently authorizes a court to impose any condition of supervision it considers proper.

The pretrial intervention portions of the bill do not permit the state attorney to object to a defendant's participation in the program.

The bill provides that a defendant who successfully completes the pretrial veterans' treatment intervention program may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged pursuant to s. 943.0585, F.S. However, pretrial intervention programs by their very nature divert cases from the court system prior to the entry of any nolo contendere plea and therefore there would be no such plea to expunge.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HB 117

2012

1    A bill to be entitled

2    An act relating to military veterans convicted of

3    criminal offenses; providing a short title; creating

4    s. 921.00242, F.S.; providing that a person found to

5    have committed a criminal offense who alleges that the

6    offense resulted from posttraumatic stress disorder,

7    traumatic brain injury, substance use disorder, or

8    psychological problems stemming from service in a

9    combat theater in the United States military may have

10    a hearing on that issue before sentencing; providing

11    that a defendant found to have committed an offense

12    due to such causes and who is eligible for probation

13    or community control may be placed in a treatment

14    program in certain circumstances; providing for

15    sentence credit for a defendant placed in treatment

16    who would have otherwise been incarcerated; providing

17    a preference for treatment programs that have

18    histories of successfully treating such combat

19    veterans; amending s. 948.08, F.S.; creating a

20    pretrial veterans' treatment intervention program;

21    providing requirements for a defendant to be

22    voluntarily admitted to the pretrial program;

23    providing certain exceptions to such admission;

24    providing for the disposition of pending charges

25    following a defendant's completion of the pretrial

26    intervention program; providing for the charges to be

27    expunged under certain circumstances; amending s.

28    948.16, F.S.; creating a misdemeanor pretrial

29 veterans' treatment intervention program; providing  
 30 requirements for voluntary admission to the  
 31 misdemeanor pretrial program; providing for the  
 32 misdemeanor charges to be expunged under certain  
 33 circumstances; exempting treatment services provided  
 34 by the Department of Veterans' Affairs or the United  
 35 States Department of Veterans Affairs from certain  
 36 contract requirements; providing an effective date.

37

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

39

40 Section 1. This act may be cited as the "T. Patt Maney  
 41 Veterans' Treatment Intervention Act."

42 Section 2. Section 921.00242, Florida Statutes, is created  
 43 to read:

44 921.00242 Convicted military veterans; posttraumatic  
 45 stress disorder, traumatic brain injury, substance use disorder,  
 46 or psychological problems from service; treatment services.-

47 (1) If a circuit or county court finds that a defendant  
 48 has committed a criminal offense, the court must hold a  
 49 veterans' status hearing prior to sentencing if the defendant  
 50 has alleged that he or she committed the offense as a result of  
 51 posttraumatic stress disorder, traumatic brain injury, substance  
 52 use disorder, or psychological problems stemming from service in  
 53 a combat theater in the United States military.

54 (2) At a veterans' status hearing conducted as required by  
 55 subsection (1), the court shall determine whether the defendant  
 56 was a member of the military forces of the United States who

57 served in a combat theater and assess whether the defendant  
 58 suffers from posttraumatic stress disorder, traumatic brain  
 59 injury, substance use disorder, or psychological problems as a  
 60 result of that service. The defendant shall bear the burden of  
 61 proof at the hearing.

62 (3) If the court concludes that the defendant is a person  
 63 described in subsection (2) who is eligible for probation or  
 64 community control and the court places the defendant on county  
 65 or state probation or into community control, the court may  
 66 order the defendant into a local, state, federal, or private  
 67 nonprofit treatment program as a condition of probation or  
 68 community control if the defendant agrees to participate in the  
 69 program and the court determines that an appropriate treatment  
 70 program exists.

71 (4) A defendant who is placed on county or state probation  
 72 or into community control and committed to a residential  
 73 treatment program under this section shall earn sentence credits  
 74 for the actual time he or she serves in the residential  
 75 treatment program if the court makes a written finding that it  
 76 would otherwise have sentenced the defendant to incarceration  
 77 except for the fact that the defendant is a person described in  
 78 subsection (2).

79 (5) In making an order under this section to commit a  
 80 defendant to a treatment program, whenever possible the court  
 81 shall place the defendant in a treatment program that has a  
 82 history of successfully treating combat veterans who suffer from  
 83 posttraumatic stress disorder, traumatic brain injury, substance  
 84 use disorder, or psychological problems as a result of that

85 service. The court shall give preference to treatment programs  
 86 for which the veteran is eligible through the United States  
 87 Department of Veterans Affairs or the Department of Veterans'  
 88 Affairs.

89 Section 3. Present subsection (7) of section 948.08,  
 90 Florida Statutes, is renumbered as subsection (8), and a new  
 91 subsection (7) is added to that section, to read:

92 948.08 Pretrial intervention program.-

93 (7) (a) A person who is charged with a felony, other than a  
 94 felony listed in s. 948.06(8)(c), and identified as a member or  
 95 former member of the military forces of the United States who  
 96 served in a combat theater and who suffers from posttraumatic  
 97 stress disorder, traumatic brain injury, substance use disorder,  
 98 or psychological problems as a result of that service is  
 99 eligible for voluntary admission into a pretrial veterans'  
 100 treatment intervention program approved by the chief judge of  
 101 the circuit, upon motion of either party or the court's own  
 102 motion, except:

103 1. If a defendant was previously offered admission to a  
 104 pretrial veterans' treatment intervention program at any time  
 105 prior to trial and the defendant rejected that offer on the  
 106 record, the court may deny the defendant's admission to such a  
 107 program.

108 2. If a defendant previously entered a court-ordered  
 109 veterans' treatment program, the court may deny the defendant's  
 110 admission into the pretrial veterans' treatment program.

111 3. If the state attorney believes that the facts and  
 112 circumstances of the case suggest the defendant's involvement in

113 the selling of controlled substances, the court shall hold a  
114 preadmission hearing. If the state attorney establishes, by a  
115 preponderance of the evidence at such hearing, that the  
116 defendant was involved in the selling of controlled substances,  
117 the court shall deny the defendant's admission into a pretrial  
118 intervention program.

119 (b) While enrolled in a pretrial intervention program  
120 authorized by this subsection, the participant shall be subject  
121 to a coordinated strategy developed by a veterans' treatment  
122 intervention team. The coordinated strategy should be modeled  
123 after the therapeutic jurisprudence principles and key  
124 components in s. 397.334(4), with treatment specific to the  
125 needs of veterans. The coordinated strategy may include a  
126 protocol of sanctions that may be imposed upon the participant  
127 for noncompliance with program rules. The protocol of sanctions  
128 may include, but need not be limited to, placement in a  
129 treatment program offered by a licensed service provider or in a  
130 jail-based treatment program or serving a period of  
131 incarceration within the time limits established for contempt of  
132 court. The coordinated strategy must be provided in writing to  
133 the participant before the participant agrees to enter into a  
134 pretrial veterans' treatment intervention program or other  
135 pretrial intervention program. Any person whose charges are  
136 dismissed after successful completion of the pretrial veterans'  
137 treatment intervention program, if otherwise eligible, may have  
138 his or her arrest record and plea of nolo contendere to the  
139 dismissed charges expunged under s. 943.0585.

140 (c) At the end of the pretrial intervention period, the



141 court shall consider the recommendation of the administrator  
 142 pursuant to subsection (5) and the recommendation of the state  
 143 attorney as to disposition of the pending charges. The court  
 144 shall determine, by written finding, whether the defendant has  
 145 successfully completed the pretrial intervention program. If the  
 146 court finds that the defendant has not successfully completed  
 147 the pretrial intervention program, the court may order the  
 148 person to continue in education and treatment, which may include  
 149 treatment programs offered by licensed service providers or  
 150 jail-based treatment programs, or order that the charges revert  
 151 to normal channels for prosecution. The court shall dismiss the  
 152 charges upon a finding that the defendant has successfully  
 153 completed the pretrial intervention program.

154 Section 4. Section 948.16, Florida Statutes, is amended to  
 155 read:

156 948.16 Misdemeanor pretrial substance abuse education and  
 157 treatment intervention program; misdemeanor pretrial veterans'  
 158 treatment intervention program.-

159 (1)(a) A person who is charged with a misdemeanor for  
 160 possession of a controlled substance or drug paraphernalia under  
 161 chapter 893, and who has not previously been convicted of a  
 162 felony nor been admitted to a pretrial program, is eligible for  
 163 voluntary admission into a misdemeanor pretrial substance abuse  
 164 education and treatment intervention program, including a  
 165 treatment-based drug court program established pursuant to s.  
 166 397.334, approved by the chief judge of the circuit, for a  
 167 period based on the program requirements and the treatment plan  
 168 for the offender, upon motion of either party or the court's own

169 motion, except, if the state attorney believes the facts and  
 170 circumstances of the case suggest the defendant is involved in  
 171 dealing and selling controlled substances, the court shall hold  
 172 a preadmission hearing. If the state attorney establishes, by a  
 173 preponderance of the evidence at such hearing, that the  
 174 defendant was involved in dealing or selling controlled  
 175 substances, the court shall deny the defendant's admission into  
 176 the pretrial intervention program.

177 (b) While enrolled in a pretrial intervention program  
 178 authorized by this section, the participant is subject to a  
 179 coordinated strategy developed by a drug court team under s.  
 180 397.334(4). The coordinated strategy may include a protocol of  
 181 sanctions that may be imposed upon the participant for  
 182 noncompliance with program rules. The protocol of sanctions may  
 183 include, but is not limited to, placement in a substance abuse  
 184 treatment program offered by a licensed service provider as  
 185 defined in s. 397.311 or in a jail-based treatment program or  
 186 serving a period of incarceration within the time limits  
 187 established for contempt of court. The coordinated strategy must  
 188 be provided in writing to the participant before the participant  
 189 agrees to enter into a pretrial treatment-based drug court  
 190 program or other pretrial intervention program. Any person whose  
 191 charges are dismissed after successful completion of the  
 192 treatment-based drug court program, if otherwise eligible, may  
 193 have his or her arrest record and plea of nolo contendere to the  
 194 dismissed charges expunged under s. 943.0585.

195 (2) (a) A member or former member of the military forces of  
 196 the United States who served in a combat theater and who suffers

197 from posttraumatic stress disorder, traumatic brain injury,  
198 substance use disorder, or psychological problems as a result of  
199 that service who is charged with a misdemeanor is eligible for  
200 voluntary admission into a misdemeanor pretrial veterans'  
201 treatment intervention program approved by the chief judge of  
202 the circuit, for a period based on the program requirements and  
203 the treatment plan for the offender, upon motion of either party  
204 or the court's own motion. However, the court may deny the  
205 defendant admission into a misdemeanor pretrial veterans'  
206 treatment intervention program if the defendant has previously  
207 entered a court-ordered veterans' treatment program.

208 (b) While enrolled in a pretrial intervention program  
209 authorized by this section, the participant shall be subject to  
210 a coordinated strategy developed by a veterans' treatment  
211 intervention team. The coordinated strategy should be modeled  
212 after the therapeutic jurisprudence principles and key  
213 components in s. 397.334(4), with treatment specific to the  
214 needs of veterans. The coordinated strategy may include a  
215 protocol of sanctions that may be imposed upon the participant  
216 for noncompliance with program rules. The protocol of sanctions  
217 may include, but need not be limited to, placement in a  
218 treatment program offered by a licensed service provider or in a  
219 jail-based treatment program or serving a period of  
220 incarceration within the time limits established for contempt of  
221 court. The coordinated strategy must be provided in writing to  
222 the participant before the participant agrees to enter into a  
223 misdemeanor pretrial veterans' treatment intervention program or  
224 other pretrial intervention program. Any person whose charges

225 are dismissed after successful completion of the misdemeanor  
 226 pretrial veterans' treatment intervention program, if otherwise  
 227 eligible, may have his or her arrest record and plea of nolo  
 228 contendere to the dismissed charges expunged under s. 943.0585.

229 (3)-(2) At the end of the pretrial intervention period, the  
 230 court shall consider the recommendation of the treatment program  
 231 and the recommendation of the state attorney as to disposition  
 232 of the pending charges. The court shall determine, by written  
 233 finding, whether the defendant successfully completed the  
 234 pretrial intervention program. Notwithstanding the coordinated  
 235 strategy developed by a drug court team pursuant to s.  
 236 397.334(4) or by the veterans' treatment intervention team, if  
 237 the court finds that the defendant has not successfully  
 238 completed the pretrial intervention program, the court may order  
 239 the person to continue in education and treatment or return the  
 240 charges to the criminal docket for prosecution. The court shall  
 241 dismiss the charges upon finding that the defendant has  
 242 successfully completed the pretrial intervention program.

243 (4)-(3) Any public or private entity providing a pretrial  
 244 substance abuse education and treatment program under this  
 245 section shall contract with the county or appropriate  
 246 governmental entity. The terms of the contract shall include,  
 247 but not be limited to, the requirements established for private  
 248 entities under s. 948.15(3). This requirement does not apply to  
 249 services provided by the Department of Veterans' Affairs or the  
 250 United States Department of Veterans Affairs.

251 Section 5. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 117 (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: Criminal Justice  
2 Subcommittee

3 Representative Nelson offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. This act may be cited as the "T. Patt Maney  
8 Military Veterans and Servicemembers Court Act."

9 Section 2. Section 394.48, Florida Statutes, is created to  
10 read:

11 394.48 Military veterans and servicemembers court  
12 programs.-- The chief judge of each judicial circuit may  
13 establish a Military Veterans and Servicemembers Court Program  
14 under which veterans, as defined in s. 1.01, and servicemembers,  
15 as defined in s. 250.01, who are convicted of a criminal offense  
16 and who suffer from a mental illness, traumatic brain injury, or  
17 substance abuse disorder as a result of their military service  
18 can be sentenced in accordance with ch. 921 in a manner that  
19 appropriately addresses the severity of the mental illness,

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 117 (2012)

Amendment No. 1

20 traumatic brain injury, or substance abuse disorder through  
21 services tailored to the individual needs of the participant.  
22 Entry into any Military Veterans and Servicemembers Court  
23 Program must be based upon the sentencing court's assessment of  
24 the defendant's criminal history, military service, substance  
25 abuse treatment needs, mental health treatment needs,  
26 amenability to the services of the program, the recommendation  
27 of the state attorney and the victim, if any, and the  
28 defendant's agreement to enter the program.

29 Section 3. Section 948.21, Florida Statutes, is created to  
30 read:

31 948.21 Condition of probation or community control;  
32 military servicemembers and veterans.-- Effective for a  
33 probationer or community controllee whose crime was committed on  
34 or after July 1, 2012, and who is a servicemember, as defined in  
35 s. 250.01, or veteran, as defined in s. 1.01, who suffers from a  
36 military service-related mental illness, traumatic brain injury,  
37 or substance abuse disorder, the court may, in addition to any  
38 other conditions imposed, impose a condition requiring the  
39 probationer or community controllee to participate in a  
40 treatment program capable of treating the probationer or  
41 community controllee's mental illness, traumatic brain injury,  
42 or substance abuse disorder. The court shall give preference to  
43 treatment programs for which the probationer or community  
44 controllee is eligible through the United States Department of  
45 Veterans Affairs or the Florida Department of Veterans' Affairs.

46 Section 4. This act shall take effect July 1, 2012.  
47

Amendment No. 1

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**T I T L E   A M E N D M E N T**

Remove the entire title and insert:

An act relating to veterans and servicemembers; citing the act the "T. Patt Maney Military Veterans and Servicemembers Court Act;" creating s. 394.48, F.S.; authorizing the chief judge of each judicial circuit to establish a Military Veterans and Servicemembers Court Program for specified veterans and servicemembers; providing criteria for entry into the program; creating s. 948.21, F.S.; authorizing a judge to impose a condition of supervision upon specified probationers and community controllees requiring such person to participate in a treatment program; requiring the court to give preference to certain treatment programs; providing an effective date.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

**SPONSOR(S):** Reed and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol TK	Cunningham <i>SK</i>
2) Rulemaking & Regulation Subcommittee			
3) Justice Appropriations Subcommittee			
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 Department of Corrections within one year after the incident.

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

The bill may create an additional workload for state and local governments. 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 (DJJ), 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 (DOC) 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 Department of Corrections pursuant to s. 944.331, F.S., 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:

The Department of Corrections reports that this bill would create an additional workload for staff, however DOC was unable to quantify any fiscal impact.<sup>19</sup>

The Department of Juvenile Justice reports no fiscal impact.<sup>20</sup> However, the bill may create additional workload for staff 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.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

This bill may create additional staff workload for county and municipal detention facilities 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.

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

This bill may create additional staff workload for private prison facilities 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:

None.

## 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> Tommy Maggitas. Phone conversation. January 12, 2012.

<sup>20</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 allows a prisoner who is restrained in violation of this section to file a grievance with the department pursuant to s. 944.331, F.S. within one year after the incident. The bill's provisions are for all pregnant prisoners in "correctional institutions," which is defined by the bill and includes more than just the Department of Corrections. Any pregnant prisoner housed in a DJJ facility, a county or municipal detention facility, or a detention facility operated by a private entity would not be entitled to the one year limit. Those pregnant prisoners would be required to follow her specific facility's grievance guidelines.
- The bill appears to have redundant language on lines 151-152.
- 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>21</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>22</sup> This provision of the bill is also contrary to current filing practices for prisoners who are released from DOC custody.<sup>23</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>24</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>25</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>26</sup>

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

<sup>22</sup> *Id.*

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

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

<sup>25</sup> Department of Corrections General Counsel. Phone Conversation. January 11, 2012.

<sup>26</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

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2012

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 4. Use of leg, ankle, or waist restraints is subject to  
 152 the provisions of subparagraph (a)2.

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

157 (4) ENFORCEMENT.—

158 (a) Notwithstanding any relief or claims afforded by  
 159 federal or state law, any prisoner who is restrained in  
 160 violation of this section may file a grievance with the  
 161 department pursuant to s. 944.331, Florida Statutes, within 1  
 162 year after the incident.

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

166 (5) NOTICE TO PRISONERS.—

167 (a) By September 1, 2012, the department and the  
 168 Department of Juvenile Justice shall adopt rules pursuant to ss.

169 120.536(1) and 120.54, Florida Statutes, to administer this  
 170 section.

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

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

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 367 (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: Criminal Justice  
2 Subcommittee

3 Representative Reed offered the following:

4  
5 **Amendment**

6 Remove lines 151-162 and insert:

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

11 (4) ENFORCEMENT.-

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 583 Murder of a Child 17 Years Of Age or Younger

**SPONSOR(S):** Oliva and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1734

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

### SUMMARY ANALYSIS

HB 583 provides that when a person is charged with second or third degree murder pursuant to s. 782.04(2) or (4), F.S., where the victim was a child 17 years of age or younger, the offense for which the person is charged may be reclassified, regardless of whether the person had a reason to know the age of the victim. The bill reclassifies the offenses as follows:

- In the case of a violation of s. 782.04(2), F.S. (second degree murder), from a first degree felony to a capital felony.
- In the case of a violation of s. 782.04(4), F.S. (third degree murder), from a second degree felony to a first degree felony.

The bill prohibits a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence for any violation of s. 782.066, F.S.

On December 14, 2012, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

The bill is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Second Degree Murder**

Section 782.04(2), F.S., provides that it is second degree murder to unlawfully kill a human being when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual.

Second degree murder, as provided in s. 782.04(2), F.S., is a first degree felony punishable by imprisonment for a term of years not exceeding life or by up to 30 years imprisonment and a \$10,000 fine.<sup>1</sup>

##### **Third Degree Murder**

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Unlawful distribution of any substance controlled under s. 893.03(1), F.S., cocaine as described in s. 893.03(2)(a)4., F.S., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Third degree murder is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine.<sup>2</sup>

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

The bill creates s. 782.066, F.S., entitled "Murder; child 17 years of age or younger." The bill provides that when a person is charged with second or third degree murder pursuant to s. 782.04(2) or (4), F.S., where the victim was a child 17 years of age or younger, the offense for which the person is charged may be reclassified, regardless of whether the person had a reason to know the age of the victim. The bill reclassifies the offenses as follows:

---

<sup>1</sup> Sections 775.082 and 775.083, F.S.

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

- In the case of a violation of s. 782.04(2), F.S. (second degree murder), from a first degree felony to a capital felony.
- In the case of a violation of s. 782.04(4), F.S. (third degree murder), from a second degree felony to a first degree felony punishable by up to 30 years imprisonment and a \$10,000 fine.

The bill provides that notwithstanding s. 948.01, F.S.,<sup>3</sup> the court may not suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of s. 782.066, F.S.

**B. SECTION DIRECTORY:**

Section 1. Creates s. 782.066, F.S., relating to murder; child 17 years of age or younger.

Section 2. The bill is effective 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:

On December 14, 2012, the Criminal Justice Impact Conference determined that the bill would have an insignificant prison bed impact on the Department of Corrections.

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

1. Revenues:

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

2. Expenditures:

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

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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<sup>3</sup> Section 948.01(2), F.S., provides that if it appears to the court upon a hearing of the matter that a defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt. In either case, the court shall stay and withhold the imposition of sentence upon the defendant and shall place a felony defendant upon probation.

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:**

The bill provides an effective date of July 1, 2012. Generally, bills that impose or increase criminal penalties are effective on October 1 in order to give adequate notice to the public, state attorneys, public defenders, etc., of the new law's provisions.

It is unclear why there is a reference to s. 782.04(1), F.S. (first degree murder) on line 16. The bill only reclassifies the offenses contained in s. 782.04(2) and (4), F.S.

It appears that the provision prohibiting a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence should apply to "any offense reclassified by this section" rather than "any violation of this section."

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to murder of a child 17 years of age  
 3           or younger; creating s. 782.066, F.S.; providing for  
 4           reclassification of specified murder offenses if  
 5           committed upon a child 17 years of age or younger;  
 6           prohibiting a court from suspending, deferring, or  
 7           withholding adjudication of guilt or imposition of  
 8           sentence; providing an effective date.

9  
 10   Be It Enacted by the Legislature of the State of Florida:

11  
 12           Section 1.   Section 782.066, Florida Statutes, is created  
 13   to read:

14           782.066   Murder; child 17 years of age or younger.-

15           (1)   Whenever a person is charged with committing a  
 16           violation of s. 782.04, other than s. 782.04(1), upon a child 17  
 17           years of age or younger, the offense for which the person is  
 18           charged may be reclassified as follows, regardless of whether he  
 19           or she had a reason to know the age of the victim:

20           (a)   In the case of a violation of s. 782.04(2), from a  
 21           felony of the first degree to a capital felony, punishable as  
 22           provided in s. 775.082.

23           (b)   In the case of a violation of s. 782.04(4), from a  
 24           felony of the second degree to a felony of the first degree.

25           (2)   Notwithstanding s. 948.01, a court may not suspend,  
 26           defer, or withhold adjudication of guilt or imposition of  
 27           sentence for any violation of this section.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 583 (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: Criminal Justice  
2 Subcommittee

3 Representative Oliva offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (1) of section  
8 921.0024, Florida Statutes, is amended to read:

9 921.0024 Criminal Punishment Code; worksheet computations;  
10 scoresheets.-

11 (1)(a) The Criminal Punishment Code worksheet is used to  
12 compute the subtotal and total sentence points as follows:

13 FLORIDA CRIMINAL PUNISHMENT CODE

14 WORKSHEET

15 OFFENSE SCORE

16  
17 Primary Offense

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 583 (2012)

Amendment No. 1

Level	Sentence Points		Total
10	116	=	.....
9	92	=	.....
8	74	=	.....
7	56	=	.....
6	36	=	.....
5	28	=	.....
4	22	=	.....
3	16	=	.....
2	10	=	.....
1	4	=	.....
			Total

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 583 (2012)

Amendment No. 1

Additional Offenses

32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

Level	Sentence Points		Counts		Total
10	58	x	.....	=	.....
9	46	x	.....	=	.....
8	37	x	.....	=	.....
7	28	x	.....	=	.....
6	18	x	.....	=	.....
5	5.4	x	.....	=	.....
4	3.6	x	.....	=	.....
3	2.4	x	.....	=	.....
2	1.2	x	.....	=	.....
1	0.7	x	.....	=	.....
M	0.2	x	.....	=	.....



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 583 (2012)

Amendment No. 1

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59  
60

Total

Victim Injury

Level	Sentence Points		Number		Total
2nd degree murder- death of an <u>adult victim</u>	240	x	.....	=	.....
<u>2nd degree</u> murder - death of a minor	400	x	.....	=	.....
Death	120	x	.....	=	.....
<u>Death of a minor</u> under s. 782.04(4)	200	x	.....	=	.....
Severe	40	x	.....	=	.....
Moderate	18	x	.....	=	.....

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 583 (2012)

Amendment No. 1

61	Slight	4	x	....	=	....
62	Sexual penetration	80	x	....	=	....
63	Sexual contact	40	x	....	=	....
64						Total
65	Primary Offense + Additional Offenses + Victim Injury =					
66	TOTAL OFFENSE SCORE					
67	PRIOR RECORD SCORE					
68	Prior Record					
69						
70	Level	Sentence Points		Number		Total
71	10	29	x	....	=	....
72	9	23	x	....	=	....
73	8	19	x	....	=	....
74						

COMMITTEE/SUBCOMMITTEE AMENDMENT  
 Bill No. HB 583 (2012)

	Amendment No. 1				
75	7	14	x	.... =	....
76	6	9	x	.... =	....
77	5	3.6	x	.... =	....
78	4	2.4	x	.... =	....
79	3	1.6	x	.... =	....
80	2	0.8	x	.... =	....
81	1	0.5	x	.... =	....
82	M	0.2	x	.... =	....
83					
84					Total
85					TOTAL OFFENSE SCORE.....
86					TOTAL PRIOR RECORD SCORE.....
87					LEGAL STATUS.....
88					COMMUNITY SANCTION VIOLATION.....
89					PRIOR SERIOUS FELONY.....
90					PRIOR CAPITAL FELONY.....
91					FIREARM OR SEMIAUTOMATIC WEAPON.....

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 583 (2012)

Amendment No. 1

92		SUBTOTAL.....
93	PRISON RELEASEE REOFFENDER (no) (yes) .....	
94	VIOLENT CAREER CRIMINAL (no) (yes) .....	
95	HABITUAL VIOLENT OFFENDER (no) (yes) .....	
96	HABITUAL OFFENDER (no) (yes) .....	
97	DRUG TRAFFICKER (no) (yes) (x multiplier) .....	
98	LAW ENF. PROTECT. (no) (yes) (x multiplier) .....	
99	MOTOR VEHICLE THEFT (no) (yes) (x multiplier) .....	
100	CRIMINAL GANG OFFENSE (no) (yes) (x multiplier) .....	
101	DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD (no) (yes)	
102	(x multiplier) .....	
103	.....	
104		TOTAL SENTENCE POINTS.....

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

106

107

108



109

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

110

Remove the entire title and insert:

111

An act relating to murder of a child 17 years or age or younger;

112

amending s. 921.0024, F.S.; increasing victim injury sentence

113

points for second and third degree murder where the victim is a

114

minor; providing an effective date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 667 Murder
SPONSOR(S): Corcoran
TIED BILLS: None IDEN./SIM. BILLS: SB 872

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Criminal Justice Subcommittee, Cunningham, Cunningham. Row 2: 2) Justice Appropriations Subcommittee. Row 3: 3) Judiciary Committee.

SUMMARY ANALYSIS

Section 316.1935(4), F.S., establishes the crimes of "aggravated fleeing or eluding" and "aggravated fleeing or eluding with serious bodily injury or death." "Aggravated fleeing or eluding" is a second degree felony and occurs when the act causes injury to another person or causes damage to any property belonging to another person. "Aggravated fleeing or eluding with serious bodily injury or death" is a first degree felony and occurs when the act causes serious bodily injury or death to another person. The court is required to sentence any person convicted aggravated fleeing or eluding with serious bodily injury or death to a mandatory minimum sentence of 3 years imprisonment.

Section 782.04(1)(a)2., F.S., defines first degree murder as the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, a variety of specified offenses (e.g., arson, sexual battery, robbery, burglary, etc.). First degree murder is a capital felony.

Section 782.04(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any of a variety of specified offenses (e.g., arson, sexual battery, robbery, burglary, etc.), by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such offense, the person perpetrating or attempting to perpetrate such felony is guilty of second degree murder. Second degree murder is a first degree felony punishable by life imprisonment or by up to 30 years imprisonment.

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than a variety of specifically listed offenses (e.g., arson, sexual battery, robbery, burglary, etc.). Third degree murder is a second degree felony punishable by up to 15 years imprisonment.

The bill adds "aggravated fleeing or eluding" to the above-described lists of offenses contained in s. 782.04(1)(a)2., (3), and (4), F.S. The bill also makes conforming changes to s. 921.0022, F.S., the Criminal Punishment Code, offense severity ranking chart.

On December 14, 2011, the Criminal Justice Impact Conference met and determined that this bill would have an insignificant 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:

##### **Aggravated Fleeing and Eluding**

Section 316.1935, F.S., relates to fleeing or eluding law enforcement officers. Subsection (4) of the statute, provided below, establishes the crimes of "aggravated fleeing or eluding" and "aggravated fleeing or eluding with serious bodily injury or death."

- (4) Any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash in violation of s. 316.027, F.S. (crash involving death or personal injury), or s. 316.061, F.S. (crashes involving damage to vehicle or personal property), having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order, or having stopped in knowing compliance with such order, willfully flees in an attempt to elude such officer and, as a result of such fleeing or eluding:
- (a) Causes injury to another person or causes damage to any property belonging to another person, commits aggravated fleeing or eluding, a second degree felony.<sup>1</sup>
  - (b) Causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle, commits aggravated fleeing or eluding with serious bodily injury or death, a first degree felony.<sup>2</sup> The court is required to sentence any person convicted of committing aggravated fleeing or eluding with serious bodily injury or death to a mandatory minimum sentence of 3 years imprisonment.<sup>3</sup>

##### **First Degree Murder**

Section 782.04(1)(a)2., F.S., defines first degree murder as the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

<sup>1</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>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> The court is authorized to impose a greater sentence as authorized by law. Section 316.1935(4)(b), F.S.

First degree murder is a capital felony punishable by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141, F.S.,<sup>4</sup> results in findings by the court that such person shall be punished by death. If such proceeding results in findings by the court that the person shall not be punished by death, such person must be punished by life imprisonment and is ineligible for parole.

### **Second Degree Murder**

Section 782.04(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any of the following offenses by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony is guilty of second degree murder:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Second degree murder is a first degree felony punishable by imprisonment for a term of years not exceeding life or by up to 30 years imprisonment and a \$10,000 fine.

### **Third Degree Murder**

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,

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<sup>4</sup> Section 921.141, F.S., requires a court, upon conviction or adjudication of guilt of a defendant of a capital felony, to conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable. After hearing all the evidence, the jury must deliberate and render an advisory sentence to the court, based upon specified aggravating and mitigating circumstances. Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, must enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it must set forth in writing its findings upon which the sentence of death is based.



- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Unlawful distribution of any substance controlled under s. 893.03(1), F.S., cocaine as described in s. 893.03(2)(a)4., F.S., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Third degree murder is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine.

### **Effect of the Bill**

The bill adds "aggravated fleeing or eluding" to the lists of offenses contained in s. 782.04(1)(a)2., (3), and (4), F.S. The bill also makes conforming changes to s. 921.0022, F.S., the Criminal Punishment Code, offense severity ranking chart and reenacts the following statutes to incorporate changes made to s. 782.04, F.S.:

- Section 775.0823, F.S. (violent offenses committed against law enforcement and correctional officers, state attorneys, assistant state attorneys, justices, or judges)
- Section 782.051, F.S. (attempted felony murder)
- Section 782.065, F.S. (murder; law enforcement officer)
- Section 947.146, F.S. (Control Release Authority).

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 782.04, F.S., relating to murder.

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

Section 3. Reenacts s. 775.0823, F.S., relating to violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.

Section 4. Reenacts s. 782.051, F.S., relating to attempted felony murder.

Section 5. Reenacts s. 782.065, F.S., relating to murder; law enforcement officer.

Section 6. Reenacts s. 947.146, F.S., relating to Control Release Authority.

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 government revenues.

#### **2. Expenditures:**

On December 14, 2011, the Criminal Justice Impact Conference met and determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

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

1. Revenues:

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

2. Expenditures:

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

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill 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:**

It is unclear why the bill adds "aggravated fleeing and eluding" to the various provisions of the murder statute rather than "aggravated fleeing or eluding with serious bodily injury or death."

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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1                                   A bill to be entitled  
 2           An act relating to murder; amending s. 782.04, F.S.;  
 3           providing that the unlawful killing of a human being  
 4           when committed by a person engaged in the perpetration  
 5           of, or in the attempt to perpetrate, the offense of  
 6           aggravated fleeing or eluding, is murder of a  
 7           specified degree, dependent upon certain  
 8           circumstances; amending s. 921.0022, F.S.; revising  
 9           provisions of the offense severity ranking chart of  
 10          the Criminal Punishment Code to conform to changes  
 11          made by the act; reenacting ss. 775.0823, 782.051,  
 12          782.065, and 947.146(3), F.S., relating to violent  
 13          offenses committed against law enforcement officers  
 14          and others, attempted felony murder, murder of a law  
 15          enforcement officer, and the Control Release  
 16          Authority, respectively, to incorporate the amendments  
 17          made to s. 782.04, 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.   Section 782.04, Florida Statutes, is amended to  
 23   read:

24           782.04   Murder.—

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

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

28           2.   When committed by a person engaged in the perpetration

29 of, or in the attempt to perpetrate, any:

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

31 b. Arson,

32 c. Sexual battery,

33 d. Robbery,

34 e. Burglary,

35 f. Kidnapping,

36 g. Escape,

37 h. Aggravated child abuse,

38 i. Aggravated abuse of an elderly person or disabled

39 adult,

40 j. Aircraft piracy,

41 k. Unlawful throwing, placing, or discharging of a

42 destructive device or bomb,

43 l. Carjacking,

44 m. Home-invasion robbery,

45 n. Aggravated stalking,

46 o. Murder of another human being,

47 p. Resisting an officer with violence to his or her

48 person,

49 q. Aggravated fleeing or eluding,

50 r. Felony that is an act of terrorism or is in

51 furtherance of an act of terrorism; or

52 3. Which resulted from the unlawful distribution of any

53 substance controlled under s. 893.03(1), cocaine as described in

54 s. 893.03(2)(a)4., opium or any synthetic or natural salt,

55 compound, derivative, or preparation of opium, or methadone by a

56 person 18 years of age or older, when such drug is proven to be

57 | the proximate cause of the death of the user,  
 58 |  
 59 | is murder in the first degree and constitutes a capital felony,  
 60 | punishable as provided in s. 775.082.

61 | (b) In all cases under this section, the procedure set  
 62 | forth in s. 921.141 shall be followed in order to determine  
 63 | sentence of death or life imprisonment.

64 | (2) The unlawful killing of a human being, when  
 65 | perpetrated by any act imminently dangerous to another and  
 66 | evincing a depraved mind regardless of human life, although  
 67 | without any premeditated design to effect the death of any  
 68 | particular individual, is murder in the second degree and  
 69 | constitutes a felony of the first degree, punishable by  
 70 | imprisonment for a term of years not exceeding life or as  
 71 | provided in s. 775.082, s. 775.083, or s. 775.084.

72 | (3) When a human being ~~person~~ is killed during ~~in~~ the  
 73 | perpetration of, or during ~~in~~ the attempt to perpetrate, any:

- 74 | (a) Trafficking offense prohibited by s. 893.135(1),
- 75 | (b) Arson,
- 76 | (c) Sexual battery,
- 77 | (d) Robbery,
- 78 | (e) Burglary,
- 79 | (f) Kidnapping,
- 80 | (g) Escape,
- 81 | (h) Aggravated child abuse,
- 82 | (i) Aggravated abuse of an elderly person or disabled  
 83 | adult,
- 84 | (j) Aircraft piracy,

- 85 (k) Unlawful throwing, placing, or discharging of a  
 86 destructive device or bomb,
- 87 (l) Carjacking,
- 88 (m) Home-invasion robbery,
- 89 (n) Aggravated stalking,
- 90 (o) Murder of another human being,
- 91 (p) Aggravated fleeing or eluding,
- 92 (q)~~(p)~~ Resisting an officer with violence to his or her  
 93 person, or
- 94 (r)~~(q)~~ Felony that is an act of terrorism or is in  
 95 furtherance of an act of terrorism,  
 96
- 97 by a person other than the person engaged in the perpetration of  
 98 or in the attempt to perpetrate such felony, the person  
 99 perpetrating or attempting to perpetrate such felony is guilty  
 100 of murder in the second degree, which constitutes a felony of  
 101 the first degree, punishable by imprisonment for a term of years  
 102 not exceeding life or as provided in s. 775.082, s. 775.083, or  
 103 s. 775.084.
- 104 (4) The unlawful killing of a human being, when  
 105 perpetrated without any design to effect death, by a person  
 106 engaged in the perpetration of, or in the attempt to perpetrate,  
 107 any felony other than any:
- 108 (a) Trafficking offense prohibited by s. 893.135(1),  
 109 (b) Arson,  
 110 (c) Sexual battery,  
 111 (d) Robbery,  
 112 (e) Burglary,

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- 113 (f) Kidnapping,  
 114 (g) Escape,  
 115 (h) Aggravated child abuse,  
 116 (i) Aggravated abuse of an elderly person or disabled  
 117 adult,  
 118 (j) Aircraft piracy,  
 119 (k) Unlawful throwing, placing, or discharging of a  
 120 destructive device or bomb,  
 121 (l) Unlawful distribution of any substance controlled  
 122 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,  
 123 or opium or any synthetic or natural salt, compound, derivative,  
 124 or preparation of opium by a person 18 years of age or older,  
 125 when such drug is proven to be the proximate cause of the death  
 126 of the user,  
 127 (m) Carjacking,  
 128 (n) Home-invasion robbery,  
 129 (o) Aggravated stalking,  
 130 (p) Murder of another human being,  
 131 (q) Aggravated fleeing or eluding,  
 132 (r)~~(q)~~ Resisting an officer with violence to his or her  
 133 person, or  
 134 (s)~~(r)~~ Felony that is an act of terrorism or is in  
 135 furtherance of an act of terrorism,  
 136  
 137 is murder in the third degree and constitutes a felony of the  
 138 second degree, punishable as provided in s. 775.082, s. 775.083,  
 139 or s. 775.084.  
 140 (5) As used in this section, the term "terrorism" means an

141 activity that:

142 (a)1. Involves a violent act or an act dangerous to human  
 143 life which is a violation of the criminal laws of this state or  
 144 of the United States; or

145 2. Involves a violation of s. 815.06; and

146 (b) Is intended to:

147 1. Intimidate, injure, or coerce a civilian population;

148 2. Influence the policy of a government by intimidation or  
 149 coercion; or

150 3. Affect the conduct of government through destruction of  
 151 property, assassination, murder, kidnapping, or aircraft piracy.

152 Section 2. Paragraphs (h) and (i) of subsection (3) of  
 153 section 921.0022, Florida Statutes, are amended to read:

154 921.0022 Criminal Punishment Code; offense severity  
 155 ranking chart.—

156 (3) OFFENSE SEVERITY RANKING CHART

157 (h) LEVEL 8

158

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.

161



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162	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
163	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
164	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
165	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
166	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
167	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
168	777.03(2)(a)	1st	Accessory after the fact, capital felony.

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169	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, <u>aggravated fleeing or eluding</u> , aircraft piracy, or unlawfully discharging bomb.
170	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
171	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
172	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
173	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
174	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.

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175	794.08 (3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
176	800.04 (4)	2nd	Lewd or lascivious battery.
177	806.01 (1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
178	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
179	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
180	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
181	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
182	812.13 (2) (b)	1st	Robbery with a weapon.
183	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.

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184	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
185	825.102 (2)	1st	Aggravated abuse of an elderly person or disabled adult.
186	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
187	825.103 (2) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
188	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
189	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
190	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
191	860.16	1st	Aircraft piracy.

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192	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
193	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
194	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
195	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
196	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
197	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
198	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
199	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.

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200	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
201	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
202	893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
203	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
204	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
205	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
206	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real

207			property.
208	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
209	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
210	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
211	(i) LEVEL 9		
212	Florida Statute	Felony Degree	Description
213	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
214	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
215			

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216	409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
217	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
218	560.123(8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
219	560.125(5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
220	655.50(10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
221	775.0844	1st	Aggravated white collar crime.
222	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
	782.04(3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery,



223			burglary, <u>aggravated fleeing or eluding</u> , and other specified felonies.
224	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
225	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
226	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
227	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
228	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
229	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.

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230	790.161	1st	Attempted capital destructive device offense.
231	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
232	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
233	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
234	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
235	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
236	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years

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			or older.
237	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.
238	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.
239			
240	812.135(2)(b)	1st	Home-invasion robbery with weapon.
	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.
241			
	827.03(2)	1st	Aggravated child abuse.
242			
	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
243			
	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
244			
	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink,

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			medicine, or water with intent to kill or injure another person.
245			
	893.135	1st	Attempted capital trafficking offense.
246			
	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
247			
	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
248			
	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
249			
	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
250			
	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
251			
	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
252			
	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
253			
	893.135	1st	Trafficking in 1,4-Butanediol, 10

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- 254 (1) (j) 1.c. kilograms or more.
- 893.135 1st Trafficking in Phenethylamines, 400
- 255 (1) (k) 2.c. grams or more.
- 896.101(5) (c) 1st Money laundering, financial
- instruments totaling or exceeding
- 256 \$100,000.
- 896.104(4) (a) 3. 1st Structuring transactions to evade
- reporting or registration
- requirements, financial transactions
- totaling or exceeding \$100,000.

257  
 258 Section 3. For the purpose of incorporating the amendment  
 259 made by this act to section 782.04, Florida Statutes, in a  
 260 reference thereto, section 775.0823, Florida Statutes, is  
 261 reenacted to read:

262 775.0823 Violent offenses committed against law  
 263 enforcement officers, correctional officers, state attorneys,  
 264 assistant state attorneys, justices, or judges.—The Legislature  
 265 does hereby provide for an increase and certainty of penalty for  
 266 any person convicted of a violent offense against any law  
 267 enforcement or correctional officer, as defined in s. 943.10(1),  
 268 (2), (3), (6), (7), (8), or (9); against any state attorney  
 269 elected pursuant to s. 27.01 or assistant state attorney  
 270 appointed under s. 27.181; or against any justice or judge of a  
 271 court described in Art. V of the State Constitution, which

272 offense arises out of or in the scope of the officer's duty as a  
 273 law enforcement or correctional officer, the state attorney's or  
 274 assistant state attorney's duty as a prosecutor or investigator,  
 275 or the justice's or judge's duty as a judicial officer, as  
 276 follows:

277 (1) For murder in the first degree as described in s.  
 278 782.04(1), if the death sentence is not imposed, a sentence of  
 279 imprisonment for life without eligibility for release.

280 (2) For attempted murder in the first degree as described  
 281 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,  
 282 or s. 775.084.

283 (3) For attempted felony murder as described in s.  
 284 782.051, a sentence pursuant to s. 775.082, s. 775.083, or s.  
 285 775.084.

286 (4) For murder in the second degree as described in s.  
 287 782.04(2) and (3), a sentence pursuant to s. 775.082, s.  
 288 775.083, or s. 775.084.

289 (5) For attempted murder in the second degree as described  
 290 in s. 782.04(2) and (3), a sentence pursuant to s. 775.082, s.  
 291 775.083, or s. 775.084.

292 (6) For murder in the third degree as described in s.  
 293 782.04(4), a sentence pursuant to s. 775.082, s. 775.083, or s.  
 294 775.084.

295 (7) For attempted murder in the third degree as described  
 296 in s. 782.04(4), a sentence pursuant to s. 775.082, s. 775.083,  
 297 or s. 775.084.

298 (8) For manslaughter as described in s. 782.07 during the  
 299 commission of a crime, a sentence pursuant to s. 775.082, s.

300 775.083, or s. 775.084.

301 (9) For kidnapping as described in s. 787.01, a sentence  
 302 pursuant to s. 775.082, s. 775.083, or s. 775.084.

303 (10) For aggravated battery as described in s. 784.045, a  
 304 sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

305 (11) For aggravated assault as described in s. 784.021, a  
 306 sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

307

308 Notwithstanding the provisions of s. 948.01, with respect to any  
 309 person who is found to have violated this section, adjudication  
 310 of guilt or imposition of sentence shall not be suspended,  
 311 deferred, or withheld.

312 Section 4. For the purpose of incorporating the amendment  
 313 made by this act to section 782.04, Florida Statutes, in a  
 314 reference thereto, section 782.051, Florida Statutes, is  
 315 reenacted to read:

316 782.051 Attempted felony murder.—

317 (1) Any person who perpetrates or attempts to perpetrate  
 318 any felony enumerated in s. 782.04(3) and who commits, aids, or  
 319 abets an intentional act that is not an essential element of the  
 320 felony and that could, but does not, cause the death of another  
 321 commits a felony of the first degree, punishable by imprisonment  
 322 for a term of years not exceeding life, or as provided in s.  
 323 775.082, s. 775.083, or s. 775.084, which is an offense ranked  
 324 in level 9 of the Criminal Punishment Code. Victim injury points  
 325 shall be scored under this subsection.

326 (2) Any person who perpetrates or attempts to perpetrate  
 327 any felony other than a felony enumerated in s. 782.04(3) and

328 | who commits, aids, or abets an intentional act that is not an  
 329 | essential element of the felony and that could, but does not,  
 330 | cause the death of another commits a felony of the first degree,  
 331 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
 332 | which is an offense ranked in level 8 of the Criminal Punishment  
 333 | Code. Victim injury points shall be scored under this  
 334 | subsection.

335 |         (3) When a person is injured during the perpetration of or  
 336 | the attempt to perpetrate any felony enumerated in s. 782.04(3)  
 337 | by a person other than the person engaged in the perpetration of  
 338 | or the attempt to perpetrate such felony, the person  
 339 | perpetrating or attempting to perpetrate such felony commits a  
 340 | felony of the second degree, punishable as provided in s.  
 341 | 775.082, s. 775.083, or s. 775.084, which is an offense ranked  
 342 | in level 7 of the Criminal Punishment Code. Victim injury points  
 343 | shall be scored under this subsection.

344 |         Section 5. For the purpose of incorporating the amendment  
 345 | made by this act to section 782.04, Florida Statutes, in a  
 346 | reference thereto, section 782.065, Florida Statutes, is  
 347 | reenacted to read:

348 |         782.065 Murder; law enforcement officer.—Notwithstanding  
 349 | ss. 775.082, 775.0823, 782.04, 782.051, and chapter 921, a  
 350 | defendant shall be sentenced to life imprisonment without  
 351 | eligibility for release upon findings by the trier of fact that,  
 352 | beyond a reasonable doubt:

353 |         (1) The defendant committed murder in the first degree in  
 354 | violation of s. 782.04(1) and a death sentence was not imposed;  
 355 | murder in the second or third degree in violation of s.



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356 | 782.04(2), (3), or (4); attempted murder in the first or second  
 357 | degree in violation of s. 782.04(1)(a)1. or (2); or attempted  
 358 | felony murder in violation of s. 782.051; and

359 |       (2) The victim of any offense described in subsection (1)  
 360 | was a law enforcement officer, part-time law enforcement  
 361 | officer, or auxiliary law enforcement officer, as those terms  
 362 | are defined in s. 943.10, engaged in the lawful performance of a  
 363 | legal duty.

364 |       Section 6. For the purpose of incorporating the amendment  
 365 | made by this act to section 782.04, Florida Statutes, in a  
 366 | reference thereto, subsection (3) of section 947.146, Florida  
 367 | Statutes, is reenacted to read:

368 |       947.146 Control Release Authority.—

369 |       (3) Within 120 days prior to the date the state  
 370 | correctional system is projected pursuant to s. 216.136 to  
 371 | exceed 99 percent of total capacity, the authority shall  
 372 | determine eligibility for and establish a control release date  
 373 | for an appropriate number of parole ineligible inmates committed  
 374 | to the department and incarcerated within the state who have  
 375 | been determined by the authority to be eligible for  
 376 | discretionary early release pursuant to this section. In  
 377 | establishing control release dates, it is the intent of the  
 378 | Legislature that the authority prioritize consideration of  
 379 | eligible inmates closest to their tentative release date. The  
 380 | authority shall rely upon commitment data on the offender  
 381 | information system maintained by the department to initially  
 382 | identify inmates who are to be reviewed for control release  
 383 | consideration. The authority may use a method of objective risk

384 assessment in determining if an eligible inmate should be  
 385 released. Such assessment shall be a part of the department's  
 386 management information system. However, the authority shall have  
 387 sole responsibility for determining control release eligibility,  
 388 establishing a control release date, and effectuating the  
 389 release of a sufficient number of inmates to maintain the inmate  
 390 population between 99 percent and 100 percent of total capacity.  
 391 Inmates who are ineligible for control release are inmates who  
 392 are parole eligible or inmates who:

393 (a) Are serving a sentence that includes a mandatory  
 394 minimum provision for a capital offense or drug trafficking  
 395 offense and have not served the number of days equal to the  
 396 mandatory minimum term less any jail-time credit awarded by the  
 397 court;

398 (b) Are serving the mandatory minimum portion of a  
 399 sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);

400 (c) Are convicted, or have been previously convicted, of  
 401 committing or attempting to commit sexual battery, incest, or  
 402 any of the following lewd or indecent assaults or acts:  
 403 masturbating in public; exposing the sexual organs in a  
 404 perverted manner; or nonconsensual handling or fondling of the  
 405 sexual organs of another person;

406 (d) Are convicted, or have been previously convicted, of  
 407 committing or attempting to commit assault, aggravated assault,  
 408 battery, or aggravated battery, and a sex act was attempted or  
 409 completed during commission of such offense;

410 (e) Are convicted, or have been previously convicted, of  
 411 committing or attempting to commit kidnapping, burglary, or

412 murder, and the offense was committed with the intent to commit  
 413 sexual battery or a sex act was attempted or completed during  
 414 commission of the offense;

415 (f) Are convicted, or have been previously convicted, of  
 416 committing or attempting to commit false imprisonment upon a  
 417 child under the age of 13 and, in the course of committing the  
 418 offense, the inmate committed aggravated child abuse, sexual  
 419 battery against the child, or a lewd or lascivious offense  
 420 committed upon or in the presence of a person less than 16 years  
 421 of age;

422 (g) Are sentenced, have previously been sentenced, or have  
 423 been sentenced at any time under s. 775.084, or have been  
 424 sentenced at any time in another jurisdiction as a habitual  
 425 offender;

426 (h) Are convicted, or have been previously convicted, of  
 427 committing or attempting to commit assault, aggravated assault,  
 428 battery, aggravated battery, kidnapping, manslaughter, or murder  
 429 against an officer as defined in s. 943.10(1), (2), (3), (6),  
 430 (7), (8), or (9); against a state attorney or assistant state  
 431 attorney; or against a justice or judge of a court described in  
 432 Art. V of the State Constitution; or against an officer, judge,  
 433 or state attorney employed in a comparable position by any other  
 434 jurisdiction; or

435 (i) Are convicted, or have been previously convicted, of  
 436 committing or attempting to commit murder in the first, second,  
 437 or third degree under s. 782.04(1), (2), (3), or (4), or have  
 438 ever been convicted of any degree of murder or attempted murder  
 439 in another jurisdiction;

440 (j) Are convicted, or have been previously convicted, of  
 441 DUI manslaughter under s. 316.193(3)(c)3., and are sentenced, or  
 442 have been sentenced at any time, as a habitual offender for such  
 443 offense, or have been sentenced at any time in another  
 444 jurisdiction as a habitual offender for such offense;

445 (k)1. Are serving a sentence for an offense committed on  
 446 or after January 1, 1994, for a violation of the Law Enforcement  
 447 Protection Act under s. 775.0823(2), (3), (4), (5), or (6), and  
 448 the subtotal of the offender's sentence points is multiplied  
 449 pursuant to former s. 921.0014 or s. 921.0024;

450 2. Are serving a sentence for an offense committed on or  
 451 after October 1, 1995, for a violation of the Law Enforcement  
 452 Protection Act under s. 775.0823(2), (3), (4), (5), (6), (7),  
 453 (8), or (9), and the subtotal of the offender's sentence points  
 454 is multiplied pursuant to former s. 921.0014 or s. 921.0024;

455 (l) Are serving a sentence for an offense committed on or  
 456 after January 1, 1994, for possession of a firearm,  
 457 semiautomatic firearm, or machine gun in which additional points  
 458 are added to the subtotal of the offender's sentence points  
 459 pursuant to former s. 921.0014 or s. 921.0024; or

460 (m) Are convicted, or have been previously convicted, of  
 461 committing or attempting to commit manslaughter, kidnapping,  
 462 robbery, carjacking, home-invasion robbery, or a burglary under  
 463 s. 810.02(2).

464

465 In making control release eligibility determinations under this  
 466 subsection, the authority may rely on any document leading to or  
 467 generated during the course of the criminal proceedings,

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468 | including, but not limited to, any presentence or postsentence  
469 | investigation or any information contained in arrest reports  
470 | relating to circumstances of the offense.

471 |       Section 7. This act shall take effect October 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 667 (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: Criminal Justice  
2 Subcommittee

3 Representative Corcoran offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. This act may be cited as the "Deputy John C.  
8 Mecklenburg Act."

9 Section 2. Paragraph (b) of subsection (4) of section  
10 316.1935, Florida Statutes, is amended to read:

11 316.1935 Fleeing or attempting to elude a law enforcement  
12 officer; aggravated fleeing or eluding.-

13 (4) Any person who, in the course of unlawfully leaving or  
14 attempting to leave the scene of a crash in violation of s.  
15 316.027 or s. 316.061, having knowledge of an order to stop by a  
16 duly authorized law enforcement officer, willfully refuses or  
17 fails to stop in compliance with such an order, or having  
18 stopped in knowing compliance with such order, willfully flees

COMMITTEE/SUBCOMMITTEE AMENDMENT

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19 in an attempt to elude such officer and, as a result of such  
20 fleeing or eluding:

21 (b) Causes serious bodily injury or death to another  
22 person, including any law enforcement officer involved in  
23 pursuing or otherwise attempting to effect a stop of the  
24 person's vehicle, commits aggravated fleeing or eluding with  
25 serious bodily injury or death, a felony of the first degree,  
26 punishable by imprisonment for a term of years not exceeding  
27 life imprisonment or as provided in s. 775.082, s. 775.083, or  
28 s. 775.084.

29  
30 The felony of aggravated fleeing or eluding and the felony of  
31 aggravated fleeing or eluding with serious bodily injury or  
32 death constitute separate offenses for which a person may be  
33 charged, in addition to the offenses under ss. 316.027 and  
34 316.061, relating to unlawfully leaving the scene of a crash,  
35 which the person had been in the course of committing or  
36 attempting to commit when the order to stop was given.

37 Notwithstanding any other provision of law, the court shall  
38 sentence any person convicted of committing aggravated fleeing  
39 or eluding with serious bodily injury or death to a mandatory  
40 minimum sentence of 3 years imprisonment. Nothing in this  
41 subsection shall prevent a court from imposing a greater  
42 sentence of incarceration as authorized by law.

43 Section 3. Paragraph (h) of subsection (3) of section  
44 921.0022, Florida Statutes, is amended to read:

45 921.0022 Criminal Punishment Code; offense severity  
46 ranking chart.—

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47 (3) OFFENSE SEVERITY RANKING CHART

48 (h) LEVEL 8

49

Florida Statute	Felony Degree	Description
-----------------	---------------	-------------

50

316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
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51

316.1935 (4) (b)	1 <sup>st</sup> , <u>PBL</u>	Aggravated fleeing or attempted eluding with serious bodily injury or death.
------------------	------------------------------	--

52

327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
-------------------	-----	--------------------------

53

499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
--------------	-----	---

54

499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
--------------	-----	---

55

560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
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56



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560.125(5)(b) 2nd Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.

57

655.50(10)(b)2. 2nd Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.

58

777.03(2)(a) 1st Accessory after the fact, capital felony.

59

782.04(4) 2nd Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.

60

782.051(2) 1st Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).

61

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782.071(1)(b)

1st

Committing vehicular homicide and failing to render aid or give information.

62

782.072(2)

1st

Committing vessel homicide and failing to render aid or give information.

63

790.161(3)

1st

Discharging a destructive device which results in bodily harm or property damage.

64

794.011(5)

2nd

Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.

65

794.08(3)

2nd

Female genital mutilation, removal of a victim younger than 18 years of age from this state.

66

800.04(4)

2nd

Lewd or lascivious battery.

67

806.01(1)

1st

Maliciously damage dwelling or structure by fire or explosive, believing person in structure.

68

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69	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
70	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
71	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
72	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
73	812.13(2)(b)	1st	Robbery with a weapon.
74	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
75	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
	825.102(2)	1st	Aggravated abuse of an elderly

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76			person or disabled adult.
	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
77			
	825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
78			
	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
79			
	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
80			
	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
81			
	860.16	1st	Aircraft piracy.
82			
	893.13(1)(b)	1st	Sell or deliver in excess of 10

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grams of any substance  
specified in s. 893.03(1)(a) or  
(b).

83

893.13(2)(b)            1st    Purchase in excess of 10 grams  
of any substance specified in  
s. 893.03(1)(a) or (b).

84

893.13(6)(c)           1st    Possess in excess of 10 grams  
of any substance specified in  
s. 893.03(1)(a) or (b).

85

893.135(1)(a)2.        1st    Trafficking in cannabis, more  
than 2,000 lbs., less than  
10,000 lbs.

86

893.135  
(1)(b)1.b.              1st    Trafficking in cocaine, more  
than 200 grams, less than 400  
grams.

87

893.135  
(1)(c)1.b.              1st    Trafficking in illegal drugs,  
more than 14 grams, less than  
28 grams.

88

893.135  
(1)(d)1.b.              1st    Trafficking in phencyclidine,  
more than 200 grams, less than  
400 grams.

89

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90	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
91	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
92	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
93	893.135 (1)(h)1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
94	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
95	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
	893.1351(3)	1st	Possession of a place used to manufacture controlled

COMMITTEE/SUBCOMMITTEE AMENDMENT

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substance when minor is present  
or resides there.

96

895.03(1) 1st Use or invest proceeds derived  
from pattern of racketeering  
activity.

97

895.03(2) 1st Acquire or maintain through  
racketeering activity any  
interest in or control of any  
enterprise or real property.

98

895.03(3) 1st Conduct or participate in any  
enterprise through pattern of  
racketeering activity.

99

896.101(5)(b) 2nd Money laundering, financial  
transactions totaling or  
exceeding \$20,000, but less  
than \$100,000.

100

896.104(4)(a)2. 2nd Structuring transactions to  
evade reporting or registration  
requirements, financial  
transactions totaling or  
exceeding \$20,000 but less than  
\$100,000.

101

Amendment No. 1

102 Section 4. This act shall take effect October 1, 2012.

103

104

105 -----

106

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

107

Remove the entire title and insert:

108

An act relating to aggravated feeling or eluding; citing the act

109

the "Deputy John C. Mecklenburg Act;" amending s. 316.1935,

110

F.S.; providing that aggravated fleeing or eluding with serious

111

bodily injury or death is a first degree felony punishable by a

112

term of years not exceeding life imprisonment; amending s.

113

921.0022, F.S.; making a corresponding change to the Criminal

114

Punishment Code, offense severity ranking chart; providing an

115

effective date.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1175 Controlled Substances  
**SPONSOR(S):** Ingram  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1502

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

### SUMMARY ANALYSIS

Synthetic cannabinoids (also known as "K2" or "Spice"), are chemically engineered substances containing one or more synthetic compounds that behave similarly to the primary psychoactive constituent of marijuana. Synthetic stimulants, routinely marketed as "bath salts," are psychoactive substances that, when used improperly, offer alternatives to illegal drugs. In recent years, synthetic cannabinoids and bath salts have begun being used as recreational drugs, and marketed as legal and safer alternatives to illegal methods of getting "high".

During the 2011 legislative session, s. 893.03, F.S., was amended to add synthetic cannabinoids and bath salts substances to Schedule I of Florida's controlled substance schedules. As a result, current law prohibits the possession, sale, manufacture, delivery and purchase of the synthetic cannabinoid and bath salt substances listed in Schedule I.

Since the 2011 Legislative Session, new formulas of synthetic cannabinoids and bath salts have been developed and introduced that are made up of chemicals that are not covered by current law.

The bill amends s. 893.03, F.S., to add additional chemical formulas of synthetic cannabinoids and bath salts to Schedule I of Florida's controlled substance schedules. As a result, possession of these substances is a third degree felony ranked in Level 3 of the ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver these substances is a third degree felony ranked in Level 3 of the ranking chart. The purchase of these substances is a third degree felony ranked in Level 2 of the ranking chart.

The bill may have a fiscal impact on state and local government. See fiscal section.

The bill is effective October 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Synthetic Cannabinoids

Synthetic cannabinoids (also known as "K2" or "Spice") are chemically engineered substances, similar to tetrahydrocannabinol (THC)—the active ingredient in marijuana—that, when smoked or ingested, can produce a high similar to marijuana.<sup>1</sup> Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system. No legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the U.S. Food and Drug Administration for human consumption.<sup>2</sup>

##### Bath Salts

3,4-Methylenedioxymethcathinone, 3,4-Methylenedioxypropylvalerone (MDPV), Methylenedioxymethcathinone, Methoxymethcathinone, Fluoromethcathinone, and Methylethcathinone, are psychoactive substances that, when used improperly, offer alternatives to illegal drugs.<sup>3</sup> Much like the marketing of Synthetic Cannabinoids (Spice/K2) as incense, these synthetic stimulant substances are commercially available and are being marketed as "bath salts"<sup>4, 5</sup> While these substances have become popular under the guise of being sold as bath salts, they are sometimes sold as other products such as insect repellent or plant food, with names like "Bonsai Grow," among others.<sup>6</sup>

##### Substance Abuse

Despite being labeled "not for human consumption," synthetic cannabinoids and bath salts have begun being used as recreational drugs and have been marketed as legal and safer alternatives to illegal methods of getting "high".<sup>7</sup> They have been found accessible at convenience stores, discount tobacco outlets, gas stations, pawnshops, tattoo parlors, and truck stops, amongst other locations.<sup>8</sup> These substances are reportedly being used predominately by the youth population.<sup>9</sup>

Synthetic cannabinoids and bath salts are abused typically by smoking. However, bath salts have also been abused by injection, snorting and by the use of an atomizer.<sup>10</sup> Reports of side effects from synthetic cannabinoids and bath salts include: tachycardia, hypertension, anxiety, high blood pressure,

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<sup>1</sup> National Conference of State Legislatures, "Synthetic Drug Threats." October 24, 2011 (<http://www.ncsl.org/?tabid=21398>) (last visited on January 12, 2012).

<sup>2</sup> "Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I," Federal Register, The Daily Journal of the United States Government, November 24, 2010 (<http://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule>) (last visited on January 12, 2012).

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

<sup>4</sup> "Bath salts" are known by a variety of names, including "Red Dove," "Blue Silk," "Zoom," "Bloom," "Cloud Nine," "Ocean Snow," "Lunar Wave," "Vanilla Sky," "Ivory Wave," "White Lightning," "Scarface" "Purple Wave," "Blizzard," "Star Dust," "Lovey, Dovey," "Snow Leopard," "Aura," and "Hurricane Charlie." Hunterdon Drug Awareness Program, Comprehensive Drug Information on MDPV, Mephedrone ("Bath Salts"). Hunterdon Drug Awareness Program, Comprehensive Drug Information on MDPV, Mephedrone ("Bath Salts"). December 28, 2011. (<http://www.hdap.org/mdpv.html>) (last visited on January 12, 2012).

<sup>5</sup> Hunterdon Drug Awareness Program, Comprehensive Drug Information on MDPV, Mephedrone ("Bath Salts"). December 28, 2011. (<http://www.hdap.org/mdpv.html>) (last visited on January 12, 2012).

<sup>6</sup> Drug Enforcement Administration. Methylenedioxypropylvalerone (MDPV). October, 2011. ([http://www.deadiversion.usdoj.gov/drugs\\_concern/mdpv.pdf](http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf)) (last visited on January 12, 2012).

<sup>7</sup> See, Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence. "Bath Salts" Receive Emergency Drug Scheduling. Brief # 10-194 Public, January 26, 2011. ([http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10\\_194BathSaltsPublic.pdf](http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf)) (last visited on January 12, 2012). See also, *supra* note 2.

<sup>8</sup> National Drug Intelligence Center. U.S. Department of Justice. DRUG WATCH: Increasing abuse of bath salts. December 17, 2010. ([www.justice.gov/ndic/pubs43/43474/sw0007p.pdf](http://www.justice.gov/ndic/pubs43/43474/sw0007p.pdf)) (last visited on January 12, 2012).

<sup>9</sup> *Supra* note 6. See also, *supra* note 2.

<sup>10</sup> *Supra* note 8.

and hallucinations.<sup>11</sup> Additionally, there have been cases in which these substances have caused individuals to behave inappropriately, and in some instances cause public danger.<sup>12</sup>

### Drug Schedules

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein.

The distinguishing factors between the different drug schedules are the "potential for abuse"<sup>13</sup> of the substance listed therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.<sup>14</sup> Cannabis and heroin are examples of Schedule I drugs.<sup>15</sup>

### Florida law

#### *Synthetic Cannabinoids (Spice/K2)*

During the 2011 Legislative Session, the following synthetic cannabinoids and synthetic cannabinoid-mimicking compounds were added to Schedule I of Florida's controlled substance schedules:

- 2-[ (1R, 3S) -3-hydroxycyclohexyl] -5- (2-methyloctan-2-yl) phenol, also known as CP 47, 497 and its dimethyloctyl (C8) homologue.
- (6aR, 10aR) -9- (hydroxymethyl) -6, 6-dimethyl-3- (2-methyloctan-2-yl) -6a, 7, 10, 10a-tetrahydrobenzo [c] chromen-1-ol, also known as HU-210.
- 1-Pentyl-3- (1-naphthoyl) indole, also known as JWH-018.
- 1-Butyl-3- (1-naphthoyl) indole, also known as JWH-073.
- 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl) indole, also known as JWH-200.<sup>16</sup>

As a result, possession of these synthetic cannabinoids is a third degree felony<sup>17</sup> in conformity with other Schedule I hallucinogens.<sup>18</sup> This offense is ranked in Level 3 of the offense severity ranking chart (ranking chart). The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver synthetic cannabinoids is a third degree felony ranked in Level 3 of the ranking chart. The offense of purchase of synthetic cannabinoids is a third degree felony ranked in Level 2 of the ranking chart.

#### *Bath Salts*

During the 2011 Legislative Session, the following synthetic substances (bath salts) were added to Schedule I of Florida's controlled substance schedules:

- 3,4-Methylenedioxymethcathinone.
- 3,4-Methylenedioxypyrovalerone (MDPV).
- Methylenedioxymethcathinone.
- Methoxymethcathinone.
- Fluoromethcathinone.
- Methylethcathinone.<sup>19</sup>

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<sup>11</sup> *Supra* note 6. *See also, supra* note 2.

<sup>12</sup> According to Panama City Beach police, one of the most shocking cases of bath salts abuse involved a woman who burst into her 71-year-old mother's room swinging a machete. Alexia Campbell and Aaron Deslatte, Sun Sentinel, *Florida bans 'bath salt' drugs after violent outbursts*. January 27, 2011. ([http://articles.sun-sentinel.com/2011-01-27/news/fl-bath-salts-florida-20110126\\_1\\_salts-fake-cocaine-bath](http://articles.sun-sentinel.com/2011-01-27/news/fl-bath-salts-florida-20110126_1_salts-fake-cocaine-bath)) (last visited on January 12, 2012).

<sup>13</sup> *See* s. 893.02(19), F.S.

<sup>14</sup> *See* s. 893.03, F.S.

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

<sup>16</sup> Chapter 2011-73, L.O.F.

<sup>17</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>18</sup> Possession of 3 grams or less of synthetic cannabinoids will be a first degree misdemeanor, unless the synthetic cannabinoid is in powdered form. *See*, ch. 2011-73, L.O.F.

<sup>19</sup> Chapter 2011-90, L.O.F.

As a result, possession of these substances is a third degree felony ranked in Level 3 of the ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver these substances is a third degree felony ranked in Level 3 of the ranking chart. The purchase of these substances is a third degree felony ranked in Level 2 of the ranking chart.

#### Recent Issues

Since the 2011 Legislative Session, new formulas of synthetic cannabinoids and bath salts have been developed and introduced that are made up of chemicals that are not covered by current law.<sup>20</sup> According to the Florida Department of Law Enforcement (FDLE), state and local law enforcement agencies are currently limited in their ability to intercede in cases involving any of these chemical substances, thus creating an environment where individuals feel free to possess, distribute, and/or use these harmful substances without fear of intervention by state and local law enforcement.<sup>21</sup>

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

The bill amends s. 893.03, F.S., to add certain specified materials, compounds, mixtures, or preparations that contain certain chemical substances related to synthetic cannabinoids and bath salts to Schedule I of Florida's controlled substance schedules. As a result, possession of these substances is a third degree felony ranked in Level 3 of the ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver these substances is a third degree felony ranked in Level 3 of the ranking chart. The purchase of these substances is a third degree felony ranked in Level 2 of the ranking chart.

The bill also reenacts ss. 893.13(1) – (6) and 921.0022(3)(b) – (e), F.S., to incorporate changes made to s. 893.03, F.S.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 893.03, F.S., relating to standards and schedules.

Section 2. Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 3. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. 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 bill adds certain chemical substances to Schedule I of Florida's controlled substance schedules. According to FDLE, these additions could potentially increase the number of evidence

<sup>20</sup> According to the FDLE, over 90 chemicals related to synthetic cannabinoids and bath salts have been discovered that have no accepted medical use or a legitimate industrial or commercial purpose. Although similar in structural make up, these chemical compounds differ by rearrangement of the molecules, creating a different drug. See, Florida Department of Law Enforcement. Analysis to HB 1175 relating to Controlled Substances. January 12, 2012. (On file with House Criminal Justice Subcommittee).

<sup>21</sup> Florida Department of Law Enforcement. Analysis to HB 1175 relating to Controlled Substances. January 12, 2012. (On file with House Criminal Justice Subcommittee).

submissions into FDLE's Crime Laboratory System.<sup>22</sup> The lab system will need to acquire all of the required standards necessary to test the proposed chemical substances.<sup>23</sup>

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill. However, during the 2011 session the Conference determined that HB 39 and HB 1039, which were similar to this bill, would have an insignificant prison bed impact. As a result, it is expected that the bill will have an insignificant prison bed impact on the Department of Corrections.

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

##### 1. Revenues:

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

##### 2. Expenditures:

Because the bill adds certain chemical substances to Schedule I, local agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a rise in evidence submissions associated with the additions of the proposed chemical substances.<sup>24</sup>

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

The bill prohibits the possession, sale, manufacture, delivery and purchase of related synthetic cannabinoids and bath salts chemical substances. As a result, the bill could have a negative fiscal impact on retailers currently profiting on the sale of such chemical substances.

#### 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

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<sup>22</sup> *Id.*

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

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

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A bill to be entitled  
 An act relating to controlled substances; amending s.  
 893.03, F.S.; adding to the list of Schedule I  
 controlled substances certain specified materials,  
 compounds, mixtures, or preparations that contain  
 hallucinogenic substances or that contain any of these  
 substances' salts, isomers, and salts of isomers, if  
 the existence of such salts, isomers, and salts of  
 isomers is possible within the specific chemical  
 designation; reenacting ss. 893.13(1)-(6) and  
 921.0022(3)(b)-(e), F.S., relating to prohibited acts  
 involving controlled substances and the Criminal  
 Punishment Code, respectively, to incorporate the  
 amendments made to s. 893.03, F.S., in references  
 thereto; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section  
 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated  
 in this section are controlled by this chapter. The controlled  
 substances listed or to be listed in Schedules I, II, III, IV,  
 and V are included by whatever official, common, usual,  
 chemical, or trade name designated. The provisions of this  
 section shall not be construed to include within any of the  
 schedules contained in this section any excluded drugs listed  
 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded

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29 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
 30 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
 31 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
 32 Anabolic Steroid Products."

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

38 (c) Unless specifically excepted or unless listed in  
 39 another schedule, any material, compound, mixture, or  
 40 preparation that ~~which~~ contains any quantity of the following  
 41 hallucinogenic substances or that ~~which~~ contains any of their  
 42 salts, isomers, and salts of isomers, if ~~whenever~~ the existence  
 43 of such salts, isomers, and salts of isomers is possible within  
 44 the specific chemical designation:

- 45 1. Alpha-ethyltryptamine.
- 46 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-  
 47 methylaminorex).
- 48 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
- 49 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 50 5. 4-Bromo-2, 5-dimethoxyphenethylamine.
- 51 6. Bufotenine.
- 52 7. Cannabis.
- 53 8. Cathinone.
- 54 9. Diethyltryptamine.
- 55 10. 2,5-Dimethoxyamphetamine.
- 56 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).



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- 57 12. Dimethyltryptamine.
- 58 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine  
59 analog of phencyclidine).
- 60 14. N-Ethyl-3-piperidyl benzilate.
- 61 15. N-ethylamphetamine.
- 62 16. Fenethylamine.
- 63 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
- 64 18. Ibogaine.
- 65 19. Lysergic acid diethylamide (LSD).
- 66 20. Mescaline.
- 67 21. Methcathinone.
- 68 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 69 23. 4-methoxyamphetamine.
- 70 24. 4-methoxymethamphetamine.
- 71 25. 4-Methyl-2,5-dimethoxyamphetamine.
- 72 26. 3,4-Methylenedioxy-N-ethylamphetamine.
- 73 27. 3,4-Methylenedioxyamphetamine.
- 74 28. N-Methyl-3-piperidyl benzilate.
- 75 29. N,N-dimethylamphetamine.
- 76 30. Parahexyl.
- 77 31. Peyote.
- 78 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine  
79 analog of phencyclidine).
- 80 33. Psilocybin.
- 81 34. Psilocyn.
- 82 35. Salvia divinorum, except for any drug product approved  
83 by the United States Food and Drug Administration which contains  
84 Salvia divinorum or its isomers, esters, ethers, salts, and

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85 salts of isomers, esters, and ethers, if ~~whenever~~ the existence  
 86 of such isomers, esters, ethers, and salts is possible within  
 87 the specific chemical designation.

88 36. Salvinorin A, except for any drug product approved by  
 89 the United States Food and Drug Administration which contains  
 90 Salvinorin A or its isomers, esters, ethers, salts, and salts of  
 91 isomers, esters, and ethers, if ~~whenever~~ the existence of such  
 92 isomers, esters, ethers, and salts is possible within the  
 93 specific chemical designation.

94 37. Tetrahydrocannabinols.

95 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)  
 96 (Thiophene analog of phencyclidine).

97 39. 3,4,5-Trimethoxyamphetamine.

98 40. 3,4-Methylenedioxymethcathinone.

99 41. 3,4-Methylenedioxypyrovalerone (MDPV).

100 42. Methymethcathinone.

101 43. Methoxymethcathinone.

102 44. Fluoromethcathinone.

103 45. Methylethcathinone.

104 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-  
 105 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)  
 106 homologue.

107 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-  
 108 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,  
 109 also known as HU-210.

110 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.

111 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.

112 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole,

- 113 | also known as JWH-200.
- 114 |     51. BZP (Benzylpiperazine).
- 115 |     52. Fluorophenylpiperazine.
- 116 |     53. Methylphenylpiperazine.
- 117 |     54. Chlorophenylpiperazine.
- 118 |     55. Methoxyphenylpiperazine.
- 119 |     56. DBZP (1,4-dibenzylpiperazine).
- 120 |     57. TFMPP (3-Trifluoromethylphenylpiperazine).
- 121 |     58. MBDB (Methylbenzodioxolylbutanamine).
- 122 |     59. 5-Hydroxy-alpha-methyltryptamine.
- 123 |     60. 5-Hydroxy-N-methyltryptamine.
- 124 |     61. 5-Methoxy-N-methyl-N-isopropyltryptamine.
- 125 |     62. 5-Methoxy-alpha-methyltryptamine.
- 126 |     63. Methyltryptamine.
- 127 |     64. 5-Methoxy-N,N-dimethyltryptamine.
- 128 |     65. 5-Methyl-N,N-dimethyltryptamine.
- 129 |     66. Tyramine (4-Hydroxyphenethylamine).
- 130 |     67. 5-Methoxy-N,N-Diisopropyltryptamine.
- 131 |     68. DiPT (N,N-Diisopropyltryptamine).
- 132 |     69. DPT (N,N-Dipropyltryptamine).
- 133 |     70. 4-Hydroxy-N,N-diisopropyltryptamine.
- 134 |     71. Methoxytryptamine.
- 135 |     72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 136 |     73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 137 |     74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 138 |     75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
- 139 |     76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 140 |     77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).

- 141     78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
- 142     79. 2C-T-7 (2,5-Dimethoxy-4-propylthiophenethylamine).
- 143     80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 144     81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).
- 145     82. Ethcathinone.
- 146     83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
- 147     84. Naphyrone (naphylpyrovalerone).
- 148     85. N-N-Dimethyl-3,4-methylenedioxcathinone.
- 149     86. N-N-Diethyl-3,4-methylenedioxcathinone.
- 150     87. 3,4-methylenedioxy-propiofenone.
- 151     88. 2-Bromo-3,4-Methylenedioxypropiofenone.
- 152     89. 3,4-methylenedioxy-propiofenone-2-oxime.
- 153     90. N-Acetyl-3,4-methylenedioxcathinone.
- 154     91. N-Acetyl-N-Methyl-3,4-Methylenedioxcathinone.
- 155     92. N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone.
- 156     93. Bromomethcathinone.
- 157     94. Buphedrone (alpha-methylamino-butyrophenone).
- 158     95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
- 159     96. Dimethylcathinone.
- 160     97. Dimethylmethcathinone.
- 161     98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
- 162     99. (MDPPP) 3,4-Methylenedioxy-alpha-
- 163 pyrrolidinopropiofenone.
- 164     100. (MDPBP) 3,4-Methylenedioxy-alpha-
- 165 pyrrolidinobutiophenone.
- 166     101. Methoxypyrrolidinopropiofenone (MOPPP).
- 167     102. Methylpyrrolidinohexiofenone (MPHP).
- 168     103. Benocyclidine (BCP) or

- 169 benzothiophenylcyclohexylpiperidine (BTCP).
- 170 104. Fluoromethylaminobutyrophenone (F-MABP).
- 171 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
- 172 106. Ethylpyrrolodinobutyrophenone (Et-PBP).
- 173 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
- 174 108. Methyleneaminobutyrophenone (Me-EABP)
- 175 109. Methylaminobutyrophenone (MABP).
- 176 110. Pyrrolidinopropiophenone.
- 177 111. Pyrrolidinobutiophenone (PBP).
- 178 112. Pyrrolidinovalerophenone (PVP).
- 179 113. Methylpyrrolidinopropiophenone (MPPP).
- 180 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
- 181 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
- 182 naphthalenylmethanone).
- 183 116. JWH-019 (Naphthalen-1-yl-(1-pentylindol-3-
- 184 yl)methanone).
- 185 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
- 186 118. JWH-072 (naphthalen-1-yl(1-propyl-1H-indol-3-
- 187 yl)methanone).
- 188 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
- 189 yl)methanone).
- 190 120. JHW-122 (1-Pentyl-3-(40methyl-1-naphthoyl)indole).
- 191 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-
- 192 6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
- 193 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-
- 194 indole).
- 195 123. JWH-201 (1-pentyl-3-(4-methocyphenylacetyl)indole).
- 196 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-

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- 197 | yl)ethanone).  
 198 |        125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-  
 199 | yl)methanone).  
 200 |        126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-  
 201 | yl)ethanone).  
 202 |        127. JWH-251 (2-(2-methylphenyl)-1-(1 pentyl-1H-indol-3-  
 203 | yl)ethanone).  
 204 |        128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).  
 205 |        129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole)..  
 206 |        130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-  
 207 | (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-  
 208 | ol)).  
 209 |        131. HU-308 ([91R,2R,5R)-2-[2,6-dimethoxy-4-(2-  
 210 | methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-  
 211 | enyl]methanol).  
 212 |        132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-  
 213 | methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-  
 214 | 1,4-dione).  
 215 |        133. CB-13 (Naphthalen-1-yl-(4-pentylloxynaphthalen-1-  
 216 | yl)methanone).  
 217 |        134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-  
 218 | undecanamide).  
 219 |        135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-  
 220 | undecanamide).  
 221 |        136. CP55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl)  
 222 | cyclohexyl]-5-(2-methyloctan-2-yl)phenol.)  
 223 |        137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-  
 224 | iodophenyl)methanone).

225 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-  
 226 (naphthalen-1-yl)methanone).

227 139. RCS-4 (((4-methoxyphenyl) (1-pentyl-1H-indol-3-  
 228 yl)methanone)).

229 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-  
 230 methoxyphenylethanone).

231 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-  
 232 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-  
 233 naphthalenylmethanone).

234 142. WIN55,212-3 ([3S)-2,3-Dihydro-5-methyl-3-(4-  
 235 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-  
 236 naphthalenylmethanone).

237 Section 2. For the purpose of incorporating the amendment  
 238 made by this act to section 893.03, Florida Statutes, in  
 239 references thereto, subsections (1), (2), (3), (4), (5), and (6)  
 240 of section 893.13, Florida Statutes, are reenacted to read:

241 893.13 Prohibited acts; penalties.--

242 (1)(a) Except as authorized by this chapter and chapter  
 243 499, it is unlawful for any person to sell, manufacture, or  
 244 deliver, or possess with intent to sell, manufacture, or  
 245 deliver, a controlled substance. Any person who violates this  
 246 provision with respect to:

247 1. A controlled substance named or described in s.  
 248 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 249 commits a felony of the second degree, punishable as provided in  
 250 s. 775.082, s. 775.083, or s. 775.084.

251 2. A controlled substance named or described in s.  
 252 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

253 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 254 the third degree, punishable as provided in s. 775.082, s.  
 255 775.083, or s. 775.084.

256 3. A controlled substance named or described in s.  
 257 893.03(5) commits a misdemeanor of the first degree, punishable  
 258 as provided in s. 775.082 or s. 775.083.

259 (b) Except as provided in this chapter, it is unlawful to  
 260 sell or deliver in excess of 10 grams of any substance named or  
 261 described in s. 893.03(1)(a) or (1)(b), or any combination  
 262 thereof, or any mixture containing any such substance. Any  
 263 person who violates this paragraph commits a felony of the first  
 264 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 265 775.084.

266 (c) Except as authorized by this chapter, it is unlawful  
 267 for any person to sell, manufacture, or deliver, or possess with  
 268 intent to sell, manufacture, or deliver, a controlled substance  
 269 in, on, or within 1,000 feet of the real property comprising a  
 270 child care facility as defined in s. 402.302 or a public or  
 271 private elementary, middle, or secondary school between the  
 272 hours of 6 a.m. and 12 midnight, or at any time in, on, or  
 273 within 1,000 feet of real property comprising a state, county,  
 274 or municipal park, a community center, or a publicly owned  
 275 recreational facility. For the purposes of this paragraph, the  
 276 term "community center" means a facility operated by a nonprofit  
 277 community-based organization for the provision of recreational,  
 278 social, or educational services to the public. Any person who  
 279 violates this paragraph with respect to:

280 1. A controlled substance named or described in s.



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281 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 282 commits a felony of the first degree, punishable as provided in  
 283 s. 775.082, s. 775.083, or s. 775.084. The defendant must be  
 284 sentenced to a minimum term of imprisonment of 3 calendar years  
 285 unless the offense was committed within 1,000 feet of the real  
 286 property comprising a child care facility as defined in s.  
 287 402.302.

288 2. A controlled substance named or described in s.  
 289 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 290 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 291 the second degree, punishable as provided in s. 775.082, s.  
 292 775.083, or s. 775.084.

293 3. Any other controlled substance, except as lawfully  
 294 sold, manufactured, or delivered, must be sentenced to pay a  
 295 \$500 fine and to serve 100 hours of public service in addition  
 296 to any other penalty prescribed by law.

297  
 298 This paragraph does not apply to a child care facility unless  
 299 the owner or operator of the facility posts a sign that is not  
 300 less than 2 square feet in size with a word legend identifying  
 301 the facility as a licensed child care facility and that is  
 302 posted on the property of the child care facility in a  
 303 conspicuous place where the sign is reasonably visible to the  
 304 public.

305 (d) Except as authorized by this chapter, it is unlawful  
 306 for any person to sell, manufacture, or deliver, or possess with  
 307 intent to sell, manufacture, or deliver, a controlled substance  
 308 in, on, or within 1,000 feet of the real property comprising a

309 public or private college, university, or other postsecondary  
 310 educational institution. Any person who violates this paragraph  
 311 with respect to:

312 1. A controlled substance named or described in s.  
 313 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 314 commits a felony of the first degree, punishable as provided in  
 315 s. 775.082, s. 775.083, or s. 775.084.

316 2. A controlled substance named or described in s.  
 317 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 318 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 319 the second degree, punishable as provided in s. 775.082, s.  
 320 775.083, or s. 775.084.

321 3. Any other controlled substance, except as lawfully  
 322 sold, manufactured, or delivered, must be sentenced to pay a  
 323 \$500 fine and to serve 100 hours of public service in addition  
 324 to any other penalty prescribed by law.

325 (e) Except as authorized by this chapter, it is unlawful  
 326 for any person to sell, manufacture, or deliver, or possess with  
 327 intent to sell, manufacture, or deliver, a controlled substance  
 328 not authorized by law in, on, or within 1,000 feet of a physical  
 329 place for worship at which a church or religious organization  
 330 regularly conducts religious services or within 1,000 feet of a  
 331 convenience business as defined in s. 812.171. Any person who  
 332 violates this paragraph with respect to:

333 1. A controlled substance named or described in s.  
 334 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 335 commits a felony of the first degree, punishable as provided in  
 336 s. 775.082, s. 775.083, or s. 775.084.

337           2. A controlled substance named or described in s.  
 338 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 339 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 340 the second degree, punishable as provided in s. 775.082, s.  
 341 775.083, or s. 775.084.

342           3. Any other controlled substance, except as lawfully  
 343 sold, manufactured, or delivered, must be sentenced to pay a  
 344 \$500 fine and to serve 100 hours of public service in addition  
 345 to any other penalty prescribed by law.

346           (f) Except as authorized by this chapter, it is unlawful  
 347 for any person to sell, manufacture, or deliver, or possess with  
 348 intent to sell, manufacture, or deliver, a controlled substance  
 349 in, on, or within 1,000 feet of the real property comprising a  
 350 public housing facility at any time. For purposes of this  
 351 section, the term "real property comprising a public housing  
 352 facility" means real property, as defined in s. 421.03(12), of a  
 353 public corporation created as a housing authority pursuant to  
 354 part I of chapter 421. Any person who violates this paragraph  
 355 with respect to:

356           1. A controlled substance named or described in s.  
 357 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 358 commits a felony of the first degree, punishable as provided in  
 359 s. 775.082, s. 775.083, or s. 775.084.

360           2. A controlled substance named or described in s.  
 361 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 362 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 363 the second degree, punishable as provided in s. 775.082, s.  
 364 775.083, or s. 775.084.

365           3. Any other controlled substance, except as lawfully  
 366 sold, manufactured, or delivered, must be sentenced to pay a  
 367 \$500 fine and to serve 100 hours of public service in addition  
 368 to any other penalty prescribed by law.

369           (g) Except as authorized by this chapter, it is unlawful  
 370 for any person to manufacture methamphetamine or phencyclidine,  
 371 or possess any listed chemical as defined in s. 893.033 in  
 372 violation of s. 893.149 and with intent to manufacture  
 373 methamphetamine or phencyclidine. If any person violates this  
 374 paragraph and:

375           1. The commission or attempted commission of the crime  
 376 occurs in a structure or conveyance where any child under 16  
 377 years of age is present, the person commits a felony of the  
 378 first degree, punishable as provided in s. 775.082, s. 775.083,  
 379 or s. 775.084. In addition, the defendant must be sentenced to a  
 380 minimum term of imprisonment of 5 calendar years.

381           2. The commission of the crime causes any child under 16  
 382 years of age to suffer great bodily harm, the person commits a  
 383 felony of the first degree, punishable as provided in s.  
 384 775.082, s. 775.083, or s. 775.084. In addition, the defendant  
 385 must be sentenced to a minimum term of imprisonment of 10  
 386 calendar years.

387           (h) Except as authorized by this chapter, it is unlawful  
 388 for any person to sell, manufacture, or deliver, or possess with  
 389 intent to sell, manufacture, or deliver, a controlled substance  
 390 in, on, or within 1,000 feet of the real property comprising an  
 391 assisted living facility, as that term is used in chapter 429.  
 392 Any person who violates this paragraph with respect to:

393 1. A controlled substance named or described in s.  
 394 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.  
 395 commits a felony of the first degree, punishable as provided in  
 396 s. 775.082, s. 775.083, or s. 775.084.

397 2. A controlled substance named or described in s.  
 398 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 399 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 400 the second degree, punishable as provided in s. 775.082, s.  
 401 775.083, or s. 775.084.

402 (2)(a) Except as authorized by this chapter and chapter  
 403 499, it is unlawful for any person to purchase, or possess with  
 404 intent to purchase, a controlled substance. Any person who  
 405 violates this provision with respect to:

406 1. A controlled substance named or described in s.  
 407 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 408 commits a felony of the second degree, punishable as provided in  
 409 s. 775.082, s. 775.083, or s. 775.084.

410 2. A controlled substance named or described in s.  
 411 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 412 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 413 the third degree, punishable as provided in s. 775.082, s.  
 414 775.083, or s. 775.084.

415 3. A controlled substance named or described in s.  
 416 893.03(5) commits a misdemeanor of the first degree, punishable  
 417 as provided in s. 775.082 or s. 775.083.

418 (b) Except as provided in this chapter, it is unlawful to  
 419 purchase in excess of 10 grams of any substance named or  
 420 described in s. 893.03(1)(a) or (1)(b), or any combination

421 thereof, or any mixture containing any such substance. Any  
 422 person who violates this paragraph commits a felony of the first  
 423 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 424 775.084.

425 (3) Any person who delivers, without consideration, not  
 426 more than 20 grams of cannabis, as defined in this chapter,  
 427 commits a misdemeanor of the first degree, punishable as  
 428 provided in s. 775.082 or s. 775.083. For the purposes of this  
 429 paragraph, "cannabis" does not include the resin extracted from  
 430 the plants of the genus Cannabis or any compound manufacture,  
 431 salt, derivative, mixture, or preparation of such resin.

432 (4) Except as authorized by this chapter, it is unlawful  
 433 for any person 18 years of age or older to deliver any  
 434 controlled substance to a person under the age of 18 years, or  
 435 to use or hire a person under the age of 18 years as an agent or  
 436 employee in the sale or delivery of such a substance, or to use  
 437 such person to assist in avoiding detection or apprehension for  
 438 a violation of this chapter. Any person who violates this  
 439 provision with respect to:

440 (a) A controlled substance named or described in s.  
 441 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 442 commits a felony of the first degree, punishable as provided in  
 443 s. 775.082, s. 775.083, or s. 775.084.

444 (b) A controlled substance named or described in s.  
 445 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 446 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 447 the second degree, punishable as provided in s. 775.082, s.  
 448 775.083, or s. 775.084.

449  
 450 Imposition of sentence may not be suspended or deferred, nor  
 451 shall the person so convicted be placed on probation.  
 452 (5) It is unlawful for any person to bring into this state  
 453 any controlled substance unless the possession of such  
 454 controlled substance is authorized by this chapter or unless  
 455 such person is licensed to do so by the appropriate federal  
 456 agency. Any person who violates this provision with respect to:  
 457 (a) A controlled substance named or described in s.  
 458 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 459 commits a felony of the second degree, punishable as provided in  
 460 s. 775.082, s. 775.083, or s. 775.084.  
 461 (b) A controlled substance named or described in s.  
 462 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 463 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 464 the third degree, punishable as provided in s. 775.082, s.  
 465 775.083, or s. 775.084.  
 466 (c) A controlled substance named or described in s.  
 467 893.03(5) commits a misdemeanor of the first degree, punishable  
 468 as provided in s. 775.082 or s. 775.083.  
 469 (6)(a) It is unlawful for any person to be in actual or  
 470 constructive possession of a controlled substance unless such  
 471 controlled substance was lawfully obtained from a practitioner  
 472 or pursuant to a valid prescription or order of a practitioner  
 473 while acting in the course of his or her professional practice  
 474 or to be in actual or constructive possession of a controlled  
 475 substance except as otherwise authorized by this chapter. Any  
 476 person who violates this provision commits a felony of the third

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477 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 478 775.084.

479 (b) If the offense is the possession of not more than 20  
 480 grams of cannabis, as defined in this chapter, or 3 grams or  
 481 less of a controlled substance described in s. 893.03(1)(c)46.-  
 482 50., the person commits a misdemeanor of the first degree,  
 483 punishable as provided in s. 775.082 or s. 775.083. For the  
 484 purposes of this subsection, "cannabis" does not include the  
 485 resin extracted from the plants of the genus Cannabis, or any  
 486 compound manufacture, salt, derivative, mixture, or preparation  
 487 of such resin, and a controlled substance described in s.  
 488 893.03(1)(c)46.-50. does not include the substance in a powdered  
 489 form.

490 (c) Except as provided in this chapter, it is unlawful to  
 491 possess in excess of 10 grams of any substance named or  
 492 described in s. 893.03(1)(a) or (1)(b), or any combination  
 493 thereof, or any mixture containing any such substance. Any  
 494 person who violates this paragraph commits a felony of the first  
 495 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 496 775.084.

497 (d) Notwithstanding any provision to the contrary of the  
 498 laws of this state relating to arrest, a law enforcement officer  
 499 may arrest without warrant any person who the officer has  
 500 probable cause to believe is violating the provisions of this  
 501 chapter relating to possession of cannabis.

502 Section 3. For the purpose of incorporating the amendment  
 503 made by this act to section 893.03, Florida Statutes, in  
 504 references thereto, paragraphs (b), (c), (d), and (e) of



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505 subsection (3) of section 921.0022, Florida Statutes, are  
 506 reenacted to read:

507 921.0022 Criminal Punishment Code; offense severity  
 508 ranking chart.—

509 (3) OFFENSE SEVERITY RANKING CHART

510 (b) LEVEL 2

511

Florida	Felony	
Statute	Degree	Description

512

379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
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513

379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
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514

403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
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515

517.07	3rd	Registration of securities and furnishing of prospectus required.
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516

590.28(1)	3rd	Intentional burning of lands.
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518	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
519	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
520	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
521	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
522	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
523	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
524	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control

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525			device countermeasure.
526	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
527	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
528	817.52(3)	3rd	Failure to redeliver hired vehicle.
529	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
530	817.60(5)	3rd	Dealing in credit cards of another.
531	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
532	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
533	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
534	831.01	3rd	Forgery.

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535	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
536	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
537	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
538	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
539	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
540	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
541	843.08	3rd	Falsely impersonating an officer.
542	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
	893.147(2)	3rd	Manufacture or delivery of drug

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paraphernalia.

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(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.

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554	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
555	327.35(2)(b)	3rd	Felony BUI.
556	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
557	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
558	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
559	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
	379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle

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			Protection Act.
560	400.9935 (4)	3rd	Operating a clinic without a license or filing false license application or other required information.
561	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
562	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
563	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
564	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
565	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.
566	697.08	3rd	Equity skimming.
567	790.15 (3)	3rd	Person directs another to discharge

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			firearm from a vehicle.
568			
	796.05(1)	3rd	Live on earnings of a prostitute.
569			
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
570			
	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
571			
	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
572			
	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
573			
	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
574			
	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
575			
	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property



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			valued at less than \$20,000.
576			
	817.233	3rd	Burning to defraud insurer.
577			
	817.234	3rd	Unlawful solicitation of persons
	(8)(b)-(c)		involved in motor vehicle accidents.
578			
	817.234(11)(a)	3rd	Insurance fraud; property value less
			than \$20,000.
579			
	817.236	3rd	Filing a false motor vehicle insurance
			application.
580			
	817.2361	3rd	Creating, marketing, or presenting a
			false or fraudulent motor vehicle
			insurance card.
581			
	817.413(2)	3rd	Sale of used goods as new.
582			
	817.505(4)	3rd	Patient brokering.
583			
	828.12(2)	3rd	Tortures any animal with intent to
			inflict intense pain, serious physical
			injury, or death.
584			
	831.28(2)(a)	3rd	Counterfeiting a payment instrument with
			intent to defraud or possessing a

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585			counterfeit payment instrument.
	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
586			
	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
587			
	843.19	3rd	Injure, disable, or kill police dog or horse.
588			
	860.15(3)	3rd	Overcharging for repairs and parts.
589			
	870.01(2)	3rd	Riot; inciting or encouraging.
590			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
591			
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
592			

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- 593 893.13(1)(f)2. 2nd Sell, manufacture, or deliver s.  
893.03(1)(c), (2)(c)1., (2)(c)2.,  
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,  
(2)(c)8., (2)(c)9., (3), or (4) drugs  
within 1,000 feet of public housing  
facility.
- 594 893.13(6)(a) 3rd Possession of any controlled substance  
other than felony possession of  
cannabis.
- 595 893.13(7)(a)8. 3rd Withhold information from practitioner  
regarding previous receipt of or  
prescription for a controlled substance.
- 596 893.13(7)(a)9. 3rd Obtain or attempt to obtain controlled  
substance by fraud, forgery,  
misrepresentation, etc.
- 597 893.13(7)(a)10. 3rd Affix false or forged label to package  
of controlled substance.
- 598 893.13(7)(a)11. 3rd Furnish false or fraudulent material  
information on any document or record  
required by chapter 893.
- 893.13(8)(a)1. 3rd Knowingly assist a patient, other

599	893.13(8)(a)2.	3rd	person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
600	893.13(8)(a)3.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
601	893.13(8)(a)4.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
602	918.13(1)(a)	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
603	944.47	3rd	Alter, destroy, or conceal investigation evidence.
604	(1)(a)1.-2.	3rd	Introduce contraband to correctional facility.

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605	944.47 (1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.
606	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
607	(d) LEVEL 4		
608			
609	Florida Statute	Felony Degree	Description
610	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.
611	499.0051 (1)	3rd	Failure to maintain or deliver pedigree papers.
612	499.0051 (2)	3rd	Failure to authenticate pedigree papers.
613	499.0051 (6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.

F L O R I D A   H O U S E   O F   R E P R E S E N T A T I V E S

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614	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
615	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
616	784.075	3rd	Battery on detention or commitment facility staff.
617	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
618	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
619	784.081(3)	3rd	Battery on specified official or employee.
620	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
621	784.083(3)	3rd	Battery on code inspector.
622	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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- 623 787.03(1) 3rd Interference with custody; wrongly takes  
minor from appointed guardian.
- 624 787.04(2) 3rd Take, entice, or remove child beyond  
state limits with criminal intent  
pending custody proceedings.
- 625 787.04(3) 3rd Carrying child beyond state lines with  
criminal intent to avoid producing child  
at custody hearing or delivering to  
designated person.
- 626 790.115(1) 3rd Exhibiting firearm or weapon within  
1,000 feet of a school.
- 627 790.115(2)(b) 3rd Possessing electric weapon or device,  
destructive device, or other weapon on  
school property.
- 628 790.115(2)(c) 3rd Possessing firearm on school property.
- 629 800.04(7)(c) 3rd Lewd or lascivious exhibition; offender  
less than 18 years.
- 630 810.02(4)(a) 3rd Burglary, or attempted burglary, of an  
unoccupied structure; unarmed; no  
assault or battery.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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631	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
632	810.06	3rd	Burglary; possession of tools.
633	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
634	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
635	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
636	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
637	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
638	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
639	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.



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640	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
641	837.02(1)	3rd	Perjury in official proceedings.
642	837.021(1)	3rd	Make contradictory statements in official proceedings.
643	838.022	3rd	Official misconduct.
644	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
645	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.
646	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
647	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
648	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).

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649	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
650	874.05(1)	3rd	Encouraging or recruiting another to join a criminal gang.
651	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).
652	914.14(2)	3rd	Witnesses accepting bribes.
653	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
654	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
655	918.12	3rd	Tampering with jurors.
656	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
657	(e)	LEVEL 5	
658	Florida	Felony	
659	Statute	Degree	Description

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660	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
661	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
662	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
663	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
664	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
665	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
666	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
667	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
	624.401(4)(b)2.	2nd	Transacting insurance without a

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			certificate or authority; premium collected \$20,000 or more but less than \$100,000.
668	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
669	790.01(2)	3rd	Carrying a concealed firearm.
670	790.162	2nd	Threat to throw or discharge destructive device.
671	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
672	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
673	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
674	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
675	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
676			

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677	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
678	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
679	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
680	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
681	812.131(2)(b)	3rd	Robbery by sudden snatching.
682	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
683	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
684	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
	817.2341(1),	3rd	Filing false financial statements,

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	(2) (a) & (3) (a)		making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
685	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.
686	817.625(2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
687	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
688	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
689	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion

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690	839.13(2)(b)	2nd	picture, etc., which includes sexual conduct by a child.
691	843.01	3rd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
692	847.0135(5)(b)	2nd	Resist officer with violence to person; resist arrest with violence.
693	847.0137 (2) & (3)	3rd	Lewd or lascivious exhibition using computer; offender 18 years or older.
694	847.0138 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
695	874.05(2)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
696	893.13(1)(a)1.	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
			Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.

697	893.13(1)(c)2.	2nd	drugs). 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.
698	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.
699	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.
700	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine



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(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.

701

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.,  
 (2)(c)8., (2)(c)9., (3), or (4) drugs).

702

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

703

704            Section 4. This act shall take effect October 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1175 (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: Criminal Justice  
2 Subcommittee

3 Representative Ingram offered the following:

4  
5 **Amendment**

6 Remove lines 147-236 and insert:

7 84. Naphyrone (naphthylpyrovalerone).

8 85. N-N-Dimethyl-3,4-methylenedioxcathinone.

9 86. N-N-Diethyl-3,4-methylenedioxcathinone.

10 87. 3,4-methylenedioxy-propiofenone.

11 88. 2-Bromo-3,4-Methylenedioxypropiofenone.

12 89. 3,4-methylenedioxy-propiofenone-2-oxime.

13 90. N-Acetyl-3,4-methylenedioxcathinone.

14 91. N-Acetyl-N-Methyl-3,4-Methylenedioxcathinone.

15 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone.

16 93. Bromomethcathinone.

17 94. Buphedrone (alpha-methylamino-butyrophenone).

18 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).

19 96. Dimethylcathinone.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1175 (2012)

Amendment No. 1

- 20 97. Dimethylmethcathinone.
- 21 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
- 22 99. (MDPPP) 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone.
- 23 100. (MDPBP) 3,4-Methylenedioxy-alpha-pyrrolidinobutiophenone.
- 24 101. Methoxypyrrolidinopropiophenone (MOPPP).
- 25 102. Methylpyrrolidinohexiophenone (MPHP).
- 26 103. Benzocyclidine (BCP) or benzothiophenylcyclohexylpiperidine
- 27 (BTCP).
- 28 104. Fluoromethylaminobutyrophenone (F-MABP).
- 29 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
- 30 106. Ethylpyrrolidinobutyrophenone (Et-PBP).
- 31 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
- 32 108. Methyleneaminobutyrophenone (Me-EABP)
- 33 109. Methylaminobutyrophenone (MABP).
- 34 110. Pyrrolidinopropiophenone.
- 35 111. Pyrrolidinobutiophenone (PBP).
- 36 112. Pyrrolidinovalerophenone (PVP).
- 37 113. Methylpyrrolidinopropiophenone (MPPP).
- 38 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
- 39 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
- 40 naphthalenylmethanone).
- 41 116. JWH-019 (Naphthalen-1-yl-(1-pentylindol-3-yl)methanone).
- 42 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
- 43 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-
- 44 yl)methanone).
- 45 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
- 46 yl)methanone).
- 47 120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

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## COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1175 (2012)

Amendment No. 1

- 48 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-  
49 tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)) .
- 50 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-indole) .
- 51 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole) .
- 52 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-  
53 yl)ethanone) .
- 54 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-  
55 yl)methanone) .
- 56 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-  
57 yl)ethanone) .
- 58 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-  
59 yl)ethanone) .
- 60 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole) .
- 61 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole) .
- 62 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-  
63 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)) .
- 64 131. HU-308 ([91R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-  
65 yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol) .
- 66 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-  
67 2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione) .
- 68 133. CB-13 (Naphthalen-1-yl-(4-pentylloxynaphthalen-1-  
69 yl)methanone) .
- 70 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-  
71 undecanamide) .
- 72 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-  
73 undecanamide) .
- 74 136. CP55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-  
75 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol) .

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1175 (2012)



Amendment No. 1

- 76 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-2-  
77 iodophenyl)methanone).
- 78 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-1-  
79 napthalen-1-  
yl)methanone).
- 80 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-  
81 yl)methanone)).
- 82 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-  
83 methoxyphenylethanone).
- 84 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-  
85 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-  
86 napthalenylmethanone).
- 87 142. WIN55,212-3 ([3S)-2,3-Dihydro-5-methyl-3-(4-  
88 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-  
89 napthalenylmethanone).
- 90



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1193 Pub. Rec./Victims of Violence  
**SPONSOR(S):** Jones and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Williams 	Cunningham 
2) Government Operations Subcommittee			
3) Judiciary Committee			

**SUMMARY ANALYSIS**

Sections 741.30 and 784.046, F.S., require the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence. This process necessarily requires the petitioner to provide the Association with personal contact information. In many instances, the petitioner is a victim of a crime, and thus the information he or she provides to the Association may be exempt from public records requirements pursuant to s. 119.07, F.S. However, a person does not have to be a crime victim in order to petition for a protective injunction. In these instances, the petitioner's information may be public record.

The bill creates a new public records exemption by amending ss. 741.30 and 784.046, F.S., to require the automated notification of service of injunction to apprise the petitioner of his or her right to request in writing that specified information held by the Association be exempt from public record. Such information shall be exempt upon the written request by the petitioner for five years after the receipt of the written request.

The bill grants access by any state or federal agency that is authorized by law to have access to such documents in furtherance of the agencies' statutory duties, and repeals the public records exemption effective October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity as required by the State Constitution, does not appear to have a fiscal impact, and is effective October 1, 2012.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government as well as counties and municipalities.<sup>1</sup> The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution.<sup>2</sup> The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>3</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.<sup>4</sup> Furthermore, the Open Government Sunset Review Act<sup>5</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose.<sup>6</sup> In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.<sup>7</sup>

###### Public Record Exemptions for Victims of Crimes

Current law provides public record exemptions for victims of crimes.<sup>8</sup> Specifically, the law provides that any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from the public records requirements provided in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.<sup>9</sup>

In addition, upon the written request by the victim, which must include official verification that an applicable crime has occurred, any information not otherwise held confidential or exempt from public records requirements as provided by s. 119.07(1), F.S., which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution.<sup>10</sup>

<sup>1</sup> Section 24(a), Art. I of the State Constitution.

<sup>2</sup> Section 24(c), Art. I of the State Constitution

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

<sup>4</sup> *See*, section 119.011(5) and (12), F.S.

<sup>5</sup> Section 119.15, F.S.

<sup>6</sup> Section 119.15(6)(b), F.S.

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

<sup>8</sup> *See* sections 119.071 and 119.0714, F.S.

<sup>9</sup> Section 119.071(2)(j)1., F.S.

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



Information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from the public records requirements provided in s. 119.071(2)(h), F.S.<sup>11</sup>

#### Injunctions for Victims of Violence

Sections 741.30 and 784.046, F.S., currently provide the guidelines for the service of injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence. During the 2011 Legislative Session, these statutes were amended to require the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.<sup>12</sup> This process necessarily requires the petitioner to provide the Association with personal contact information. In many instances, the petitioner is a victim of a crime, and thus the information he or she provides to the Association may be exempt from public records requirements pursuant to s. 119.07, F.S. However, a person does not have to be a crime victim in order to petition for a protective injunction. In these instances, the petitioner's information may be public record.

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

The bill amends ss. 741.30 and 784.046, F.S., to allow a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence to request that the following be held exempt from public records requirements for 5 years after receipt of the request:

- Information which reveals the home or employment telephone number or address, cellular telephone number, electronic mail address, or other electronic means of identification of the petitioner.

The notification of service of an injunction must apprise the petitioner of his or her right to make the public records exemption request.

The bill provides that information held by the Association in conjunction with the automated injunction notification process which reveals the above-described information is exempt from public record upon written request of the petitioner. Such information will cease to be exempt 5 years after the Association's receipt of the petitioner's written request. Notwithstanding this exemption, the bill grants access by any state or federal agency that is authorized by law to have access to such documents in furtherance of the agencies' statutory duties.

The bill specifies that the public records exemption is subject to the Open Government Sunset Review Act and repeals the exemption effective October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution,<sup>13</sup> specifying that without the public record exemption:

- A victim could be exposed to public humiliation and shame;
- A victim could become inhibited from availing herself or himself of relief under state law; and
- Personal identifying and location information could be used to determine the location of the victim, placing the victim in jeopardy.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

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<sup>11</sup> Section 119.0714(1)(h), F.S.

<sup>12</sup> Chapter No. 2011-187, L.O.F.

<sup>13</sup> Section 24(c), Art. I of the State Constitution.

Section 2. Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations.

Section 3. Provides a public necessity statement.

Section 4. 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 government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

Not applicable. This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

#### 2. Other:

##### Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public records exemption; thus, it requires a two-thirds vote for final passage.

### Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption; thus, it includes a public necessity statement.

#### B. RULE-MAKING AUTHORITY:

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

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

1. The bill requires *the notification of service of an injunction* to apprise the petitioner of his or her right to make the public records exemption request. As such, petitioners might only become aware of this right *after* providing personal information to the Association. Since the information only becomes exempt from public records upon the petitioner's written request, it would appear that a petitioner should be notified of his or her right to make the public records exemption request at the same time that the petitioner is making the request to be notified that the injunction was served. Otherwise, information provided to the Association prior to the petitioner making the request for exemption could be public record.
2. The bill provides that information held by *the Association* in conjunction with the automated injunction notification process which reveals specified personal information is exempt from public record. However, this information will necessarily have to be provided to the law enforcement agency who is serving the injunction. Thus, the bill should exempt information held by both the Association and law enforcement agencies.
3. The bill provides that it is a public necessity that a petitioner's personal identifying and location information held by the Association in conjunction with the automated notification process be held *confidential* and exempt from s. 119.07(1), F.S. However, the remainder of the bill only requires that such information be held exempt from s. 119.07(1), F.S., and not held confidential. In order to ensure that the public necessity statement conforms to the bill, the reference to information being held confidential should be removed.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled

An act relating to public records; amending ss. 741.30 and 784.046, F.S.; providing exemptions from public records requirements for personal identifying and location information of victims of domestic violence, repeat violence, sexual violence, and dating violence held by the Florida Association of Court Clerks and Comptrollers in conjunction with the automated process developed by the association by which a petitioner may request notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection; providing that the exemption is conditional upon the petitioner's request; providing specified duration of the exemption; providing for access by state or federal agencies in furtherance of the agencies' statutory duties; providing that notification to the petitioner of service of the injunction for protection must inform the petitioner of the right to request that the identifying and location information be held exempt from public records requirements; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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

29 Section 1. Paragraph (c) of subsection (8) of section  
 30 741.30, Florida Statutes, is amended to read:

31 741.30 Domestic violence; injunction; powers and duties of  
 32 court and clerk; petition; notice and hearing; temporary  
 33 injunction; issuance of injunction; statewide verification  
 34 system; enforcement; public records exemption.-

35 (8)

36 (c)1. Within 24 hours after the court issues an injunction  
 37 for protection against domestic violence or changes, continues,  
 38 extends, or vacates an injunction for protection against  
 39 domestic violence, the clerk of the court must forward a  
 40 certified copy of the injunction for service to the sheriff with  
 41 jurisdiction over the residence of the petitioner. The  
 42 injunction must be served in accordance with this subsection.

43 2. Within 24 hours after service of process of an  
 44 injunction for protection against domestic violence upon a  
 45 respondent, the law enforcement officer must forward the written  
 46 proof of service of process to the sheriff with jurisdiction  
 47 over the residence of the petitioner.

48 3. Within 24 hours after the sheriff receives a certified  
 49 copy of the injunction for protection against domestic violence,  
 50 the sheriff must make information relating to the injunction  
 51 available to other law enforcement agencies by electronically  
 52 transmitting such information to the department.

53 4. Within 24 hours after the sheriff or other law  
 54 enforcement officer has made service upon the respondent and the  
 55 sheriff has been so notified, the sheriff must make information  
 56 relating to the service available to other law enforcement

57 agencies by electronically transmitting such information to the  
 58 department.

59 5.a. Subject to available funding, the Florida Association  
 60 of Court Clerks and Comptrollers shall develop an automated  
 61 process by which a petitioner may request notification of  
 62 service of the injunction for protection against domestic  
 63 violence and other court actions related to the injunction for  
 64 protection. The automated notice shall be made within 12 hours  
 65 after the sheriff or other law enforcement officer serves the  
 66 injunction upon the respondent. The notification must include,  
 67 at a minimum, the date, time, and location where the injunction  
 68 for protection against domestic violence was served, and must  
 69 apprise the petitioner of her or his right to request in writing  
 70 that the information specified in sub-subparagraph b. be held  
 71 exempt from public records requirements for 5 years after the  
 72 receipt of the written request. The Florida Association of Court  
 73 Clerks and Comptrollers may apply for any available grants to  
 74 fund the development of the automated process.

75 b. Information held by the Florida Association of Court  
 76 Clerks and Comptrollers in conjunction with the automated  
 77 process developed under sub-subparagraph a. which reveals the  
 78 home or employment telephone number, cellular telephone number,  
 79 home or employment address, electronic mail address, or other  
 80 electronic means of identification of a petitioner requesting  
 81 notification of service of an injunction for protection against  
 82 domestic violence and other court actions related to the  
 83 injunction for protection is exempt from s. 119.07(1) and s.  
 84 24(a), Art. I of the State Constitution, upon written request by

85 the petitioner. Such information shall cease to be exempt 5  
 86 years after the receipt of the written request. Any state or  
 87 federal agency that is authorized to have access to such  
 88 documents by any provision of law shall be granted such access  
 89 in the furtherance of such agency's statutory duties,  
 90 notwithstanding this sub-subparagraph. This sub-subparagraph is  
 91 subject to the Open Government Sunset Review Act in accordance  
 92 with s. 119.15 and shall stand repealed on October 2, 2017,  
 93 unless reviewed and saved from repeal through reenactment by the  
 94 Legislature.

95 6. Within 24 hours after an injunction for protection  
 96 against domestic violence is vacated, terminated, or otherwise  
 97 rendered no longer effective by ruling of the court, the clerk  
 98 of the court must notify the sheriff receiving original  
 99 notification of the injunction as provided in subparagraph 2.  
 100 That agency shall, within 24 hours after receiving such  
 101 notification from the clerk of the court, notify the department  
 102 of such action of the court.

103 Section 2. Paragraph (c) of subsection (8) of section  
 104 784.046, Florida Statutes, is amended to read:

105 784.046 Action by victim of repeat violence, sexual  
 106 violence, or dating violence for protective injunction; dating  
 107 violence investigations, notice to victims, and reporting;  
 108 pretrial release violations; public records exemption.-

109 (8)

110 (c)1. Within 24 hours after the court issues an injunction  
 111 for protection against repeat violence, sexual violence, or  
 112 dating violence or changes or vacates an injunction for

113 protection against repeat violence, sexual violence, or dating  
 114 violence, the clerk of the court must forward a copy of the  
 115 injunction to the sheriff with jurisdiction over the residence  
 116 of the petitioner.

117 2. Within 24 hours after service of process of an  
 118 injunction for protection against repeat violence, sexual  
 119 violence, or dating violence upon a respondent, the law  
 120 enforcement officer must forward the written proof of service of  
 121 process to the sheriff with jurisdiction over the residence of  
 122 the petitioner.

123 3. Within 24 hours after the sheriff receives a certified  
 124 copy of the injunction for protection against repeat violence,  
 125 sexual violence, or dating violence, the sheriff must make  
 126 information relating to the injunction available to other law  
 127 enforcement agencies by electronically transmitting such  
 128 information to the department.

129 4. Within 24 hours after the sheriff or other law  
 130 enforcement officer has made service upon the respondent and the  
 131 sheriff has been so notified, the sheriff must make information  
 132 relating to the service available to other law enforcement  
 133 agencies by electronically transmitting such information to the  
 134 department.

135 5.a. Subject to available funding, the Florida Association  
 136 of Court Clerks and Comptrollers shall develop an automated  
 137 process by which a petitioner may request notification of  
 138 service of the injunction for protection against repeat  
 139 violence, sexual violence, or dating violence and other court  
 140 actions related to the injunction for protection. The automated



141 notice shall be made within 12 hours after the sheriff or other  
 142 law enforcement officer serves the injunction upon the  
 143 respondent. The notification must include, at a minimum, the  
 144 date, time, and location where the injunction for protection  
 145 against repeat violence, sexual violence, or dating violence was  
 146 served, and must apprise the petitioner of her or his right to  
 147 request in writing that the information specified in sub-  
 148 subparagraph b. be held exempt from public records requirements  
 149 for 5 years after the receipt of the written request. The  
 150 Florida Association of Court Clerks and Comptrollers may apply  
 151 for any available grants to fund the development of the  
 152 automated process.

153 b. Information held by the Florida Association of Court  
 154 Clerks and Comptrollers in conjunction with the automated  
 155 process developed under sub-subparagraph a. which reveals the  
 156 home or employment telephone number, cellular telephone number,  
 157 home or employment address, electronic mail address, or other  
 158 electronic means of identification of a petitioner requesting  
 159 notification of service of an injunction for protection against  
 160 repeat violence, sexual violence, or dating violence and other  
 161 court actions related to the injunction for protection is  
 162 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 163 Constitution, upon written request by the petitioner. Such  
 164 information shall cease to be exempt 5 years after the receipt  
 165 of the written request. Any state or federal agency that is  
 166 authorized to have access to such documents by any provision of  
 167 law shall be granted such access in the furtherance of such  
 168 agency's statutory duties, notwithstanding this sub-

169 subparagraph. This sub-subparagraph is subject to the Open  
 170 Government Sunset Review Act in accordance with s. 119.15 and  
 171 shall stand repealed on October 2, 2017, unless reviewed and  
 172 saved from repeal through reenactment by the Legislature.

173 6. Within 24 hours after an injunction for protection  
 174 against repeat violence, sexual violence, or dating violence is  
 175 lifted, terminated, or otherwise rendered no longer effective by  
 176 ruling of the court, the clerk of the court must notify the  
 177 sheriff or local law enforcement agency receiving original  
 178 notification of the injunction as provided in subparagraph 2.  
 179 That agency shall, within 24 hours after receiving such  
 180 notification from the clerk of the court, notify the department  
 181 of such action of the court.

182 Section 3. It is the finding of the Legislature that it is  
 183 a public necessity that personal identifying and location  
 184 information of victims of domestic violence, repeat violence,  
 185 sexual violence, and dating violence held by the Florida  
 186 Association of Court Clerks and Comptrollers in conjunction with  
 187 the automated process developed by the association under ss.  
 188 741.30 and 784.046, Florida Statutes, by which a petitioner may  
 189 request notification of service of an injunction for protection  
 190 against domestic violence, repeat violence, sexual violence, or  
 191 dating violence and other court actions related to the  
 192 injunction for protection be held confidential and exempt from  
 193 s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the  
 194 State Constitution upon written request by the petitioner. Such  
 195 information, if publicly available, could expose the victims of  
 196 domestic violence, repeat violence, sexual violence, and dating

HB 1193

2012

197 violence to public humiliation and shame and could inhibit the  
 198 victim from availing herself or himself of relief provided under  
 199 state law. Additionally, if such information were publicly  
 200 available, it could be used by the partner or former partner of  
 201 the victim of domestic violence, repeat violence, sexual  
 202 violence, or dating violence to determine the location of the  
 203 victim, thus placing the victim in jeopardy.

204 Section 4. This act shall take effect October 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1193 (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 \_\_\_\_\_

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1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee

3 Representative Jones offered the following:

4  
5 **Amendment**

6 Remove line 192 and insert:

7 injunction for protection be held exempt from  
8

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1193 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee

3 Representative Harrell offered the following:

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

6 Remove lines 68-154 and insert:

7 for protection against domestic violence was served. When a  
8 petitioner makes a request for notification, the Florida  
9 Association of Court Clerks and Comptrollers must apprise the  
10 petitioner of her or his right to request in writing that the  
11 information specified in sub-subparagraph b. be held exempt from  
12 public records requirements for 5 years. The Florida Association  
13 of Court Clerks and Comptrollers may apply for any available  
14 grants to fund the development of the automated process.

15 b. Information held by the Florida Association of Court  
16 Clerks and Comptrollers and law enforcement agencies in  
17 conjunction with the automated process developed under sub-  
18 paragraph a. which reveals the home or employment telephone  
19 number, cellular telephone number, home or employment address,

Amendment No. 2

20 electronic mail address, or other electronic means of  
21 identification of a petitioner requesting notification of  
22 service of an injunction for protection against domestic  
23 violence and other court actions related to the injunction for  
24 protection is exempt from s. 119.07(1) and s. 24(a), Art. I of  
25 the State Constitution, upon written request by the petitioner.  
26 Such information shall cease to be exempt 5 years after the  
27 receipt of the written request. Any state or federal agency that  
28 is authorized to have access to such documents by any provision  
29 of law shall be granted such access in the furtherance of such  
30 agency's statutory duties, notwithstanding this sub-  
31 subparagraph. This sub-subparagraph is subject to the Open  
32 Government Sunset Review Act in accordance with s. 119.15 and  
33 shall stand repealed on October 2, 2017, unless reviewed and  
34 saved from repeal through reenactment by the Legislature.

35 6. Within 24 hours after an injunction for protection  
36 against domestic violence is vacated, terminated, or otherwise  
37 rendered no longer effective by ruling of the court, the clerk  
38 of the court must notify the sheriff receiving original  
39 notification of the injunction as provided in subparagraph 2.  
40 That agency shall, within 24 hours after receiving such  
41 notification from the clerk of the court, notify the department  
42 of such action of the court.

43 Section 2. Paragraph (c) of subsection (8) of section  
44 784.046, Florida Statutes, is amended to read:

45 784.046 Action by victim of repeat violence, sexual  
46 violence, or dating violence for protective injunction; dating

Amendment No. 2

47 violence investigations, notice to victims, and reporting;  
48 pretrial release violations; public records exemption.-

49 (8)

50 (c)1. Within 24 hours after the court issues an injunction  
51 for protection against repeat violence, sexual violence, or  
52 dating violence or changes or vacates an injunction for  
53 protection against repeat violence, sexual violence, or dating  
54 violence, the clerk of the court must forward a copy of the  
55 injunction to the sheriff with jurisdiction over the residence  
56 of the petitioner.

57 2. Within 24 hours after service of process of an  
58 injunction for protection against repeat violence, sexual  
59 violence, or dating violence upon a respondent, the law  
60 enforcement officer must forward the written proof of service of  
61 process to the sheriff with jurisdiction over the residence of  
62 the petitioner.

63 3. Within 24 hours after the sheriff receives a certified  
64 copy of the injunction for protection against repeat violence,  
65 sexual violence, or dating violence, the sheriff must make  
66 information relating to the injunction available to other law  
67 enforcement agencies by electronically transmitting such  
68 information to the department.

69 4. Within 24 hours after the sheriff or other law  
70 enforcement officer has made service upon the respondent and the  
71 sheriff has been so notified, the sheriff must make information  
72 relating to the service available to other law enforcement  
73 agencies by electronically transmitting such information to the  
74 department.

Amendment No. 2

75           5.a. Subject to available funding, the Florida Association  
76 of Court Clerks and Comptrollers shall develop an automated  
77 process by which a petitioner may request notification of  
78 service of the injunction for protection against repeat  
79 violence, sexual violence, or dating violence and other court  
80 actions related to the injunction for protection. The automated  
81 notice shall be made within 12 hours after the sheriff or other  
82 law enforcement officer serves the injunction upon the  
83 respondent. The notification must include, at a minimum, the  
84 date, time, and location where the injunction for protection  
85 against repeat violence, sexual violence, or dating violence was  
86 served. When a petitioner makes a request for notification, the  
87 Florida Association of Court Clerks and Comptrollers must  
88 apprise the petitioner of her or his right to request in writing  
89 that the information specified in sub-subparagraph b. be held  
90 exempt from public records requirements for 5 years. The Florida  
91 Association of Court Clerks and Comptrollers may apply for any  
92 available grants to fund the development of the automated  
93 process.

94           b. Information held by the Florida Association of Court  
95 Clerks and Comptrollers and law enforcement agencies in  
96 conjunction with the automated  
97  
98

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**T I T L E   A M E N D M E N T**

99  
100           Remove lines 8-19 and insert:  
101 Comptrollers and law enforcement agencies in conjunction with  
102 the automated process developed by the association by which a



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1193 (2012)

Amendment No. 2

103 petitioner may request notification of service of an injunction  
104 for protection against domestic violence, repeat violence,  
105 sexual violence, or dating violence and other court actions  
106 related to the injunction for protection; providing that the  
107 exemption is conditional upon the petitioner's request;  
108 providing specified duration of the exemption; providing for  
109 access by state or federal agencies in furtherance of the  
110 agencies' statutory duties; providing that the Florida  
111 Association of Court Clerks and Comptrollers

112