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# **Justice Appropriations Subcommittee**

# **Meeting Packet**

**March 6, 2013  
1:30 p.m. – 3:30 p.m.  
Morris Hall**



**The Florida House of Representatives**  
APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

**Will Weatherford**  
Speaker

**Charles McBurney**  
Chair

**MEETING AGENDA**

Morris Hall  
March 6, 2013

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following proposed committee bill:  
PCB JUAS 13-01 – Capital Collateral Regional Counsel Trust Fund
- IV.** Consideration of the following bill(s):  
HB 87 - Mortgage Foreclosures by Rep. Passidomo  
CS/HB 113 – Distribution of Materials Harmful to Minors by Criminal Justice Subcommittee and Rep. M. Diaz  
HB 191 – Theft of Utility Services by Rep. Raulerson  
HB 311 – Costs of Prosecution, Investigation, and Representation by Rep. Ray  
HB 619 – Controlled Substances by Rep. Ingram
- V.** Closing Remarks
- VI.** Meeting Adjourned



**HOUSE OF REPRESENTATIVES TRUST FUND RE-CREATION STAFF ANALYSIS**

**BILL #:** PCB JUAS 13-01 Capital Collateral Regional Counsel Trust Fund  
**SPONSOR(S):** Justice Appropriations Subcommittee  
**TIED BILLS:**                   **IDEN./SIM. BILLS:**

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
Orig. Comm.: Justice Appropriations Subcommittee		Lipsky <i>CL</i>	Jones Darity <i>JF Darity</i>

**I. SUMMARY**

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision also requires that trust funds be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating or re-creating that trust fund. The Capital Collateral Regional Counsel Trust Fund was created in the Justice Administrative Commission effective July 1, 2009, and is scheduled to terminate on July 1, 2013.

This legislation re-creates the Capital Collateral Regional Counsel Trust Fund without modification, effective July 1, 2013, provided that it is enacted by three-fifths of the membership of both houses of the Legislature.

This bill has no fiscal impact.

## II. SUBSTANTIVE ANALYSIS

### A. PRESENT SITUATION:

#### 1. MAJOR STATUTES THAT CONTROL THE TRUST FUND:

Section 19(f), Article III of the State Constitution requires that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This provision also requires that trust funds be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating or re-creating that trust fund. The Capital Collateral Regional Counsel Trust Fund was created in the Justice Administrative Commission effective July 1, 2009, by chapter 2009-62, Laws of Florida, in section 27.715, Florida Statutes and is scheduled to terminate on July 1, 2013.

#### 2. BRIEF DESCRIPTION OF THE FUND'S USES OR PURPOSES:

This trust fund is used for the operational expenditures related to the Capital Collateral Regional Counsel.

#### 3. MAJOR SOURCES OF REVENUE FOR THE FUND:

Moneys in the trust fund consist of federal reimbursements for representation of indigent persons in federal court by attorneys of the Capital Collateral Regional Counsel. The Capital Collateral Regional Counsel is required to seek such reimbursements pursuant to s. 27.702(3)(a), F.S.

#### 4. TOTAL PROJECTED RECEIPTS INTO THE FUND AND CURRENT YEAR APPROPRIATIONS FROM THE FUND:

The total projected receipts into this fund for the current year are \$424,438 and current year appropriations from the fund are \$400,000.

### B. EFFECT OF PROPOSED CHANGES:

This legislation re-creates the Capital Collateral Regional Counsel Trust Fund without modification, effective July 1, 2013, and repeals the scheduled termination of the trust fund.

## III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

This legislation has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

## IV. COMMENTS

## V. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to trust funds; re-creating the  
 3           Capital Collateral Regional Counsel Trust Fund within  
 4           the Justice Administrative Commission without  
 5           modification; repealing s. 27.715(2), F.S.; abrogating  
 6           provisions relating to the scheduled termination of  
 7           the trust fund, to conform; providing an effective  
 8           date.

9  
 10           WHEREAS, the Legislature wishes to extend the life of the  
 11           Capital Collateral Regional Counsel Trust Fund within the  
 12           Justice Administrative Commission, which is otherwise scheduled  
 13           to be terminated pursuant to constitutional mandate, and

14           WHEREAS, the Legislature has reviewed the trust fund before  
 15           its scheduled termination date and has found that it continues  
 16           to meet an important public purpose, and

17           WHEREAS, the Legislature has found that existing public  
 18           policy concerning the trust fund sets adequate parameters for  
 19           its use, NOW, THEREFORE,

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

22  
 23           Section 1. The Capital Collateral Regional Counsel Trust  
 24           Fund within the Justice Administrative Commission, FLAIR number  
 25           21-2-073, which is to be terminated pursuant to Section 19(f),  
 26           Article III of the State Constitution on July 1, 2013, is re-  
 27           created.

28           Section 2. Subsection (2) of section 27.715, Florida

PCB JUAS 13-01

ORIGINAL

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29 | Statutes, is repealed.

30 | Section 3. This act shall take effect July 1, 2013.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 87 Mortgage Foreclosures
SPONSOR(S): Passidomo and others
TIED BILLS: None IDEN./SIM. BILLS: None

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Rows include Civil Justice Subcommittee, Justice Appropriations Subcommittee, and Judiciary Committee.

SUMMARY ANALYSIS

The foreclosure crisis has impacted Florida's economy and negatively affected the judicial branch, in terms of both funding and caseload. Foreclosing on a mortgage in Florida is a lengthy process. The average time between the first foreclosure filing and bank repossession is 853 days while the national average is 414 days.

Current law provides for an alternative procedure that is designed to speed up the foreclosure process in uncontested cases or cases where there is no legitimate defense. Additionally, if the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.

As to foreclosure of real property, the bill:

- Reduces the statute of limitations for deficiency judgments on a foreclosure action from five years to one year and limits the recoverable amount of the deficiency in some cases.
• Requires the plaintiff in a foreclosure action to provide information to the court upon filing of the case regarding a lost, destroyed or stolen promissory note.
• Provides finality of a mortgage foreclosure judgment for certain purchasers of a property at a foreclosure sale while allowing for monetary damages.
• Amends the expedited foreclosure process to allow any lienholder, instead of just the mortgagee, to use the procedures; reduces the number of hearings from 2 to 1; and prohibits service by publication when using the expedited process unless the property is abandoned.
• Allows any party to request a case management conference to expedite the lawsuit.
• Defines adequate protections where there is a lost, destroyed or stolen note.

The bill applies to existing mortgages and to pending cases.

This bill may result in a short term increase in the workload of the courts and an increase in revenues from filing fees. See fiscal comments section.

The bill provides an effective date of upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The foreclosure crisis has greatly impacted the economy of the state of Florida. It has also negatively affected the judicial branch, in terms of both funding and caseload. Florida has the largest share of foreclosure inventory of any state in the nation, with 305,766 properties in some stage of foreclosure or bank-owned as of the end of 2012.<sup>1</sup> Seven of the top 10 highest foreclosure markets in the nation are in Florida, with Palm-Bay-Melbourne-Titusville having the highest rate of foreclosure of any metro area in the nation.<sup>2</sup>

Foreclosing on a mortgage in Florida is an unusually long process. Florida trails only New York and New Jersey in terms of the length of time between the first foreclosure filing and bank repossession, at 853 days. The national average is less than half that, at 414 days.<sup>3</sup>

The state court system is struggling with a backlog of foreclosure cases. In 2005, before the housing market crash, there were only 57,106 foreclosure filings statewide. By 2009, the number of filings exploded to 399,118. Courts did not have the resources to quickly and efficiently deal with this litigation explosion. Due to constitutional and statutory requirements to provide speedy trials to criminal defendants, civil filings take the brunt of any caseload backlog.<sup>4</sup> There had been a significant decline in filings in fiscal year 2010-11 due to problems with title and the robo-signing situation<sup>5</sup>, with only 155,380 filings, compared to 338,281 in 2009-10 and a peak of 403,473 in 2008-09, but filings have begun to increase as those issues are worked out by mortgage servicers, with 186,651 filings in 2011-12 and more expected this year.<sup>6</sup>

Furthermore, the caseload backlog is not spread evenly across the state. While the statewide average is 11.02% of residential loans in foreclosure, certain areas, particularly those located in South Florida, have a much greater percentage of loans in foreclosure than other circuits. For instance, Miami-Dade has 15.56% of loans in foreclosure compared to only 5.26% in Sumter County.<sup>7</sup>

##### Foreclosure Procedure

The foreclosure procedure is governed by statutory process and the Florida Rules of Civil Procedure. It is initiated by the lender or servicer, known as a mortgagee, when the borrower, or mortgagor, fails to perform the terms of his or her mortgage, usually by defaulting on payments. Most mortgages contain an 'acceleration clause,' which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction. The following is a brief outline of the judicial foreclosure process, with the caveat that litigation is driven by the parties, so the process may be slightly different from case to case:

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<sup>1</sup> RealtyTrac, 4th quarter data, presented to the Civil Justice Subcommittee by the Legislature's Office of Demographics and Research on January 24, 2013.

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

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

<sup>4</sup> Florida Office of the State Courts Administrator, *Summary Reporting System (SRS)*, August 19, 2011.

<sup>5</sup> Susan Miller, *RealtyTrac: Robo-signing Scandal Cuts into 2010 Foreclosures*, South Florida Business Journal, January 13, 2011. <http://www.bizjournals.com/southflorida/news/2011/01/13/realtytrac-robo-signing-scandal-cuts.html> (last viewed February 1, 2013).

<sup>6</sup> RealtyTrac, 4th quarter data, presented to the Civil Justice Subcommittee by the Legislature's Office of Demographics and Research on January 24, 2013.

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

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint<sup>8</sup>, which must allege that the plaintiff is the present owner and holder of the note and mortgage<sup>9</sup>, contain a copy of the note and mortgage<sup>10</sup>, and allege a statement of default<sup>11</sup>, along with a filing fee<sup>12</sup> and a *lis pendens*, which serves to cut off the rights of any person whose interest arises after filing.<sup>13</sup>
- Service of process must be made on defendants within 120 days after the filing of the initial pleadings.<sup>14</sup>
- If a defendant has not filed an answer or another paper indicating an intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant.<sup>15</sup>
- If an answer is filed (thus negating the possibility of a default judgment), the plaintiff may then file for a motion of summary judgment or proceed to trial, however the vast majority of plaintiffs file a motion for summary judgment.<sup>16</sup>
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and if he or she finds in the favor of the plaintiff, the court renders a final judgment.<sup>17</sup>
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury.<sup>18</sup>
- The court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment if the plaintiff prevails at summary judgment or trial.<sup>19</sup>
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least five days prior to the sale.<sup>20</sup>
- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale.<sup>21</sup>
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure.<sup>22</sup>
- After 10 days, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed in accordance with the statutory procedure<sup>23</sup>, and the court may, in its discretion, enter a deficiency decree in the amount of the fair market value of the security received and the amount of the debt.<sup>24</sup>

### Alternative Foreclosure Procedure

Section 702.10, F.S., creates an alternative procedure that is designed to speed up the foreclosure process in uncontested cases or cases where there is no legitimate defense. The following is a brief outline of this alternative foreclosure process:

- After a complaint has been filed, the plaintiff may request an order to show cause for the entry of final judgment and the court must immediately review the complaint.<sup>25</sup>

<sup>8</sup> Rule 1.944, Fla. R. Civ. P.

<sup>9</sup> *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).

<sup>10</sup> Rule 1.130(a), Fla. R. Civ. P.

<sup>11</sup> *Siahpoosh v. Nor Props.*, 666 So.2d 988, 989 (Fla. 4th DCA 1996).

<sup>12</sup> The filing fee for foreclosure actions depends on the value of the claim. When the claim is for \$50,000 or less, the fee is \$395; when the claim is over \$50,000 but less than \$250,000, the fee is \$900; and when the claim is \$250,000 or more, the fee is \$1900, according to s. 28.241(1)(d), F.S.

<sup>13</sup> Section 48.23, F.S.

<sup>14</sup> Rule 1.070(j), Fla. R. Civ. P. See also chs. 48 and 49, F.S.

<sup>15</sup> Rule 1.040(a)(1), Fla. R. Civ. P.

<sup>16</sup> Rule 1.1510(a), Fla. R. Civ. P.

<sup>17</sup> Section 45.031, F.S.

<sup>18</sup> Section 702.01, F.S. The summary judgment motion is optional. A plaintiff can elect to go to trial without the filing of a summary judgment motion.

<sup>19</sup> Section 45.031(1)(a), F.S.

<sup>20</sup> Section 45.031, F.S.

<sup>21</sup> Section 45.031(8), F.S.

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

<sup>23</sup> Section 45.031, F.S.

<sup>24</sup> Section 702.06, F.S.

<sup>25</sup> Section 702.10(1), F.S.

- If the court finds that the complaint is verified, and alleges a proper cause of action, the court must issue an order directing the defending the show cause why a final judgment should not be entered.<sup>26</sup>
- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication, and no later than 60 days after the date of service.<sup>27</sup>
- The defendant can file defenses by a motion or by sworn or verified answer or appear at the hearing, which prevents entry of a final judgment.<sup>28</sup>
- The court need not hold a hearing for determination of reasonable attorney fees if the requested fees do not exceed 3% of the principal owed on the note at the time of filing.<sup>29</sup>
- The court may enter a final judgment if the defendant has waived the right to be heard or has not shown cause why a final judgment should not be entered.<sup>30</sup>

Additionally, if the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.<sup>31</sup>

- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication.<sup>32</sup>
- The defendant can file defenses by a motion or by sworn or verified answer or appear at the hearing, which prevents entry of a final judgment.<sup>33</sup>
- The court may enter an order requiring payment or an order to vacate if the defendant has waived the right to be heard.<sup>34</sup>
- If the court finds that the defendant has not waived the right to be heard, after reviewing affidavits and evidence, the court can determine if the plaintiff is likely to prevail in the foreclosure action, and enter an order requiring the defendant to make the payments or provide another remedy.<sup>35</sup>
- The court order must be stayed pending final adjudication of the claims if the defendant posts bond with the court in the amount equal to the unpaid balance of the mortgage.<sup>36</sup>

## Effect of the Bill

### Alternative Foreclosure Procedure

The bill amends s. 702.10, F.S., the alternative foreclosure procedure, to proceed as follows:

- Any lienholder, not just the mortgagee, may initiate the procedure.
- Upon filing, the court must immediately review the request and the court filing in chambers without a hearing.
- If the court finds that the complaint is verified, complies with s. 702.015, F.S., and alleges a cause of action, the court must promptly issue an order to show cause why a final judgment should not be entered.

<sup>26</sup> *Id.* While this appears to create a right to the order to show cause, many courts interpret this subsection to require an initial hearing.

<sup>27</sup> Section 702.10(1)(a), F.S.

<sup>28</sup> Section 702.10(1)(b), F.S.

<sup>29</sup> Section 702.10(1)(c), F.S.

<sup>30</sup> Section 702.10(1)(d), F.S.

<sup>31</sup> Section 702.10(2), F.S.

<sup>32</sup> Section 702.10(2)(a), F.S.

<sup>33</sup> Section 702.10(2)(b), F.S.

<sup>34</sup> Section 702.10(2)(c), F.S.

<sup>35</sup> Section 702.10(2)(d), F.S.

<sup>36</sup> *Id.*

- The date for the hearing may not occur sooner than the later of 20 days after service of the order or 45 days after the service of the initial complaint, or no sooner than 30 days after the first publication if service is obtained by publication.
- The order to show cause must state that if a defendant files defenses, the hearing time will be used to hear and consider the defendant's motion and arguments. The order must state that the court may enter an order of final judgment of foreclosure at the hearing, and if such a determination is made, the court must enter a final judgment ordering the clerk of the court to conduct a foreclosure sale.
- The court may enter a final judgment of foreclosure without the need for further hearing if the plaintiff is entitled to a final judgment and upon filing of the original note or satisfaction of the conditions for establishing a lost note or upon a showing that the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument.
- The bill includes legislative intent that the alternative procedure may run simultaneously with other court procedures.

The bill provides new provisions relating to court orders requiring the defendant to show cause why an order to make payments during the pendency of the foreclosure proceedings or an order to vacate the premises should not be entered:

- The court may order the defendant to make payments or to vacate the property in addition to any other relief that the court may order.
- A residential property is subject to this relief unless it is an owner-occupied residence, however the bill provides a rebuttable presumption that a homestead property is an owner-occupied residential property.

The bill also requests that the Supreme Court amend the Rules of Civil Procedure to provide for expedited foreclosure proceedings and related forms in conformity with s. 702.10, F.S.

#### Adequate Protections for Lost, Destroyed, or Stolen Notes in a Mortgage Foreclosure

The bill creates s. 702.11, F.S., providing reasonable means of providing adequate protection under s. 673.3091, F.S., which is the statutory provision relating to the enforcement of a lost, destroyed or stolen instrument. As it relates to a mortgage foreclosure, adequate protection would include:

- A written indemnification agreement by a person reasonably believe to be sufficiently solvent to honor such an obligation;
- A surety bond;
- A letter of credit issued by a financial institution;
- A deposit of cash collateral with the clerk of the court; or
- Such other security as the court may deem appropriate under the circumstances.

Any security given must be on terms and in amounts set by the court and must run through the applicable statute of limitations for enforcement of the note. The security also must indemnify the maker of the note against any loss or damage that might occur by reason of a claim by another person to enforce the note. Recovery of damages and costs and attorney fees may be sought against the person who wrongly claims to be the holder of a lost, stolen, or destroyed note or against the adequate protections described above. The actual holder of the note need not pursue recovery against the maker of the note or any guarantor.

#### Deficiency Judgments

Under current law, a lender has 5 years from the foreclosure sale to file a deficiency action.<sup>37</sup> This bill amends s. 95.11, F.S., to provide a one-year statute of limitations for an action to enforce a claim of a

<sup>37</sup> Section 95.11(2), F.S.  
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deficiency related to a note secured by a mortgage against residential property that is a one-family to four-family dwelling unit. The limitations period begins on the 11th day after a foreclosure sale or the day after the mortgagee accepts a deed in lieu of foreclosure.

This bill amends s. 702.06, F.S., to limit a deficiency decree to the difference between the judgment amount, or in the case of a short sale, the outstanding debt, and the fair market value of the property on the date of sale. This appears to codify the current practice of the courts when rendering a deficiency judgment.<sup>38</sup> The bill also eliminates the common law recovery of such a deficiency when the court in the foreclosure action grants or denies a claim for a deficiency judgment. This provision appears to simplify the language of the current law without providing a substantive change in the law.<sup>39</sup>

#### Lost, Destroyed or Stolen Notes

The bill creates s. 702.015, F.S., to provide that every complaint in a foreclosure proceeding on residential real property designed principally for one to four families must contain affirmative allegations expressly made by the plaintiff that the plaintiff is the holder of the original note or must allege with specificity the factual basis by which the plaintiff is a person entitled to enforce the note. If the plaintiff is not the holder of the note, the complaint must describe the authority of the plaintiff and identify the document that grants the plaintiff to file the complaint on behalf of the holder of the note.

The plaintiff must file either the original promissory note or certification that the plaintiff is in physical possession of the original note, unless it is lost, destroyed or stolen. In such a case, the complaint must contain an affidavit that details a clear chain of all assignments, set forth facts showing the plaintiff is entitled to enforce the note, and include exhibits providing evidence of the acquisition, ownership and possession of the note. The bill requires adequate protection to the plaintiff under the Uniform Commercial Code (UCC).<sup>40</sup>

#### Finality of Mortgage Foreclosure Judgment

The bill creates s. 702.036, F.S., to provide for finality of mortgage foreclosure judgments. This provision protects bona fide purchasers of a property at a foreclosure sale and ensures the validity of the title where a party seeks to set aside, invalidate, or challenge the validity of a final judgment or to establish or reestablish a lien. Under current law, an innocent purchaser could be at risk of losing a property he or she purchased in good faith. Under this bill, as long as the party seeking relief was properly served, final judgment was entered, and the appeals periods have run as to the final judgment with no appeals having been filed, and the purchaser was not affiliated with the foreclosing lender or owner, the party may recover monetary damages, but may not disturb the title, thus protecting the innocent purchaser and providing security in title. The bill does not limit the right to other forms of relief that do not adversely affect the ownership of title.

After foreclosure of a mortgage based on a lost, destroyed or stolen note, a person who was not a party to the foreclosure action but claims to be the actual holder of the note has no claim against the property after it is conveyed to a bona fide purchaser for valuable consideration who is not affiliated with the foreclosing lender or owner. However, the actual holder may pursue recovery from any adequate protection as required by the UCC.<sup>41</sup> The actual holder may also pursue damages from the party who wrongfully claimed to be the owner or holder of the promissory note, from the maker of the note, or any other person against whom the actual holder may have a claim.

## B. SECTION DIRECTORY:

<sup>38</sup> See *Trustees of Central States Southeast and Southwest Areas, Pension Fund v. Indico Corp.*, 401 So.2d 904 (Fla 1<sup>st</sup> DCA 1981).

<sup>39</sup> See *Cragin v. Ocean & Lake Realty Co.*, 101 So. 795 (Fla. 1931).

<sup>40</sup> Section 673.3091, F.S., contains the provision relating to the enforcement of lost, destroyed, or stolen instruments. This provision was adopted as part of the Uniform Commercial Code (UCC). The UCC comments on the provision, as reported by Florida Statutes Annotated, indicate that adequate protection is a "flexible concept," and "the type of adequate protection that is reasonable in the circumstances may depend on the degree of certainty about the facts in the case."

<sup>41</sup> *Id.*

Section 1 amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2 provides dates of application for section 1 of the bill.

Section 3 creates s. 702.015, F.S., relating to elements of complaint; lost, destroyed or stolen note affidavit.

Section 4 creates s. 702.036, F.S., relating to finality of mortgage foreclosure judgment.

Section 5 amends s. 702.06, F.S., relating to deficiency decree; common-law suit to recover deficiency.

Section 6 amends s. 702.10, F.S., relating to order to show cause; entry of final judgment of foreclosure; payment during foreclosure.

Section 7 creates s. 702.11, F.S., relating to adequate protections for lost, destroyed, or stolen notes in mortgage foreclosure.

Section 8 provides legislative findings that some of the provisions of the bill are remedial in nature while others apply to causes of action pending on the effective date of the act.

Section 9 provides an effective date of upon becoming a law.

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

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

#### **1. Revenues:**

See fiscal comments.

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

See fiscal comments.

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

#### **1. Revenues:**

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

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

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

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

The bill does not appear to have any direct economic impact on the private sector.

### **D. FISCAL COMMENTS:**

The Office of State Court Administrator has indicated that they anticipate a short-term increase in court workload due to provisions of the bill which allow additional lienholders to seek show cause orders under the modified foreclosure procedures and due to the provisions of the bill which shorten the statute of limitations for bringing actions to enforce claims of deficiency. OSCA indicates that there is insufficient data to establish the extent of the increased workload. OSCA indicates that the expedited foreclosure process may result in a reduction in court workload over the long-term.

OSCA also indicates that the spike in filings due to a shortened statute of limitations for bringing actions to enforce claims of efficiency may result in an increase in filing fees.

### **III. COMMENTS**

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

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

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill does appear to create a need for rulemaking. The bill requests that the Supreme Court amend the Rules of Civil Procedure to provide for expedited foreclosure proceedings and related forms in conformity to s. 702.10, F.S.

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

None.

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

None.



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A bill to be entitled

An act relating to mortgage foreclosures; amending s. 95.11, F.S.; revising the limitations period for commencing an action to enforce a claim of a deficiency judgment after a foreclosure action; providing for applicability to existing causes of action; creating s. 702.015, F.S.; providing legislative intent; specifying required contents of a complaint seeking to foreclose on certain types of residential properties with respect to the authority of the plaintiff to foreclose on the note and the location of the note; authorizing sanctions against plaintiffs who fail to comply with complaint requirements; providing for nonapplicability to proceedings involving timeshare interests; creating s. 702.036, F.S.; requiring a court to treat a collateral attack on a final judgment of foreclosure on a mortgage as a claim for monetary damages under certain circumstances; prohibiting such court from granting certain relief affecting title to the foreclosed property; providing for construction relating to the rights of certain persons to seek specified types of relief or pursue claims against the foreclosed property under certain circumstances; amending s. 702.06, F.S.; limiting the amount of a deficiency judgment; amending s. 702.10, F.S.; revising the class of persons authorized to move for expedited foreclosure to include lienholders; defining the term

29 "lienholder"; providing requirements and procedures  
 30 with respect to an order directed to defendants to  
 31 show cause why a final judgment of foreclosure should  
 32 not be entered; providing that certain failures by a  
 33 defendant to make certain filings or to make certain  
 34 appearances may have specified legal consequences;  
 35 requiring the court to enter a final judgment of  
 36 foreclosure and order a foreclosure sale under certain  
 37 circumstances; revising a restriction on a mortgagee  
 38 to request a court to order a mortgagor defendant to  
 39 make payments or to vacate the premises during an  
 40 action to foreclose on residential real estate to  
 41 provide that the restriction applies to all but owner-  
 42 occupied residential property; providing a presumption  
 43 regarding owner-occupied residential property;  
 44 requesting the Supreme Court to adopt rules and forms  
 45 for use in expedited foreclosure proceedings; creating  
 46 s. 702.11, F.S.; providing requirements for reasonable  
 47 means of providing adequate protection under s.  
 48 673.3091, F.S., in mortgage foreclosures of certain  
 49 residential properties; providing for liability of  
 50 persons who wrongly claim to be holders of or entitled  
 51 to enforce a lost, stolen, or destroyed note and cause  
 52 the mortgage secured thereby to be foreclosed in  
 53 certain circumstances; providing for construction and  
 54 applicability; providing an effective date.

55  
 56 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraph (b) of subsection (2) of section 95.11, Florida Statutes, is amended, and paragraph (h) is added to subsection (5) of that section, to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument, except for an action to enforce a claim against a payment bond, which shall be governed by the applicable provisions of paragraph (5)(e), s. 255.05(10), s. 337.18(1), or s. 713.23(1)(e), and except for an action for a deficiency judgment governed by paragraph (5)(h).

(5) WITHIN ONE YEAR.—

(h) An action to enforce a claim of a deficiency related to a note secured by a mortgage against a residential property that is a one-family to four-family dwelling unit. The limitations period shall commence on the 11th day after the foreclosure sale or the day after the mortgagee accepts a deed in lieu of foreclosure.

Section 2. The amendments made by this act to s. 95.11, Florida Statutes, apply to any action commenced on or after July 1, 2013, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(2)(b), Florida Statutes, before the amendments made by this act may be commenced no later than 5 years after the action accrued but in no event later than July 1, 2014, and if the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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85 action is not commenced by that date, it is barred by the  
86 amendments made by this act.

87 Section 3. Section 702.015, Florida Statutes, is created  
88 to read:

89 702.015 Elements of complaint; lost, destroyed, or stolen  
90 note affidavit.—

91 (1) The Legislature intends that this section expedite the  
92 foreclosure process by ensuring initial disclosure of a  
93 plaintiff's status and the facts supporting that status, thereby  
94 ensuring the availability of documents necessary to the  
95 prosecution of the case.

96 (2) A complaint that seeks to foreclose a mortgage or  
97 other lien on residential real property, including individual  
98 units of condominiums and cooperatives, designed principally for  
99 occupation by from one to four families which secures a  
100 promissory note must:

101 (a) Contain affirmative allegations expressly made by the  
102 plaintiff at the time the proceeding is commenced that the  
103 plaintiff is the holder of the original note secured by the  
104 mortgage; or

105 (b) Allege with specificity the factual basis by which the  
106 plaintiff is a person entitled to enforce the note under s.  
107 673.3011.

108 (3) If a party has been delegated the authority to  
109 institute a mortgage foreclosure action on behalf of the holder  
110 of the note, the complaint shall describe the authority of the  
111 plaintiff and identify, with specificity, the document that  
112 grants the plaintiff the authority to act on behalf of the

113 holder of the note. This subsection is intended to require  
114 initial disclosure of status and pertinent facts and not to  
115 modify law regarding standing or real parties in interest.

116 (4) If the plaintiff is in physical possession of the  
117 original promissory note, the plaintiff must file with the  
118 court, contemporaneously with and as a condition precedent to  
119 the filing of the complaint for foreclosure, certification,  
120 under penalty of perjury, that the plaintiff is in physical  
121 possession of the original promissory note. The certification  
122 must set forth the physical location of the note, the name and  
123 title of the individual giving the certification, the name of  
124 the person who personally verified such physical possession, and  
125 the time and date on which the possession was verified. Correct  
126 copies of the note and all allonges to the note must be attached  
127 to the certification. The original note and the allonges must be  
128 filed with the court before the entry of any judgment of  
129 foreclosure or judgment on the note.

130 (5) If the plaintiff seeks to enforce a lost, destroyed,  
131 or stolen instrument, an affidavit executed under penalty of  
132 perjury must be attached to the complaint. The affidavit must:

133 (a) Detail a clear chain of all endorsements or  
134 assignments of the promissory note that is the subject of the  
135 action.

136 (b) Set forth facts showing that the plaintiff is entitled  
137 to enforce a lost, destroyed, or stolen instrument pursuant to  
138 s. 673.3091. Adequate protection as required under s.  
139 673.3091(2) shall be provided before the entry of final  
140 judgment.

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141 (c) Include as exhibits to the affidavit such copies of  
142 the note and the allonges to the note, audit reports showing  
143 physical receipt of the original note, or other evidence of the  
144 acquisition, ownership, and possession of the note as may be  
145 available to the plaintiff.

146 (6) The court may sanction the plaintiff for failure to  
147 comply with this section.

148 (7) This section does not apply to any foreclosure  
149 proceeding involving timeshare interests under part III of  
150 chapter 721.

151 Section 4. Section 702.036, Florida Statutes, is created  
152 to read:

153 702.036 Finality of mortgage foreclosure judgment.-

154 (1)(a) In any action or proceeding in which a party seeks  
155 to set aside, invalidate, or challenge the validity of a final  
156 judgment of foreclosure of a mortgage or to establish or  
157 reestablish a lien or encumbrance on the property in abrogation  
158 of the final judgment of foreclosure of a mortgage, the court  
159 shall treat such request solely as a claim for monetary damages  
160 and may not grant relief that adversely affects the quality or  
161 character of the title to the property, if:

162 1. The party seeking relief from the final judgment of  
163 foreclosure of the mortgage was properly served in the  
164 foreclosure lawsuit as provided in chapter 48 or chapter 49.

165 2. The final judgment of foreclosure of the mortgage was  
166 entered as to the property.

167 3. All applicable appeals periods have run as to the final  
168 judgment of foreclosure of the mortgage with no appeals having

169 been taken or any appeals having been finally resolved.

170 4. The property has been acquired for value, by a person  
171 not affiliated with the foreclosing lender or the foreclosed  
172 owner, at a time in which no lis pendens regarding the suit to  
173 set aside, invalidate, or challenge the foreclosure appears in  
174 the official records of the county where the property was  
175 located.

176 (b) This subsection does not limit the right to pursue any  
177 other relief to which a person may be entitled, including, but  
178 not limited to, compensatory damages, punitive damages,  
179 statutory damages, consequential damages, injunctive relief, or  
180 fees and costs, which does not adversely affect the ownership of  
181 the title to the property as vested in the unaffiliated  
182 purchaser for value.

183 (2) For purposes of this section, the following, without  
184 limitation, shall be considered persons affiliated with the  
185 foreclosing lender:

186 (a) The foreclosing lender or any loan servicer for the  
187 loan being foreclosed;

188 (b) Any past or present owner or holder of the loan being  
189 foreclosed;

190 (c) Any maintenance company, holding company, foreclosure  
191 services company, or law firm under contract to any entity  
192 listed in paragraph (a), paragraph (b), or this paragraph, with  
193 regard to the loan being foreclosed; or

194 (d) Any parent entity, subsidiary, or other person who  
195 directly, or indirectly through one or more intermediaries,  
196 controls or is controlled by, or is under common control with,

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197 any entity listed in paragraph (a), paragraph (b), or paragraph  
 198 (c).

199 (3) After foreclosure of a mortgage based upon the  
 200 enforcement of a lost, destroyed, or stolen note, a person who  
 201 is not a party to the underlying foreclosure action but who  
 202 claims to be the actual holder of the promissory note secured by  
 203 the foreclosed mortgage has no claim against the foreclosed  
 204 property after it is conveyed for valuable consideration to a  
 205 person not affiliated with the foreclosing lender or the  
 206 foreclosed owner. This section does not preclude the actual  
 207 holder of the note from pursuing recovery from any adequate  
 208 protection given pursuant to s. 673.3091 or from the party who  
 209 wrongfully claimed to be the owner or holder of the promissory  
 210 note under s. 702.11(2) or otherwise, from the maker of the  
 211 note, or from any other person against whom it may have a claim  
 212 relating to the note.

213 Section 5. Section 702.06, Florida Statutes, is amended to  
 214 read:

215 702.06 Deficiency decree; common-law suit to recover  
 216 deficiency.—In all suits for the foreclosure of mortgages  
 217 heretofore or hereafter executed the entry of a deficiency  
 218 decree for any portion of a deficiency, should one exist, may  
 219 not exceed the difference between the judgment amount, or in the  
 220 case of a short sale, the outstanding debt, and the fair market  
 221 value of the property on the date of sale. ~~shall be within the~~  
 222 sound judicial discretion of the court, but The complainant  
 223 shall also have the right to sue at common law to recover such  
 224 deficiency, unless the court in the foreclosure action has



225 ~~granted or denied a claim for a deficiency judgment provided no~~  
 226 ~~suit at law to recover such deficiency shall be maintained~~  
 227 ~~against the original mortgagor in cases where the mortgage is~~  
 228 ~~for the purchase price of the property involved and where the~~  
 229 ~~original mortgagee becomes the purchaser thereof at foreclosure~~  
 230 ~~sale and also is granted a deficiency decree against the~~  
 231 ~~original mortgagor.~~

232 Section 6. Section 702.10, Florida Statutes, is amended to  
 233 read:

234 702.10 Order to show cause; entry of final judgment of  
 235 foreclosure; payment during foreclosure.-

236 (1) A lienholder ~~After a complaint in a foreclosure~~  
 237 ~~proceeding has been filed, the mortgagee may request an order to~~  
 238 ~~show cause for the entry of final judgment in a foreclosure~~  
 239 ~~action. For purposes of this section, the term "lienholder"~~  
 240 ~~includes the plaintiff and a defendant to the action who holds a~~  
 241 ~~lien encumbering the property or a defendant who, by virtue of~~  
 242 ~~its status as a condominium association, cooperative~~  
 243 ~~association, or homeowners' association, may file a lien against~~  
 244 ~~the real property subject to foreclosure. Upon filing, and the~~  
 245 ~~court shall immediately review the request and the court file in~~  
 246 ~~chambers and without a hearing ~~complaint~~.~~ If, upon examination  
 247 of the court file ~~complaint~~, the court finds that the complaint  
 248 is verified, complies with s. 702.015, and alleges a cause of  
 249 action to foreclose on real property, the court shall promptly  
 250 issue an order directed to the other parties named in the action  
 251 ~~defendant~~ to show cause why a final judgment of foreclosure  
 252 should not be entered.

253 (a) The order shall:

254 1. Set the date and time for a hearing ~~on the order~~ to

255 show cause. ~~However,~~ The date for the hearing may not occur ~~be~~

256 ~~set~~ sooner than the later of 20 days after the service of the

257 order to show cause or 45 days after service of the initial

258 complaint. When service is obtained by publication, the date for

259 the hearing may not be set sooner than 30 days after the first

260 publication. ~~The hearing must be held within 60 days after the~~

261 ~~date of service. Failure to hold the hearing within such time~~

262 ~~does not affect the validity of the order to show cause or the~~

263 ~~jurisdiction of the court to issue subsequent orders.~~

264 2. Direct the time within which service of the order to

265 show cause and the complaint must be made upon the defendant.

266 3. State that the filing of defenses by a motion,

267 responsive pleading, affidavits, or other papers ~~or by a~~

268 ~~verified or sworn answer at or before the hearing to show cause~~

269 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~

270 ~~attached~~ final judgment.

271 4. State that a ~~the~~ defendant has the right to file

272 affidavits or other papers before ~~at~~ the time of the hearing to

273 show cause and may appear personally or by way of an attorney at

274 the hearing.

275 5. State that, if a ~~the~~ defendant files defenses by a

276 motion, a verified or sworn answer, affidavits, or other papers

277 or appears personally or by way of an attorney at the time of

278 the hearing, the hearing time will ~~may~~ be used to hear and

279 consider the defendant's motion, answer, affidavits, other

280 papers, and other evidence and argument as may be presented by

281 the defendant or the defendant's attorney. The order shall also  
 282 state that the court may enter an order of final judgment of  
 283 foreclosure at the hearing and order the clerk of the court to  
 284 conduct a foreclosure sale.

285 6. State that, if a ~~the~~ defendant fails to appear at the  
 286 hearing to show cause or fails to file defenses by a motion or  
 287 by a verified or sworn answer or files an answer not contesting  
 288 the foreclosure, such ~~the~~ defendant may be considered to have  
 289 waived the right to a hearing, and in such case, the court may  
 290 enter a default against such defendant and, if appropriate, a  
 291 final judgment of foreclosure ordering the clerk of the court to  
 292 conduct a foreclosure sale.

293 7. State that if the mortgage provides for reasonable  
 294 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~  
 295 fees do not exceed 3 percent of the principal amount owed at the  
 296 time of filing the complaint, it is unnecessary for the court to  
 297 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees  
 298 to be reasonable.

299 8. Attach the form of the proposed final judgment of  
 300 foreclosure which the movant requests the court to will enter,  
 301 ~~if the defendant waives the right to be heard at the hearing on~~  
 302 ~~the order to show cause. The form may contain blanks for the~~  
 303 court to enter the amounts due.

304 9. Require the party seeking final judgment ~~mortgagee~~ to  
 305 serve a copy of the order to show cause on the other parties ~~the~~  
 306 ~~mortgager~~ in the following manner:

307 a. If a party ~~the mortgager~~ has been served pursuant to  
 308 chapter 48 with the complaint and original process, or the other

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309 party is the plaintiff in the action, service of the order to  
 310 show cause on that party ~~order~~ may be made in the manner  
 311 provided in the Florida Rules of Civil Procedure.

312 b. If a defendant ~~the mortgagor~~ has not been served  
 313 pursuant to chapter 48 with the complaint and original process,  
 314 the order to show cause, together with the summons and a copy of  
 315 the complaint, shall be served on the party ~~mortgagor~~ in the  
 316 same manner as provided by law for original process.

317  
 318 Any final judgment of foreclosure entered under this subsection  
 319 is for in rem relief only. ~~Nothing in~~ This subsection does not  
 320 ~~shall~~ preclude the entry of a deficiency judgment where  
 321 otherwise allowed by law. The Legislature intends that this  
 322 alternative procedure may run simultaneously with other court  
 323 procedures.

324 (b) The right to be heard at the hearing to show cause is  
 325 waived if a ~~the~~ defendant, after being served as provided by law  
 326 with an order to show cause, engages in conduct that clearly  
 327 shows that the defendant has relinquished the right to be heard  
 328 on that order. The defendant's failure to file defenses by a  
 329 motion or by a sworn or verified answer, affidavits, or other  
 330 papers or to appear personally or by way of an attorney at the  
 331 hearing duly scheduled on the order to show cause presumptively  
 332 constitutes conduct that clearly shows that the defendant has  
 333 relinquished the right to be heard. If a defendant files  
 334 defenses by a motion, ~~or by a verified or sworn answer,~~  
 335 affidavits, or other papers or presents evidence at or before  
 336 the hearing, which would be sufficient to preclude the entry of

337 | a summary judgment, such action constitutes cause and precludes  
 338 | the entry of a final judgment at the hearing to show cause.

339 | (c) In a mortgage foreclosure proceeding, when a final  
 340 | ~~default~~ judgment of foreclosure has been entered against the  
 341 | mortgagor and the note or mortgage provides for the award of  
 342 | reasonable attorney ~~attorney's~~ fees, it is unnecessary for the  
 343 | court to hold a hearing or adjudge the requested attorney  
 344 | ~~attorney's~~ fees to be reasonable if the fees do not exceed 3  
 345 | percent of the principal amount owed on the note or mortgage at  
 346 | the time of filing, even if the note or mortgage does not  
 347 | specify the percentage of the original amount that would be paid  
 348 | as liquidated damages.

349 | (d) If the court finds that all defendants have ~~the~~  
 350 | ~~defendant has~~ waived the right to be heard as provided in  
 351 | paragraph (b), the court shall promptly enter a final judgment  
 352 | of foreclosure without the need for further hearing if the  
 353 | plaintiff has shown entitlement to a final judgment and upon the  
 354 | filing with the court of the original note, satisfaction of the  
 355 | conditions for establishment of a lost note, or upon a showing  
 356 | to the court that the obligation to be foreclosed is not  
 357 | evidenced by a promissory note or other negotiable instrument.  
 358 | If the court finds that a ~~the~~ defendant has not waived the right  
 359 | to be heard on the order to show cause, the court shall ~~then~~  
 360 | determine whether there is cause not to enter a final judgment  
 361 | of foreclosure. If the court finds that the defendant has not  
 362 | shown cause, the court shall promptly enter a judgment of  
 363 | foreclosure. If the time allotted for the hearing is  
 364 | insufficient, the court may announce at the hearing a date and

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365 time for the continued hearing. Only the parties who appear,  
 366 individually or through an attorney, at the initial hearing must  
 367 be notified of the date and time of the continued hearing.

368 (2) Except as provided in paragraph (i), as part of any ~~In~~  
 369 an action for foreclosure, and in addition to any other relief  
 370 that the court may award ~~other than residential real estate,~~ the  
 371 plaintiff ~~the mortgagee~~ may request that the court enter an  
 372 order directing the mortgagor defendant to show cause why an  
 373 order to make payments during the pendency of the foreclosure  
 374 proceedings or an order to vacate the premises should not be  
 375 entered.

376 (a) The order shall:

377 1. Set the date and time for hearing on the order to show  
 378 cause. However, the date for the hearing may ~~shall~~ not be set  
 379 sooner than 20 days after the service of the order. If ~~Where~~  
 380 service is obtained by publication, the date for the hearing may  
 381 ~~shall~~ not be set sooner than 30 days after the first  
 382 publication.

383 2. Direct the time within which service of the order to  
 384 show cause and the complaint shall be made upon each ~~the~~  
 385 defendant.

386 3. State that a ~~the~~ defendant has the right to file  
 387 affidavits or other papers at the time of the hearing and may  
 388 appear personally or by way of an attorney at the hearing.

389 4. State that, if a ~~the~~ defendant fails to appear at the  
 390 hearing to show cause and fails to file defenses by a motion or  
 391 by a verified or sworn answer, the defendant is ~~may be~~ deemed to  
 392 have waived the right to a hearing and in such case the court

393 may enter an order to make payment or vacate the premises.

394 5. Require the movant ~~mortgagee~~ to serve a copy of the  
 395 order to show cause on the defendant ~~mortgagor~~ in the following  
 396 manner:

397 a. If a defendant ~~the mortgagor~~ has been served with the  
 398 complaint and original process, service of the order may be made  
 399 in the manner provided in the Florida Rules of Civil Procedure.

400 b. If a defendant ~~the mortgagor~~ has not been served with  
 401 the complaint and original process, the order to show cause,  
 402 together with the summons and a copy of the complaint, shall be  
 403 served on the defendant ~~mortgagor~~ in the same manner as provided  
 404 by law for original process.

405 (b) The right of a defendant to be heard at the hearing to  
 406 show cause is waived if the defendant, after being served as  
 407 provided by law with an order to show cause, engages in conduct  
 408 that clearly shows that the defendant has relinquished the right  
 409 to be heard on that order. A ~~The~~ defendant's failure to file  
 410 defenses by a motion or by a sworn or verified answer or to  
 411 appear at the hearing duly scheduled on the order to show cause  
 412 presumptively constitutes conduct that clearly shows that the  
 413 defendant has relinquished the right to be heard.

414 (c) If the court finds that a ~~the~~ defendant has waived the  
 415 right to be heard as provided in paragraph (b), the court may  
 416 promptly enter an order requiring payment in the amount provided  
 417 in paragraph (f) or an order to vacate.

418 (d) If the court finds that the mortgagor has not waived  
 419 the right to be heard on the order to show cause, the court  
 420 shall, at the hearing on the order to show cause, consider the

421 affidavits and other showings made by the parties appearing and  
 422 make a determination of the probable validity of the underlying  
 423 claim alleged against the mortgagor and the mortgagor's  
 424 defenses. If the court determines that the plaintiff mortgagee  
 425 is likely to prevail in the foreclosure action, the court shall  
 426 enter an order requiring the mortgagor to make the payment  
 427 described in paragraph (e) to the plaintiff mortgagee and  
 428 provide for a remedy as described in paragraph (f). However, the  
 429 order shall be stayed pending final adjudication of the claims  
 430 of the parties if the mortgagor files with the court a written  
 431 undertaking executed by a surety approved by the court in an  
 432 amount equal to the unpaid balance of the lien being foreclosed  
 433 ~~the mortgage on the property~~, including all principal, interest,  
 434 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~  
 435 ~~mortgagee~~.

436 (e) ~~If In the event~~ the court enters an order requiring  
 437 the mortgagor to make payments to the plaintiff mortgagee,  
 438 payments shall be payable at such intervals and in such amounts  
 439 provided for in the mortgage instrument before acceleration or  
 440 maturity. The obligation to make payments pursuant to any order  
 441 entered under this subsection shall commence from the date of  
 442 the motion filed under this section ~~hereunder~~. The order shall  
 443 be served upon the mortgagor no later than 20 days before the  
 444 date specified for the first payment. The order may permit, but  
 445 ~~may shall~~ not require, the plaintiff mortgagee to take all  
 446 appropriate steps to secure the premises during the pendency of  
 447 the foreclosure action.

448 (f) ~~If In the event~~ the court enters an order requiring



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449 payments, the order shall also provide that the plaintiff is  
 450 ~~mortgagee shall be~~ entitled to possession of the premises upon  
 451 the failure of the mortgagor to make the payment required in the  
 452 order unless at the hearing on the order to show cause the court  
 453 finds good cause to order some other method of enforcement of  
 454 its order.

455 (g) All amounts paid pursuant to this section shall be  
 456 credited against the mortgage obligation in accordance with the  
 457 terms of the loan documents; ~~provided, however, that any~~  
 458 payments made under this section do shall not constitute a cure  
 459 of any default or a waiver or any other defense to the mortgage  
 460 foreclosure action.

461 (h) Upon the filing of an affidavit with the clerk that  
 462 the premises have not been vacated pursuant to the court order,  
 463 the clerk shall issue to the sheriff a writ for possession which  
 464 shall be governed by ~~the provisions of~~ s. 83.62.

465 (i) This subsection does not apply to foreclosure of an  
 466 owner-occupied residence. For purposes of this paragraph, there  
 467 is a rebuttable presumption that a residential property for  
 468 which a homestead exemption for taxation was granted according  
 469 to the certified rolls of the latest assessment by the county  
 470 property appraiser, before the filing of the foreclosure action,  
 471 is an owner-occupied residential property.

472 (3) The Supreme Court is requested to amend the Florida  
 473 Rules of Civil Procedure to provide for expedited foreclosure  
 474 proceedings in conformity with this section and is requested to  
 475 develop and publish forms for use under this section.

476 Section 7. Section 702.11, Florida Statutes, is created to

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477 read:

478 702.11 Adequate protections for lost, destroyed, or stolen  
 479 notes in mortgage foreclosure.—

480 (1) In connection with a mortgage foreclosure, the  
 481 following constitute reasonable means of providing adequate  
 482 protection under s. 673.3091 if so found by the court:

483 (a) A written indemnification agreement by a person  
 484 reasonably believed sufficiently solvent to honor such an  
 485 obligation;

486 (b) A surety bond;

487 (c) A letter of credit issued by a financial institution;

488 (d) A deposit of cash collateral with the clerk of the  
 489 court; or

490 (e) Such other security as the court may deem appropriate  
 491 under the circumstances.

492

493 Any security given shall be on terms and in amounts set by the  
 494 court, for a time period through the running of the statute of  
 495 limitations for enforcement of the underlying note, and  
 496 conditioned to indemnify and hold harmless the maker of the note  
 497 against any loss or damage, including principal, interest, and  
 498 attorney fees and costs, that might occur by reason of a claim  
 499 by another person to enforce the note.

500 (2) Any person who wrongly claims to be the holder of or  
 501 pursuant to s. 673.3011 to be entitled to enforce a lost,  
 502 stolen, or destroyed note and causes the mortgage secured  
 503 thereby to be foreclosed is liable to the actual holder of the  
 504 note, without limitation to any adequate protections given, for

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505 actual damages suffered together with attorney fees and costs of  
506 the actual holder of the note in enforcing rights under this  
507 subsection. In addition, the actual holder of the note may  
508 pursue recovery directly against any adequate protections given.

509 (a) The actual holder of the note is not required to  
510 pursue recovery against the maker of the note or any guarantor  
511 thereof as a condition precedent to pursuing remedies under this  
512 section.

513 (b) This section does not limit or restrict the ability of  
514 the actual holder of the note to pursue any other claims or  
515 remedies it may have against the maker, the person who wrongly  
516 claimed to be the holder, or any person who facilitated or  
517 participated in the claim to the note or enforcement thereof.

518 Section 8. The Legislature finds that this act is remedial  
519 in nature and applies to all mortgages encumbering real property  
520 and all promissory notes secured by a mortgage, whether executed  
521 before, on, or after the effective date of this act. In  
522 addition, the Legislature finds that s. 702.015, Florida  
523 Statutes, as created by this act, applies to cases filed on or  
524 after July 1, 2013; however, the amendments to s. 702.10,  
525 Florida Statutes, and the creation of s. 702.11, Florida  
526 Statutes, by this act, apply to causes of action pending on the  
527 effective date of this act.

528 Section 9. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 113 Distribution of Materials Harmful to Minors  
**SPONSOR(S):** Criminal Justice Subcommittee; Diaz, M. and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 86

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

### SUMMARY ANALYSIS

Section 847.011, F.S., defines "harmful to minors" as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

Florida has multiple statutes that prohibit persons from transmitting, selling, or displaying to minors material that is harmful to minors. However, there are currently no statutes prohibiting an adult from displaying or giving minors (without monetary consideration) material that is harmful to minors.

The bill amends s. 847.012, F.S., to create a new offense making it a third degree felony for an adult to knowingly distribute to a minor on school property or post on school property any of the following material:

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.

The bill provides an exception for the distribution or posting of instructional materials by specified school personnel.

"School property" is defined as the grounds or facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.

The Criminal Justice Impact Conference met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds.

The bill is effective on October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES

##### **Regulation of Obscene Materials**

The First Amendment to the United States Constitution and Article I, Section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. However, the Supreme Court of the United States has found that obscene materials are not protected by the First Amendment.<sup>1</sup>

Section 847.001(10), F.S., defines "obscene" as the status of material that:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct;<sup>2</sup> and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.

Florida has multiple statutes prohibiting the possession, exhibition, and dissemination of obscene materials to adults and children.<sup>3</sup> One specific to children is s. 847.0133, F.S., which makes it a third degree felony<sup>4</sup> to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor.

##### **Regulation of Materials Harmful to Minors**

The definition of materials that are "harmful to minors" is similar to but more inclusive than that of "obscene" materials. Section 847.001(6), F.S., defines "harmful to minors" as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity,<sup>5</sup> sexual conduct,<sup>6</sup> or sexual excitement<sup>7</sup> when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.<sup>8</sup>

Florida has multiple statutes that prohibit persons from transmitting, selling, or displaying to minors material that is harmful to minors. A description of these statutes is below.

##### Transmission of Materials Harmful to Minors

Section 847.0138, F.S., makes it a third degree felony for a person to know or believe they are transmitting an image, information, or data that is "harmful to minors" to a specific individual known by the defendant to be a minor.<sup>9</sup>

<sup>1</sup> *Miller v. California*, 413 U.S. 15 (1973).

<sup>2</sup> Section 847.001, F.S., defines "sexual conduct" as actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person is a female, breast with the intent to arouse, or gratify the sexual desire of either party; or any act or conduct which constituted sexual battery or simulates the sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

<sup>3</sup> *See, e.g.*, s. 847.011, F.S.

<sup>4</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>5</sup> Section 847.001(9), F.S., defines "nudity" as the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> Section 847.001(17), F.S., defines "sexual excitement" as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

<sup>8</sup> Section 847.001, F.S.

**Selling, Renting, or Loaning Materials Harmful to Minors**

Section 847.012(3)(a) and (b), F.S., makes it a third degree felony for a person to knowingly<sup>10</sup> sell, rent, or loan for monetary consideration to a minor:

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.<sup>11</sup>

**Exposing Minors to Harmful Motion Pictures, Shows, Etc.**

Section 847.013(3), F.S., makes it a first degree misdemeanor<sup>12</sup> for a person to knowingly<sup>13</sup> exhibit for monetary consideration to a minor; knowingly sell or rent a videotape of a motion picture to a minor; knowingly sell to a minor an admission ticket or pass; or knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.

**Retail Display of Materials Harmful to Minors**

Section 847.0125(2)(a), F.S., makes it a first degree misdemeanor for a person who offers for sale in a retail establishment that is open to the general public any book, magazine, or other printed material, *the cover of which depicts material which is harmful to minors*, to knowingly exhibit such book, magazine, or material in such a way that it is on open display to, or within the convenient reach of, minors. The statute requires such items to be displayed, either individually or collectively, behind an opaque covering which conceals the book, magazine, or other printed material.<sup>14</sup>

The statute also makes it a first degree misdemeanor for a person who offers for sale in a retail establishment that is open to the general public any book, magazine, or other printed material, *the content of which exploits, is devoted to, or is principally made up of descriptions or depictions of material which is harmful to minors*, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is within the convenient reach of minors.<sup>15</sup>

There are currently no statutes prohibiting an adult from displaying or giving minors (without monetary consideration) material that is harmful to minors.<sup>16</sup>

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<sup>9</sup> "Known by the defendant to be a minor" means that the defendant had actual knowledge or believed that the recipient of the communication was a minor. Section 847.0138(1)(a), F.S.

<sup>10</sup> "Knowingly" means having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both: (1) the character and content of any motion picture described herein which is reasonably susceptible of examination by the defendant, or the character of any exhibition, presentation, representation, or show described herein, other than a motion picture show, which is reasonably susceptible of being ascertained by the defendant; and (2) the age of the minor. Section 847.013(1), F.S.

<sup>11</sup> A person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in a prosecution for a violation of s. 847.012, F.S.

<sup>12</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>13</sup> *Supra* note 10.

<sup>14</sup> Section 847.0125(2)(a), F.S.

<sup>15</sup> Section 847.0125(2)(b), F.S.

<sup>16</sup> There may be circumstances under which such activity could be charged as a violation of s. 827.04(1), F.S., contributing to the delinquency of a child, which is a first degree misdemeanor.

**Effect of the Bill**

The bill amends s. 847.012, F.S., to add a new subsection (5), that makes it a third degree felony for an adult to knowingly distribute to a minor on school property or post on school property any of the following material:

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.

The bill provides an exception for the distribution or posting of instructional materials that by design serve as a major tool for assisting in the instruction of a subject or course by school officers, instructional personnel, administrative personnel, school volunteers, educational support employees, or managers, as defined in s. 1012.01, F.S.

"School property" is defined as the grounds or facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 847.012, F.S., relating to harmful materials; sale or distribution to minors or using minors in production prohibited; penalty.

Section 2. Provides an effective date of October 1, 2013.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT****A. FISCAL IMPACT ON STATE GOVERNMENT:****1. Revenues:**

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

**2. Expenditures:**

The Criminal Justice Impact Conference met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:****1. Revenues:**

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

**2. Expenditures:**

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

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

None.

**D. FISCAL COMMENTS:**

None.



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

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

##### 2. Other:

The First Amendment to the United States Constitution and Article I, Section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible. As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."<sup>17</sup> Put another way, statutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct.<sup>18</sup>

The overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially "because it also threatens others not before the court – those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid."<sup>19</sup> The doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected speech.<sup>20</sup>

In *Miller v. California*, the Supreme Court of the United States found that obscene materials are not protected by the First Amendment.<sup>21</sup> However, because materials that are harmful to minors are not considered to be obscene, they receive First Amendment protections. The Supreme Court of Florida, when reviewing the constitutionality of s. 847.0138, F.S., (prohibiting the transmission of harmful materials to minors) noted the importance of the narrow construction of s. 847.0138, F.S., specifically prohibiting harmful materials given to a person *known or believed to be* minor.<sup>22</sup> If statutes are not narrowly constructed they may be challenged as being overbroad.

The bill makes it a crime to post certain material that is harmful to minors on school property, regardless of whether a minor actually sees the material (e.g. if such material were posted in a teacher's lounge or other "teacher only" areas). To the extent that the bill regulates materials arguably suitable for adults that are protected by the First Amendment, it could be challenged as being overbroad.

#### B. RULE-MAKING AUTHORITY:

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

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

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<sup>17</sup> *NAACP v. Button*, 371 U.S. 415, 433 (1963).

<sup>18</sup> *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

<sup>19</sup> *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985).

<sup>20</sup> *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

<sup>21</sup> *Miller v. California*, 413 U.S. 15 (1973).

<sup>22</sup> *Simmons v. State*, 944 So.2d 317 (Fla. 2005).

None.

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

On February 19, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment added an exception for the distribution of instructional materials by specified school personnel.

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

1                   A bill to be entitled  
 2           An act relating to the distribution of materials  
 3           harmful to minors; amending s. 847.012, F.S.;  
 4           prohibiting an adult from knowingly distributing to a  
 5           minor or posting on school property certain specified  
 6           materials harmful to minors; providing that it is a  
 7           third degree felony for any person to knowingly  
 8           distribute to a minor or post on school property  
 9           certain materials harmful to minors; defining the term  
 10          "school property"; providing an exception; providing  
 11          an effective date.

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

15           Section 1. Present subsections (5) through (9) of section  
 16           847.012, Florida Statutes, are renumbered as subsections (6)  
 17           through (10), respectively, and a new subsection (5) is added to  
 18           that section, to read:

19           847.012 Harmful materials; sale or distribution to minors  
 20           or using minors in production prohibited; penalty.—

21           (5) An adult may not knowingly distribute to a minor on  
 22           school property, or post on school property, any material  
 23           described in subsection (3). As used in this subsection, the  
 24           term "school property" means the grounds or facility of any  
 25           kindergarten, elementary school, middle school, junior high  
 26           school, or secondary school, whether public or nonpublic. This  
 27           subsection does not apply to the distribution or posting of  
 28           instructional materials that by design serve as a major tool for

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29 assisting in the instruction of a subject or course by school  
30 officers, instructional personnel, administrative personnel,  
31 school volunteers, educational support employees, or managers as  
32 those terms are defined in s. 1012.01.

33 Section 2. This act shall take effect October 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 113 (2013)

Amendment No 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations  
2 Subcommittee  
3 Representative La Rosa offered the following:

4  
5 **Amendment**

6 Remove line 28 and insert:

7 school approved instructional materials that by design serve as  
8 a major tool for  
9

HB 191

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 191 Theft of Utility Services  
**SPONSOR(S):** Raulerson  
**TIED BILLS:** IDEN./SIM. BILLS: SB 338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N	Jones	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity <i>Handwritten signature</i>
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 812.14, F.S., establishes a variety of crimes involving the theft of utilities. A violation of any of the provisions in s. 812.14, F.S., is currently a first degree misdemeanor.

In a civil action, if a person is found in violation of s. 812.14, F.S., they are liable to the utility entity involved for an amount equal to 3 times the amount of services unlawfully obtained or \$1,000, whichever is greater.

The bill applies the criminal penalties in the general theft statute (s. 812.014, F.S.), to the utility theft offenses in s. 812.14, F.S. The general theft statute penalties are primarily based upon the dollar value of the stolen property. However, there are some circumstances where the penalties are determined by the type of property stolen or whether certain situations are present during the theft. The bill also increases the threshold amount available in a civil action from \$1,000 to \$3,000.

The Criminal Justice Impact Conference met on February 27, 2013, and determined this bill may have an insignificant negative impact on the Department of Corrections, and a positive jail bed impact on local governments.

The bill is effective on October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### **Theft of Utility Services**

Section 812.14, F.S., establishes a variety of crimes involving the theft of utilities.<sup>1</sup> For example, subsections (2) and (4) make it a first degree misdemeanor<sup>2</sup> for a person to:

- Willfully alter, tamper with, injure, or knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; to alter the index or break the seal of any such meter; in any way to hinder or interfere with the proper action or just registration of any such meter or device; or knowingly to use, waste, or suffer the waste, by any means, of electricity or gas or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered;
- Make or cause to be made any connection with any wire, main, service pipe or other pipes, appliance, or appurtenance in such manner as to use, without the consent of the utility, any service or any electricity, gas, or water, or to cause to be supplied any service or electricity, gas, or water from a utility to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without such service being reported for payment or such electricity, gas, or water passing through a meter provided by the utility and used for measuring and registering the quantity of electricity, gas, or water passing through the same; or
- Use or receive the direct benefit from the use of a utility knowing, or under such circumstances as would induce a reasonable person to believe, that such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility, for the purpose of avoiding payment.<sup>3</sup>

Subsections (5) and (7) make it a first degree misdemeanor for a person or entity that owns, leases, or subleases a property to permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation any of the above stated provisions.<sup>4</sup>

Subsection (8) makes theft of utility services for the purpose of facilitating the manufacture of a controlled substance<sup>5</sup> a first degree misdemeanor.<sup>6</sup>

In a civil action, if a person is found in violation of s. 812.14, F.S., they are liable to the utility entity involved for an amount equal to 3 times the amount of services unlawfully obtained or \$1,000, whichever is greater.

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<sup>1</sup> "Utility" is defined in s. 812.14, F.S., as any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

<sup>2</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 812.14(2)(a)-(c) and (4), F.S.

<sup>4</sup> Section 812.14(5) and (7), F.S.

<sup>5</sup> Section 893.02(4), F.S., defines "controlled substance" as any substance named or described in Schedules I-V of s. 893.03, F.S.

<sup>6</sup> Section 812.14(8), F.S.



## Theft

The criminal penalties under the general theft statute (s. 812.014, F.S.) are primarily based upon the dollar value of the stolen property.<sup>7</sup> Section 812.014, F.S., provides:

- If the stolen property is valued at \$100,000 or more, the offense is a first degree felony.<sup>8</sup>
- If the stolen property is valued between \$20,000 and \$100,000, the offense is a second degree felony.<sup>9</sup>
- If the stolen property is valued between \$300 and \$20,000, the offense is a third degree felony.<sup>10</sup>
- If the stolen property is valued between \$100 and \$300, the offense is a first degree misdemeanor.
- If the stolen property is under \$100, the offense is a second degree misdemeanor.<sup>11</sup>

In certain instances the theft statute imposes criminal penalties that are not solely based on value. For example, stealing a fire extinguisher is a third degree felony no matter the value of the fire extinguisher.<sup>12</sup> Stealing law enforcement equipment valued at \$300 or more from an emergency vehicle within a county subject to a state of emergency and where the theft is facilitated by the emergency is a first degree felony.<sup>13</sup>

### **Effect of the Bill**

The bill applies the criminal penalties in the general theft statute (s. 812.014, F.S.) to the utility theft offenses in s. 812.14, F.S.

The bill also increases the threshold amount available in a civil action from \$1,000 to \$3,000.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 812.14, F.S., relating to trespass and larceny with relation to utility fixtures; theft of utility services.

Section 2. Provides an effective date of October 1, 2013.

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

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

#### **1. Revenues:**

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

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

The Criminal Justice Impact Conference met on February 27, 2013, and determined this bill may have an insignificant negative impact on the Department of Corrections.

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<sup>7</sup> See generally, s. 812.014, F.S.

<sup>8</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>9</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>10</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>11</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>12</sup> See s. 812.014(2)(c)8., F.S.

<sup>13</sup> See s. 812.014(2)(b)4., F.S.

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

**1. Revenues:**

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

**2. Expenditures:**

The bill may have a positive jail bed impact on local governments because the bill could make what is currently a first degree misdemeanor either a second degree misdemeanor or a felony (for example, a felony conviction may require the offender to serve their sentence in a state prison instead of a local jail).

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

Private utility companies may benefit because the bill increases the threshold amount available in civil actions from \$1,000 to \$3,000.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

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

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

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

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to theft of utility services; amending  
 3           s. 812.14, F.S.; providing additional criminal  
 4           penalties for utility services wrongfully taken;  
 5           providing that the person who unlawfully took utility  
 6           services is liable to the utility for an increased  
 7           civil penalty subject to the amount of the utility  
 8           services unlawfully obtained; providing an effective  
 9           date.

10

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

12

13           Section 1. Subsections (4), (7), (8), and (10) of section  
 14 812.14, Florida Statutes, are amended to read:

15           812.14 Trespass and larceny with relation to utility  
 16 fixtures; theft of utility services.-

17           (4) A ~~Any~~ person who willfully violates paragraph (2)(a),  
 18 paragraph (2)(b), or paragraph (2)(c) commits theft a  
 19 ~~misdemeanor of the first degree~~, punishable as provided in s.  
 20 812.014 ~~s. 775.082 or s. 775.083~~.

21           (7) A person who willfully violates subsection (5) commits  
 22 a misdemeanor of the first degree, punishable as provided in s.  
 23 775.082 or s. 775.083. Prosecution for a violation of subsection  
 24 (5) does not preclude prosecution for theft pursuant to ~~under~~  
 25 subsection (8) or s. 812.014.

26           (8) Theft of utility services for the purpose of  
 27 facilitating the manufacture of a controlled substance is theft  
 28 ~~a misdemeanor of the first degree~~, punishable as provided in s.

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29 | 812.014 ~~s. 775.082 or s. 775.083.~~

30 |       (10) Whoever is found in a civil action to have violated  
31 | ~~the provisions of~~ this section is liable to the utility involved  
32 | in an amount equal to 3 times the amount of services unlawfully  
33 | obtained or \$3,000 ~~\$1,000~~, whichever is greater.

34 |       Section 2. This act shall take effect October 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 311 Costs of Prosecution, Investigation, and Representation  
**SPONSOR(S):** Ray  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 288

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Jones	Cunningham
2) Justice Appropriations Subcommittee		Toms <i>ST</i>	Jones Darity <i>JDA</i>
3) Judiciary Committee			

### SUMMARY ANALYSIS

Currently, convicted persons are liable for the costs of prosecution, as well as the costs of representation. These costs may be imposed at a rate of \$50 in misdemeanor or criminal traffic offense cases, and \$100 in felony criminal cases.

The bill amends s. 903.286, F.S., to add the costs of prosecution and representation to the list of costs a clerk of the court is required to withhold from the return of a cash bond posted on behalf of a criminal defendant.

The bill also requires:

- The clerk to collect and dispense cost payments in any case, regardless of whether the case takes place before a judge in open court or in any other manner; and
- The costs of prosecution to be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

This bill will create a minimal increase in workload and an insignificant negative fiscal impact for the Clerks of the Court. This bill will likely have an insignificant positive fiscal impact on state attorneys and public defenders. However, the impact is indeterminate because the number of affected offenders and their levels of payment is unknown.

The bill is effective on July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Costs of Prosecution**

Section 938.27, F.S., provides that convicted<sup>1</sup> persons are liable for the costs of prosecution at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases.<sup>2</sup> The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.<sup>3</sup>

If requested, convicted persons are also liable for the investigative costs incurred by a law enforcement agency, fire department,<sup>4</sup> the Department of Financial Services, and the Office of Financial Regulation of the Financial Services Commission.<sup>5</sup> Section 938.27, F.S., requires a court to impose the cost of prosecution and investigation notwithstanding the convicted person's present ability to pay.

##### **Costs of Representation**

Section 938.29(1)(a), F.S., provides that convicted<sup>6</sup> persons are liable for payment of a \$50 public defender application fee under s. 27.52(1)(b), F.S.,<sup>7</sup> attorney's fees, and costs if he or she received assistance from the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or if he or she has received due process services after being found indigent for costs.

Costs of representation may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases.<sup>8</sup> The costs of representation are deposited into the Public Defender's Indigent Criminal Defense Trust Fund.<sup>9</sup>

Section 938.29(1)(a), F.S., requires a court to impose the cost of representation notwithstanding the convicted person's present ability to pay. A court may order payment of the assessed application fee and attorney's fees and costs as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence.<sup>10</sup>

The clerk within the county where the defendant was tried or received services from a public defender is responsible for enforcing, satisfying, compromising, settling, subordinating, releasing or otherwise disposing of any debt or lien imposed.<sup>11</sup>

##### **Cash Bonds**

Section 903.286, F.S., requires the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent<sup>12</sup> to pay unpaid:

- Court fees;
- Court costs; and
- Criminal penalties.

<sup>1</sup> Section 938.27(1), F.S., defines "convicted" as the determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

<sup>2</sup> A court may set a higher amount upon the showing of sufficient proof of higher costs incurred. Section 938.27(8), F.S.

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

<sup>4</sup> For arson investigations. Section 938.27, F.S.

<sup>5</sup> Section 938.27(1), F.S.

<sup>6</sup> The definition of "convicted" is the same as that in s. 938.27(1), F.S. See, *supra* note 1 and s. 938.29(1)(a), F.S.

<sup>7</sup> Section 27.52(1)(a), F.S., provides that a person seeking the appointment of a public defender under s. 27.51, F.S., based upon an inability to pay, must apply to the clerk of the court for a determination of indigent status.

<sup>8</sup> A court may set a higher amount upon the showing of sufficient proof of higher fees or costs incurred. Section 938.29(1)(a), F.S.

<sup>9</sup> Section 27.562, F.S.

<sup>10</sup> Section 938.29(1)(c), F.S.

<sup>11</sup> Section 938.29(3), F.S.

<sup>12</sup> Licensed under ch. 648, F.S.

If sufficient funds are not available to pay the above costs, the clerk must immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.<sup>13</sup>

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above-described costs on behalf of the criminal defendant, regardless of who posted the funds.<sup>14</sup>

*Effect of the Bill*

The bill amends s. 903.286, F.S., to add the costs of prosecution and costs of representation to the list of costs a clerk is required to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. If sufficient funds are not available to pay such costs from the cash bond, the clerk must immediately obtain payment from the defendant or enroll the defendant in a payment plan. The bill also requires the cash bond form to include a notice that the costs of prosecution and representation are subject to forfeiture and withholding.

**Costs of Prosecution – Disposition by the Clerk**

Section 938.27, F.S., requires the clerk to collect and disburse cost of prosecution payments in every case. In certain instances, the clerk, rather than the judge, is authorized to dispose of a case. For example, s. 318.14, F.S., authorizes the clerk to dispose of certain misdemeanor criminal traffic violations<sup>15</sup> in which the defendant shows the clerk that he or she is in compliance with the law under which the charge was made prior to the court date.

*Effect of the Bill*

The bill amends s. 938.27, F.S., to require the clerk to collect and disburse costs of prosecution in all cases, *regardless of whether the cases are disposed of before a judge in open court or in any other manner provided by law.*

**Delinquency Cases**

Currently, juveniles who are adjudicated delinquent or who have had the adjudication of delinquency withheld are not required to pay the costs of prosecution although they can be required to pay for the costs of representation.<sup>16</sup>

*Effect of the Bill*

The bill requires that costs of prosecution be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 903.286, F.S., relating to return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.

Section 2. Amends s. 938.27, F.S., relating to judgment for costs of prosecution and investigation.

Section 3. Amends s. 985.032, F.S., relating to legal representation for delinquency cases.

Section 4. Provides an effective date of July 1, 2013.

---

<sup>13</sup> Section 903.286(1), F.S.

<sup>14</sup> Section 903.286(2), F.S.

<sup>15</sup> Examples of these traffic offenses include operating a motor vehicle without a valid registration under s. 320.131, F.S., and presenting invalid proof of insurance under s. 316.646, F.S.

<sup>16</sup> Sections 27.52(6) and 938.29(2)(a)2., F.S.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

There is likely to have an insignificant positive fiscal impact on state attorneys and public defenders for the following reasons:

- The clerk is required to collect and dispense cost payments in any case, regardless of whether the disposition of the case takes place before a judge in open court or in any other manner provided by law. This may result in more costs of prosecution being collected and paid to state attorneys;
- The costs of prosecution will be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact on state attorneys as these costs were not assessed in these specific cases in the past; and
- The costs of prosecution and representation are allowed to be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This will likely have a positive fiscal impact on state attorneys and public defenders as the cost of prosecution and representation will be deducted from any cash bonds posted on behalf of a criminal defendant.

However, the impact is indeterminate because the number of affected offenders and their ultimate level of payment is unknown.

#### 2. Expenditures:

See "fiscal comments" section.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

See "fiscal comments" section.

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

Juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld will now be assessed the costs of prosecution. Criminal defendants must now pay the costs of prosecution and the costs of representation regardless of whether the cases are disposed of before a judge in open court or in any other manner provided by law.

### D. FISCAL COMMENTS:

The bill clarifies the types of cases that are subject to the collection and dispensing of cost payments by the Clerks of the Court. The bill will create a minimal increase in workload for the Clerks of the Court. The Florida Association of Court Clerks has stated that this bill will have an indeterminate fiscal impact on the office of the Clerk.

## 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 amends s. 903.286, F.S., to allow the clerk to withhold costs of representation "as provided by s. 27.52, F.S.," from the return of a cash bond. Section 27.52, F.S., only references the \$50 application fee for court-appointed counsel. If the intent was to include all costs of representation, such as attorney's fees, the reference should be changed to s. 938.29, F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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2013

1 A bill to be entitled  
 2 An act relating to costs of prosecution,  
 3 investigation, and representation; amending s.  
 4 903.286, F.S.; providing for the withholding of unpaid  
 5 costs of prosecution and representation from the  
 6 return of a cash bond posted on behalf of a criminal  
 7 defendant; requiring a notice on bond forms of such  
 8 possible withholding; amending s. 938.27, F.S.;  
 9 clarifying the types of cases that are subject to the  
 10 collection and dispensing of cost payments by the  
 11 clerk of the court; amending s. 985.032, F.S.;  
 12 providing for assessment of costs of prosecution  
 13 against a juvenile who has been adjudicated delinquent  
 14 or has adjudication of delinquency withheld; providing  
 15 an effective date.

16  
 17 Be It Enacted by the Legislature of the State of Florida:

18  
 19 Section 1. Section 903.286, Florida Statutes, is amended  
 20 to read:

21 903.286 Return of cash bond; requirement to withhold  
 22 unpaid fines, fees, court costs; cash bond forms.-

23 (1) Notwithstanding s. 903.31(2), the clerk of the court  
 24 shall withhold from the return of a cash bond posted on behalf  
 25 of a criminal defendant by a person other than a bail bond agent  
 26 licensed pursuant to chapter 648 sufficient funds to pay any  
 27 unpaid costs of prosecution, costs of representation as provided  
 28 by s. 27.52, court fees, court costs, and criminal penalties. If

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2013

29 sufficient funds are not available to pay all unpaid costs of  
 30 prosecution, costs of representation as provided by s. 27.52,  
 31 court fees, court costs, and criminal penalties, the clerk of  
 32 the court shall immediately obtain payment from the defendant or  
 33 enroll the defendant in a payment plan pursuant to s. 28.246.

34 (2) All cash bond forms used in conjunction with the  
 35 requirements of s. 903.09 must prominently display a notice  
 36 explaining that all funds are subject to forfeiture and  
 37 withholding by the clerk of the court for the payment of costs  
 38 of prosecution, costs of representation as provided by s. 27.52,  
 39 court fees, court costs, and criminal penalties on behalf of the  
 40 criminal defendant regardless of who posted the funds.

41 Section 2. Section 938.27, Florida Statutes, is amended to  
 42 read:

43 938.27 Judgment for costs of prosecution and investigation  
 44 ~~on conviction.~~

45 (1) In all criminal and violation-of-probation or  
 46 community-control cases, convicted persons are liable for  
 47 payment of the costs of prosecution, including investigative  
 48 costs incurred by law enforcement agencies, by fire departments  
 49 for arson investigations, and by investigations of the  
 50 Department of Financial Services or the Office of Financial  
 51 Regulation of the Financial Services Commission, if requested by  
 52 such agencies. The court shall include these costs in every  
 53 judgment rendered against the convicted person. For purposes of  
 54 this section, "convicted" means a determination of guilt, or of  
 55 violation of probation or community control, which is a result  
 56 of a plea, trial, or violation proceeding, regardless of whether

57 adjudication is withheld.

58 (2)(a) The court shall impose the costs of prosecution and  
 59 investigation notwithstanding the defendant's present ability to  
 60 pay. The court shall require the defendant to pay the costs  
 61 within a specified period or pursuant to a payment plan under s.  
 62 28.246(4).

63 (b) The end of such period or the last such installment  
 64 must not be later than:

- 65 1. The end of the period of probation or community  
 66 control, if probation or community control is ordered;
- 67 2. Five years after the end of the term of imprisonment  
 68 imposed, if the court does not order probation or community  
 69 control; or
- 70 3. Five years after the date of sentencing in any other  
 71 case.

72  
 73 However, the obligation to pay any unpaid amounts does not  
 74 expire if not paid in full within the period specified in this  
 75 paragraph.

76 (c) If not otherwise provided by the court under this  
 77 section, costs must ~~shall~~ be paid immediately.

78 (3) If a defendant is placed on probation or community  
 79 control, payment of any costs under this section shall be a  
 80 condition of such probation or community control. The court may  
 81 revoke probation or community control if the defendant fails to  
 82 pay these costs.

83 (4) Any dispute as to the proper amount or type of costs  
 84 shall be resolved by the court by the preponderance of the

85 | evidence. The burden of demonstrating the amount of costs  
 86 | incurred is on the state attorney. The burden of demonstrating  
 87 | the financial resources of the defendant and the financial needs  
 88 | of the defendant is on the defendant. The burden of  
 89 | demonstrating such other matters as the court deems appropriate  
 90 | is upon the party designated by the court as justice requires.

91 |       (5) Any default in payment of costs may be collected by  
 92 | any means authorized by law for enforcement of a judgment.

93 |       (6) The clerk of the court shall collect and dispense cost  
 94 | payments in any case, regardless of whether the disposition of  
 95 | the case takes place before the judge in open court or in any  
 96 | other manner provided by law.

97 |       (7) Investigative costs that are recovered must ~~shall~~ be  
 98 | returned to the appropriate investigative agency that incurred  
 99 | the expense. Such costs include actual expenses incurred in  
 100 | conducting the investigation and prosecution of the criminal  
 101 | case; however, costs may also include the salaries of permanent  
 102 | employees. Any investigative costs recovered on behalf of a  
 103 | state agency must be remitted to the Department of Revenue for  
 104 | deposit in the agency operating trust fund, and a report of the  
 105 | payment must be sent to the agency, except that any  
 106 | investigative costs recovered on behalf of the Department of Law  
 107 | Enforcement must ~~shall~~ be deposited in the department's  
 108 | Forfeiture and Investigative Support Trust Fund under s.  
 109 | 943.362.

110 |       (8) Costs for the state attorney must ~~shall~~ be set in all  
 111 | cases at no less than \$50 per case when a misdemeanor or  
 112 | criminal traffic offense is charged and no less than \$100 per

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113 | case when a felony offense is charged, including a proceeding in  
 114 | which the underlying offense is a violation of probation or  
 115 | community control. The court may set a higher amount upon a  
 116 | showing of sufficient proof of higher costs incurred. Costs  
 117 | recovered on behalf of the state attorney under this section  
 118 | must ~~shall~~ be deposited into the State Attorneys Revenue Trust  
 119 | Fund to be used during the fiscal year in which the funds are  
 120 | collected, or in any subsequent fiscal year, for actual expenses  
 121 | incurred in investigating and prosecuting criminal cases, which  
 122 | may include the salaries of permanent employees, or for any  
 123 | other purpose authorized by the Legislature.

124 | Section 3. Section 985.032, Florida Statutes, is amended  
 125 | to read:

126 | 985.032 Legal representation for delinquency cases.—

127 | (1) For cases arising under this chapter, the state  
 128 | attorney shall represent the state.

129 | (2) A juvenile who has been adjudicated delinquent or has  
 130 | adjudication of delinquency withheld shall be assessed costs of  
 131 | prosecution as provided in s. 938.27.

132 | Section 4. This act shall take effect July 1, 2013.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations  
2 Subcommittee

3 Representative Ray offered the following:

4  
5 **Amendment**

6 Remove line 30 and insert:

7 prosecution, costs of representation as provided by ss. 27.52  
8 and 938.29,  
9



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 311 (2013)

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	_____	

1 Committee/Subcommittee hearing bill: Justice Appropriations  
2 Subcommittee

3 Representative Ray offered the following:

4

5 **Amendment**

6 Remove line 38 and insert:

7 of prosecution, costs of representation as provided by ss. 27.52  
8 and 938.29,

9



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations  
 2 Subcommittee

3 Representative Ray offered the following:

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

6 Between lines 131 and 132, insert:

7 Section 4. Subsection (1) of section 985.455, Florida  
 8 Statutes, is amended to read:

9 985.455 Other dispositional issues.—

10 (1) The court that has jurisdiction over an adjudicated  
 11 delinquent child may, by an order stating the facts upon which a  
 12 determination of a sanction and rehabilitative program was made  
 13 at the disposition hearing:

14 (a) Require the child and, if the court finds it  
 15 appropriate, the child's parent or guardian, together with the  
 16 child, to render community service in a public service program.

17 (b) Order the child and, if the court finds it  
 18 appropriate, the child's parent or guardian, together with the  
 19 child, to participate in a community work project, either as an



Amendment No. 3

20 alternative to monetary restitution or as part of the  
21 rehabilitative or probation program.

22 (c) Revoke or suspend the driver's license of the child.

23 (d) Upon a determination of the child's inability to pay,  
24 the court may order the child to perform community service in  
25 lieu of all court costs assessed against the delinquent child,  
26 including costs of prosecution, public defender application fees  
27 and cost of representation.

28

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

34

Remove line 15 and insert:

35

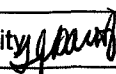
that children may perform community service in lieu of certain  
36 costs and fees; providing an effective date.

37



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 619 Controlled Substances  
**SPONSOR(S):** Ingram and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 294

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

### SUMMARY ANALYSIS

In recent years, synthetic drugs have become a problem in Florida. Synthetic drugs, such as cannabinoids, cathinones, and phenethylamines, are industrial grade chemicals mixed to produce a "high" similar to what would be experienced when using illegal drugs such as marijuana, cocaine or methamphetamine.

In 2011 and 2012, several synthetic cannabinoids and cathinones were added to Schedule I of Florida's controlled substances schedules. Since the 2012 Legislative Session, new formulas of synthetic cannabinoids, cathinones, and phenethylamines have been developed that are made up of chemicals not covered by current law.

On December 11, 2012, Attorney General Pam Bondi filed an emergency rule that temporarily scheduled several synthetic cannabinoids, cathinones, and phenethylamines in s. 893.03(1)(c), F.S. The emergency rule expires on June 30 unless the Legislature adopts the provisions of the rule as an amendment to chapter 893, F.S.

The bill amends s. 893.03(1)(c), F.S., to add numerous synthetic cannabinoids, cathinones and phenethylamines to Schedule I of Florida controlled substance schedules. As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances now apply to these synthetic substances.

According to the Florida Department of Law Enforcement (FDLE), state and local law enforcement crime labs may see an increase in evidence submissions. However FDLE states the impact should be minimal and absorbed within their current budget.

The Criminal Justice Impact Conference met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

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>1</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>2</sup> Cannabis and heroin are examples of Schedule I drugs.<sup>3</sup>

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on what schedule the substance is listed in. Other factors, such as the quantity of controlled substance involved, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

In recent years synthetic drugs have emerged in Florida. Synthetic drugs, such as cannabinoids, cathinones, and phenethylamines, are industrial grade chemicals mixed to produce a "high" similar to what would be experienced when using illegal drugs such as marijuana, cocaine or methamphetamine.<sup>4</sup> According to the Florida Department of Law Enforcement (FDLE), synthetic drugs "have no legitimate medical use and have a high potential for abuse."<sup>5</sup>

##### Synthetic Cannabinoids

Synthetic cannabinoids (also known as "K2" or "Spice") are chemically engineered substances that, when smoked or ingested, can produce a high similar to marijuana, without the delta-tetrahydrocannabinol (THC).<sup>6</sup> The chemicals are a white powder that is often applied to a plant material to mimic marijuana.<sup>7</sup> Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system.<sup>8</sup> 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>9</sup>

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

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

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

<sup>4</sup> *Synthetic Narcotics*, FDLE Powerpoint Presentation before the House Criminal Justice Subcommittee, David Gross, January, 16, 2013 (on file with the Criminal Justice Subcommittee).

<sup>5</sup> FDLE Memo Relating Controlled Substances, February 13, 2013 (on file with the Criminal Justice Subcommittee).

<sup>6</sup> *Supra* note 4.

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

<sup>8</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 February 13, 2013).

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

### Synthetic Cathinones

Synthetic cathinones (also known as "bath salts") are substances that are chemically similar to amphetamines and other substances.<sup>10</sup> Synthetic cathinones gained popularity in late 2010 and early 2011 due to being widely available online and in smoke shops.<sup>11</sup>

### Synthetic Phenethylamines

Phenethylamines are synthetic substances invented by Dr. Alexander Shulgin.<sup>12</sup> Phenethylamines are known for their intense hallucinogenic effects.<sup>13</sup> The use of synthetic phenethylamines is highly dose sensitive and directly affects the human body's nervous system.<sup>14</sup> There has been a recent increase of synthetic phenethylamines production and use because of the recent regulation of cannabinoids and cathinones.<sup>15</sup>

### Synthetic Drug Abuse

Despite being labeled "not for human consumption," synthetic cannabinoids, cathinones and phenethylamines are used as recreational drugs and have been marketed as legal and safer alternatives to illegal methods of getting "high."<sup>16</sup> They can be found on the Internet, specialty smoke shops, and convenience stores.<sup>17</sup> These substances are predominately being used by individuals between the ages of 16 and 30. There have been cases in Florida where these substances have caused individuals to behave inappropriately, and in some instances die.<sup>18</sup>

### Recent Legislation

In 2011 and 2012, several synthetic cannabinoids and cathinones were added to Schedule I of Florida's controlled substances schedules.<sup>19</sup> As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances now apply to these synthetic substances. For example:

- Possessing three grams or less of listed synthetic cannabinoids and cathinones (not in powdered form) is a first degree misdemeanor<sup>20,21</sup>
- It is a third degree felony<sup>22</sup> for a person knowingly sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, listed synthetic cannabinoids and cathinones;<sup>23</sup> and
- It is a third degree felony for a person to purchase, or possess with intent to purchase listed synthetic cannabinoids and cathinones.<sup>24</sup>

### Recent Issues

Since the 2012 Legislative Session, new formulas of synthetic cannabinoids, cathinones, and phenethylamines have been developed that are made up of chemicals not covered by current law.<sup>25</sup>

<sup>10</sup> *Consideration of the Cathinones*, Advisory Council on the Misuse of Drugs, United Kingdom, March 2010, <http://www.homeoffice.gov.uk/publications/drugs/acmd1/acmd-cathinodes-report-2010?view=Binary> (last visited on February 12, 2013).

<sup>11</sup> *Supra* note 4.

<sup>12</sup> *Id.*

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

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

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

<sup>16</sup> *Bath Salts" Receive Emergency Drug Scheduling*, Brief # 10-194, Public Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence, 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 February 13, 2013). *See also*, *Supra* note 10.

<sup>17</sup> *Bath Salts" Receive Emergency Drug Scheduling*, Brief # 10-194, Public Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence, 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 February 13, 2013).

<sup>18</sup> *Supra* note 4.

<sup>19</sup> Chapters 2012-23, 2011-73, and 2011-90, L.O.F.

<sup>20</sup> A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

<sup>21</sup> Section 893.13(6)(b), F.S.

<sup>22</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>23</sup> Section 893.13(1)(a)2., F.S.

<sup>24</sup> Section 893.13(2)(a)2., F.S.

According to 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 are able to possess, distribute, and/or use these harmful substances without fear of prosecution by state and local law enforcement.<sup>26</sup>

On December 11, 2012, Attorney General Pam Bondi filed an emergency rule<sup>27</sup> that temporarily scheduled several synthetic cannabinoids, cathinones, and phenethylamines in s. 893.03(1)(c), F.S.<sup>28</sup> The emergency rule expires on June 30 unless the Legislature adopts the provisions of the rule as an amendment to chapter 893, F.S.

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

The bill amends s. 893.03(1)(c), F.S., to add numerous synthetic cannabinoids, cathinones and phenethylamines to Schedule I of Florida controlled substance schedules. As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances now apply to these synthetic substances.

The bill removes the current listing of 3, 4-Methylenedioxymethamphetamine (MDMA) from s. 893.03(1)(a), F.S., to s. 893.03(1)(c), F.S. FDLE states that "[t]his re-designation is in keeping with the nature of MDMA's effects on the abuser and consistent with the Drug Enforcement Administration's scheduling of MDMA as a hallucinogenic substance in 21 C.F.R. §1308.11."<sup>29</sup> The bill also specifies that isomers of substances listed in s. 893.03(1)(c), F.S., include optical, positional, or geometric isomers.<sup>30</sup>

The bill reenacts ss. 893.13(1)-(6) and 921.0022(3)(b)-(e), F.S., to incorporate the amendments of s. 893.03, F.S.

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

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

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

Section 3. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 4. Reenacts s.893.13, F.S., relating to prohibited acts; penalties.

Section 5. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 6. The bill is effective upon becoming law.

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<sup>25</sup> *Supra* note 5.

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

<sup>27</sup> 2ER 12-1, Office of the Attorney General, [http://myfloridalegal.com/webfiles.nsf/WF/MMFD-92VKZ8/\\$file/ER+RuleOAGRuleCertification12-11-2012.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MMFD-92VKZ8/$file/ER+RuleOAGRuleCertification12-11-2012.pdf) (last visited on February 12, 2013).

<sup>28</sup> Pursuant to s. 893.035, F.S., if the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03, F.S., on a temporary basis is necessary to avoid an imminent hazard to the public safety, she or he may by rule, and without regard to requirements in s. 893.035(5), F.S., regarding medical and scientific evaluation, schedule the substance in Schedule I if it is not listed in any other schedule in s. 893.03, F.S.

<sup>29</sup> *Supra* note 5.

<sup>30</sup> The FDLE states that "the current language in F.S. 893.03(1)(c) does not specifically include optical, positional, or geometric isomers of the listed chemical substances." *Id.*



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have an impact on state revenues

#### 2. Expenditures:

The bill adds additional chemical substances to Schedule I of Florida's controlled substance schedules. According to FDLE, this could potentially increase the number of evidence submissions into FDLE's Crime Laboratory System.<sup>31</sup> The lab system will need to acquire all of the required standards necessary to test the proposed chemical substances.<sup>32</sup> However, FDLE's fiscal analysis states that the bill will have a minimal fiscal impact and can be absorbed within their current budget.<sup>33</sup>

The Criminal Justice Impact Conference met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

Because the bill adds certain synthetic substances to s. 893.03, F.S., 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>34</sup> This may also have a negative jail bed impact because possession of three grams or less of the newly added substances is a first degree misdemeanor.

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

According to FDLE, the bill "should have little impact on the private sector and would only affect those retailers who are currently profiting on the sale of chemical substances known to be abused by those seeking an altered mental state or 'high.'" <sup>35</sup>

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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

#### 2. Other:

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

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**

1 A bill to be entitled  
 2 An act relating to controlled substances; amending s.  
 3 893.03, F.S.; adding to the list of Schedule I  
 4 controlled substances certain specified materials,  
 5 compounds, mixtures, or preparations that contain  
 6 hallucinogenic substances, or any of their salts,  
 7 isomers, and salts of isomers, if the existence of  
 8 such salts, isomers, and salts of isomers is possible  
 9 within the specific chemical designation; amending s.  
 10 893.13, F.S.; providing reduced penalties for  
 11 possession of 3 grams or less of specified controlled  
 12 substances; amending s. 893.135, F.S.; providing  
 13 criminal penalties for a person who knowingly sells,  
 14 purchases, manufactures, delivers, or brings into this  
 15 state, or who is knowingly in actual or constructive  
 16 possession of, a specified quantity of specified  
 17 controlled substances; reenacting ss. 893.13(1)-(6)  
 18 and 921.0022(3)(b)-(e), F.S., relating to prohibited  
 19 acts involving controlled substances and the Criminal  
 20 Punishment Code, respectively, to incorporate the  
 21 amendments made to s. 893.03, F.S., in references  
 22 thereto; providing an effective date.

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

25  
 26 Section 1. Paragraphs (a) and (c) of subsection (1) of  
 27 section 893.03, Florida Statutes, are amended to read:  
 28 893.03 Standards and schedules.—The substances enumerated

29 in this section are controlled by this chapter. The controlled  
 30 substances listed or to be listed in Schedules I, II, III, IV,  
 31 and V are included by whatever official, common, usual,  
 32 chemical, or trade name designated. The provisions of this  
 33 section shall not be construed to include within any of the  
 34 schedules contained in this section any excluded drugs listed  
 35 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
 36 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
 37 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
 38 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
 39 Anabolic Steroid Products."

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

45 (a) Unless specifically excepted or unless listed in  
 46 another schedule, any of the following substances, including  
 47 their isomers, esters, ethers, salts, and salts of isomers,  
 48 esters, and ethers, whenever the existence of such isomers,  
 49 esters, ethers, and salts is possible within the specific  
 50 chemical designation:

- 51 1. Acetyl-alpha-methylfentanyl.
- 52 2. Acetylmethadol.
- 53 3. Allylprodine.
- 54 4. Alphacetylmethadol (except levo-alphacetylmethadol,  
 55 also known as levo-alpha-acetylmethadol, levomethadyl acetate,  
 56 or LAAM).

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- 57 5. Alphamethadol.
- 58 6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
- 59 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
- 60 (N-propanilido) piperidine).
- 61 7. Alpha-methylthiofentanyl.
- 62 8. Alphameprodine.
- 63 9. Benzethidine.
- 64 10. Benzylfentanyl.
- 65 11. Betacetylmethadol.
- 66 12. Beta-hydroxyfentanyl.
- 67 13. Beta-hydroxy-3-methylfentanyl.
- 68 14. Betameprodine.
- 69 15. Betamethadol.
- 70 16. Betaprodine.
- 71 17. Clonitazene.
- 72 18. Dextromoramide.
- 73 19. Diampromide.
- 74 20. Diethylthiambutene.
- 75 21. Difenoxin.
- 76 22. Dimenoxadol.
- 77 23. Dimepheptanol.
- 78 24. Dimethylthiambutene.
- 79 25. Dioxaphetyl butyrate.
- 80 26. Dipipanone.
- 81 27. Ethylmethylthiambutene.
- 82 28. Etonitazene.
- 83 29. Etoxeridine.
- 84 30. Flunitrazepam.

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- 85 | 31. Furethidine.
- 86 | 32. Hydroxypethidine.
- 87 | 33. Ketobemidone.
- 88 | 34. Levomoramide.
- 89 | 35. Levophenacymorphan.
- 90 | 36. 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
- 91 | 37. 3-Methylfentanyl (N-
- 92 | [3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
- 93 | 38. 3-Methylthiofentanyl.
- 94 | ~~39. 3, 4-Methylenedioxymethamphetamine~~
- 95 | ~~(MDMA).~~
- 96 | 39.40. Morpheridine.
- 97 | 40.41. Noracymethadol.
- 98 | 41.42. Norlevorphanol.
- 99 | 42.43. Normethadone.
- 100 | 43.44. Norpipanone.
- 101 | 44.45. Para-Fluorofentanyl.
- 102 | 45.46. Phenadoxone.
- 103 | 46.47. Phenampromide.
- 104 | 47.48. Phenomorphan.
- 105 | 48.49. Phenoperidine.
- 106 | 49.50. 1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine
- 107 | (PEPAP).
- 108 | 50.51. Piritramide.
- 109 | 51.52. Proheptazine.
- 110 | 52.53. Properidine.
- 111 | 53.54. Propiram.
- 112 | 54.55. Racemoramide.

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113 55.56. Thenylfentanyl.

114 56.57. Thiofentanyl.

115 57.58. Tilidine.

116 58.59. Trimeperidine.

117 (c) Unless specifically excepted or unless listed in  
 118 another schedule, any material, compound, mixture, or  
 119 preparation that contains any quantity of the following  
 120 hallucinogenic substances or that contains any of their salts,  
 121 isomers, including optical, positional, or geometric isomers,  
 122 and salts of isomers, if the existence of such salts, isomers,  
 123 and salts of isomers is possible within the specific chemical  
 124 designation:

- 125 1. Alpha-ethyltryptamine.
- 126 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-  
 127 methylaminorex).
- 128 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
- 129 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 130 5. 4-Bromo-2,5-dimethoxyphenethylamine.
- 131 6. Bufotenine.
- 132 7. Cannabis.
- 133 8. Cathinone.
- 134 9. Diethyltryptamine.
- 135 10. 2,5-Dimethoxyamphetamine.
- 136 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
- 137 12. Dimethyltryptamine.
- 138 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine  
 139 analog of phencyclidine).
- 140 14. N-Ethyl-3-piperidyl benzilate.

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- 141 | 15. N-ethylamphetamine.
- 142 | 16. Fenethylamine.
- 143 | 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
- 144 | 18. Ibogaine.
- 145 | 19. Lysergic acid diethylamide (LSD).
- 146 | 20. Mescaline.
- 147 | 21. Methcathinone.
- 148 | 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 149 | 23. 4-methoxyamphetamine.
- 150 | 24. 4-methoxymethamphetamine.
- 151 | 25. 4-Methyl-2,5-dimethoxyamphetamine.
- 152 | 26. 3,4-Methylenedioxy-N-ethylamphetamine.
- 153 | 27. 3,4-Methylenedioxyamphetamine.
- 154 | 28. N-Methyl-3-piperidyl benzilate.
- 155 | 29. N,N-dimethylamphetamine.
- 156 | 30. Parahexyl.
- 157 | 31. Peyote.
- 158 | 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine
- 159 | analog of phencyclidine).
- 160 | 33. Psilocybin.
- 161 | 34. Psilocyn.
- 162 | 35. *Salvia divinorum*, except for any drug product approved
- 163 | by the United States Food and Drug Administration which contains
- 164 | *Salvia divinorum* or its isomers, esters, ethers, salts, and
- 165 | salts of isomers, esters, and ethers, if the existence of such
- 166 | isomers, esters, ethers, and salts is possible within the
- 167 | specific chemical designation.
- 168 | 36. Salvinorin A, except for any drug product approved by



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169 the United States Food and Drug Administration which contains  
 170 Salvinorin A or its isomers, esters, ethers, salts, and salts of  
 171 isomers, esters, and ethers, if the existence of such isomers,  
 172 esters, ethers, and salts is possible within the specific  
 173 chemical designation.

- 174 37. Tetrahydrocannabinols.
- 175 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
- 176 (Thiophene analog of phencyclidine).
- 177 39. 3,4,5-Trimethoxyamphetamine.
- 178 40. 3,4-Methylenedioxy methcathinone.
- 179 41. 3,4-Methylenedioxy pyrovalerone (MDPV).
- 180 42. Methylmethcathinone.
- 181 43. Methoxymethcathinone.
- 182 44. Fluoromethcathinone.
- 183 45. Methylethcathinone.
- 184 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
- 185 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
- 186 homologue.
- 187 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
- 188 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
- 189 also known as HU-210.
- 190 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.
- 191 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.
- 192 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole,
- 193 also known as JWH-200.
- 194 51. BZP (Benzylpiperazine).
- 195 52. Fluorophenylpiperazine.
- 196 53. Methylphenylpiperazine.

- 197 | 54. Chlorophenylpiperazine.
- 198 | 55. Methoxyphenylpiperazine.
- 199 | 56. DBZP (1,4-dibenzylpiperazine).
- 200 | 57. TFMPP (3-Trifluoromethylphenylpiperazine).
- 201 | 58. MBDB (Methylbenzodioxolylbutanamine).
- 202 | 59. 5-Hydroxy-alpha-methyltryptamine.
- 203 | 60. 5-Hydroxy-N-methyltryptamine.
- 204 | 61. 5-Methoxy-N-methyl-N-isopropyltryptamine.
- 205 | 62. 5-Methoxy-alpha-methyltryptamine.
- 206 | 63. Methyltryptamine.
- 207 | 64. 5-Methoxy-N,N-dimethyltryptamine.
- 208 | 65. 5-Methyl-N,N-dimethyltryptamine.
- 209 | 66. Tyramine (4-Hydroxyphenethylamine).
- 210 | 67. 5-Methoxy-N,N-Diisopropyltryptamine.
- 211 | 68. DiPT (N,N-Diisopropyltryptamine).
- 212 | 69. DPT (N,N-Dipropyltryptamine).
- 213 | 70. 4-Hydroxy-N,N-diisopropyltryptamine.
- 214 | 71. N,N-Diallyl-5-Methoxytryptamine.
- 215 | 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 216 | 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 217 | 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 218 | 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
- 219 | 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 220 | 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
- 221 | 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
- 222 | 79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).
- 223 | 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 224 | 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).

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- 225 82. Ethcathinone.
- 226 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
- 227 84. Naphyrone (naphthylpyrovalerone).
- 228 85. N-N-Dimethyl-3,4-methylenedioxcathinone.
- 229 86. N-N-Diethyl-3,4-methylenedioxcathinone.
- 230 87. 3,4-methylenedioxy-propiofenone.
- 231 88. 2-Bromo-3,4-Methylenedioxypropiofenone.
- 232 89. 3,4-methylenedioxy-propiofenone-2-oxime.
- 233 90. N-Acetyl-3,4-methylenedioxcathinone.
- 234 91. N-Acetyl-N-Methyl-3,4-Methylenedioxcathinone.
- 235 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone.
- 236 93. Bromomethcathinone.
- 237 94. Buphedrone (alpha-methylamino-butyrophenone).
- 238 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
- 239 96. Dimethylcathinone.
- 240 97. Dimethylmethcathinone.
- 241 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
- 242 99. (MDPPP) 3,4-Methylenedioxy-alpha-
- 243 pyrrolidinopropiofenone.
- 244 100. (MDPBP) 3,4-Methylenedioxy-alpha-
- 245 pyrrolidinobutiophenone.
- 246 101. Methoxy-alpha-pyrrolidinopropiofenone (MOPPP).
- 247 102. Methyl-alpha-pyrrolidinohexiofenone (MPHP).
- 248 103. Benocyclidine (BCP) or
- 249 benzothiophenylcyclohexylpiperidine (BTCP).
- 250 104. Fluoromethylaminobutyrophenone (F-MABP).
- 251 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
- 252 106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).

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- 253 | 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
- 254 | 108. Methylethylaminobutyrophenone (Me-EABP).
- 255 | 109. Methylamino-butyrophenone (MABP).
- 256 | 110. Pyrrolidinopropiophenone (PPP).
- 257 | 111. Pyrrolidinobutiophenone (PBP).
- 258 | 112. Pyrrolidinovalerophenone (PVP).
- 259 | 113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).
- 260 | 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
- 261 | 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
- 262 | naphthalenylmethanone).
- 263 | 116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-
- 264 | yl)methanone).
- 265 | 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
- 266 | 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-
- 267 | yl)methanone).
- 268 | 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
- 269 | yl)methanone).
- 270 | 120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).
- 271 | 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-
- 272 | 6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
- 273 | 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-
- 274 | indole).
- 275 | 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
- 276 | 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-
- 277 | yl)ethanone).
- 278 | 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-
- 279 | yl)methanone).
- 280 | 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-

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- 281 yl)ethanone).
- 282 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-
- 283 yl)ethanone).
- 284 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
- 285 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
- 286 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
- 287 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
- 288 ol).
- 289 131. HU-308 ([ (1R,2R,5R)-2-[2,6-dimethoxy-4-(2-
- 290 methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-
- 291 enyl] methanol).
- 292 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-
- 293 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
- 294 1,4-dione).
- 295 133. CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-
- 296 yl)methanone).
- 297 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
- 298 undecanamide).
- 299 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
- 300 undecanamide).
- 301 136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-
- 302 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).
- 303 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-2-
- 304 iodophenyl)methanone).
- 305 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-
- 306 (naphthalen-1-yl)methanone).
- 307 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-
- 308 yl)methanone).

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- 309 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-  
 310 methoxyphenylethanone).
- 311 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-  
 312 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-  
 313 naphthalenylmethanone).
- 314 142. WIN55,212-3 ([ (3S)-2,3-Dihydro-5-methyl-3-(4-  
 315 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-  
 316 naphthalenylmethanone).
- 317 143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).
- 318 144. Fluoroamphetamine.
- 319 145. Fluoromethamphetamine.
- 320 146. Methoxetamine.
- 321 147. Methiopropamine.
- 322 148. 4-Methylbuphedrone (2-Methylamino-1-(4-  
 323 methylphenyl)butan-1-one).
- 324 149. APB ((2-aminopropyl)benzofuran).
- 325 150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).
- 326 151. UR-144 ((1-pentyl-1H-indol-3-yl)(2,2,3,3-  
 327 tetramethylcyclopropyl)methanone).
- 328 152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-  
 329 tetramethylcyclopropyl)methanone).
- 330 153. (1-(5-chloropentyl)-1H-indol-3-yl)(2,2,3,3-  
 331 tetramethylcyclopropyl)methanone.
- 332 154. AKB48 (1-pentyl-N-tricyclo[3.3.1.1<sup>3,7</sup>]dec-1-yl-1H-  
 333 indazole-3-carboxamide).
- 334 155. AM-2233((2-iodophenyl)[1-[(1-methyl-2-  
 335 piperidinyl)methyl]-1H-indol-3-yl]-methanone).
- 336 156. STS-135 (1-(5-fluoropentyl)-N-

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- 337 | tricyclo[3.3.1.13,7]dec-1-yl-1H-indole-3-carboxamide).  
 338 |       157. URB-597 ((3'-(aminocarbonyl)[1,1'-biphenyl]-3-yl)-  
 339 | cyclohexylcarbamate).  
 340 |       158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid,  
 341 | cyclohexyl ester).  
 342 |       159. URB-754 (6-methyl-2-[(4-methylphenyl)amino]-1-  
 343 | benzoxazin-4-one).  
 344 |       160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).  
 345 |       161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).  
 346 |       162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).  
 347 |       163. 2C-P (2-(2,5-Dimethoxy-4-(n)-  
 348 | propylphenyl)ethanamine).  
 349 |       164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-  
 350 | methoxyphenyl)methyl]-benzeneethanamine).  
 351 |       165. 3,4-Methylenedioxymethamphetamine (MDMA).

352 | Section 2. Paragraph (b) of subsection (6) of section  
 353 | 893.13, Florida Statutes, is amended to read:

354 | 893.13 Prohibited acts; penalties.-  
 355 | (6)

356 | (b) If the offense is the possession of not more than 20  
 357 | grams of cannabis, as defined in this chapter, or 3 grams or  
 358 | less of a controlled substance described in s. 893.03(1)(c)46.-  
 359 | 50., ~~and~~ 114.-142., or 151.-159., the person commits a  
 360 | misdemeanor of the first degree, punishable as provided in s.  
 361 | 775.082 or s. 775.083. For the purposes of this subsection,  
 362 | "cannabis" does not include the resin extracted from the plants  
 363 | of the genus *Cannabis*, or any compound manufacture, salt,  
 364 | derivative, mixture, or preparation of such resin, and a

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365 controlled substance described in s. 893.03(1)(c) 46.-50., and  
 366 114.-142., or 151.-159., does not include the substance in a  
 367 powdered form.

368 Section 3. Paragraph (k) of subsection (1) of section  
 369 893.135, Florida Statutes, is amended to read:

370 893.135 Trafficking; mandatory sentences; suspension or  
 371 reduction of sentences; conspiracy to engage in trafficking.-

372 (1) Except as authorized in this chapter or in chapter 499  
 373 and notwithstanding the provisions of s. 893.13:

374 (k)1. Any person who knowingly sells, purchases,  
 375 manufactures, delivers, or brings into this state, or who is  
 376 knowingly in actual or constructive possession of, 10 grams or  
 377 more of any of the following substances described in s.

378 893.03(1)(c) ~~s. 893.03(1)(a) or (e)~~:

- 379 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 380 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 381 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 382 d. 2,5-Dimethoxyamphetamine;
- 383 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 384 f. N-ethylamphetamine;
- 385 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 386 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 387 i. 4-methoxyamphetamine;
- 388 j. 4-methoxymethamphetamine;
- 389 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 390 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 391 m. 3,4-Methylenedioxyamphetamine;
- 392 n. N,N-dimethylamphetamine; or



393           o. 3,4,5-Trimethoxyamphetamine,  
 394  
 395 individually or in any combination of or any mixture containing  
 396 any substance listed in sub-subparagraphs a.-o., commits a  
 397 felony of the first degree, which felony shall be known as  
 398 "trafficking in Phenethylamines," punishable as provided in s.  
 399 775.082, s. 775.083, or s. 775.084.

400           2. If the quantity involved:

401           a. Is 10 grams or more but less than 200 grams, such  
 402 person shall be sentenced to a mandatory minimum term of  
 403 imprisonment of 3 years, and the defendant shall be ordered to  
 404 pay a fine of \$50,000.

405           b. Is 200 grams or more, but less than 400 grams, such  
 406 person shall be sentenced to a mandatory minimum term of  
 407 imprisonment of 7 years, and the defendant shall be ordered to  
 408 pay a fine of \$100,000.

409           c. Is 400 grams or more, such person shall be sentenced to  
 410 a mandatory minimum term of imprisonment of 15 calendar years  
 411 and pay a fine of \$250,000.

412           3. Any person who knowingly manufactures or brings into  
 413 this state 30 kilograms or more of any of the following  
 414 substances described in s. 893.03(1)(c) ~~s. 893.03(1)(a) or (e)~~:

- 415           a. 3,4-Methylenedioxymethamphetamine (MDMA);
- 416           b. 4-Bromo-2,5-dimethoxyamphetamine;
- 417           c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 418           d. 2,5-Dimethoxyamphetamine;
- 419           e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 420           f. N-ethylamphetamine;

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- 421 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 422 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 423 i. 4-methoxyamphetamine;
- 424 j. 4-methoxymethamphetamine;
- 425 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 426 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 427 m. 3,4-Methylenedioxyamphetamine;
- 428 n. N,N-dimethylamphetamine; or
- 429 o. 3,4,5-Trimethoxyamphetamine,

430

431 individually or in any combination of or any mixture containing  
 432 any substance listed in sub-subparagraphs a.-o., and who knows  
 433 that the probable result of such manufacture or importation  
 434 would be the death of any person commits capital manufacture or  
 435 importation of Phenethylamines, a capital felony punishable as  
 436 provided in ss. 775.082 and 921.142. Any person sentenced for a  
 437 capital felony under this paragraph shall also be sentenced to  
 438 pay the maximum fine provided under subparagraph 1.

439 Section 4. For the purpose of incorporating the amendment  
 440 made by this act to section 893.03, Florida Statutes, in a  
 441 reference thereto, subsections (1) through (6) of section  
 442 893.13, Florida Statutes, are reenacted to read:

443 893.13 Prohibited acts; penalties.-

444 (1) (a) Except as authorized by this chapter and chapter  
 445 499, it is unlawful for any person to sell, manufacture, or  
 446 deliver, or possess with intent to sell, manufacture, or  
 447 deliver, a controlled substance. Any person who violates this  
 448 provision with respect to:

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449 1. A controlled substance named or described in s.  
450 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
451 commits a felony of the second degree, punishable as provided in  
452 s. 775.082, s. 775.083, or s. 775.084.

453 2. A controlled substance named or described in s.  
454 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
455 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
456 the third degree, punishable as provided in s. 775.082, s.  
457 775.083, or s. 775.084.

458 3. A controlled substance named or described in s.  
459 893.03(5) commits a misdemeanor of the first degree, punishable  
460 as provided in s. 775.082 or s. 775.083.

461 (b) Except as provided in this chapter, it is unlawful to  
462 sell or deliver in excess of 10 grams of any substance named or  
463 described in s. 893.03(1)(a) or (1)(b), or any combination  
464 thereof, or any mixture containing any such substance. Any  
465 person who violates this paragraph commits a felony of the first  
466 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
467 775.084.

468 (c) Except as authorized by this chapter, it is unlawful  
469 for any person to sell, manufacture, or deliver, or possess with  
470 intent to sell, manufacture, or deliver, a controlled substance  
471 in, on, or within 1,000 feet of the real property comprising a  
472 child care facility as defined in s. 402.302 or a public or  
473 private elementary, middle, or secondary school between the  
474 hours of 6 a.m. and 12 midnight, or at any time in, on, or  
475 within 1,000 feet of real property comprising a state, county,  
476 or municipal park, a community center, or a publicly owned

477 recreational facility. For the purposes of this paragraph, the  
 478 term "community center" means a facility operated by a nonprofit  
 479 community-based organization for the provision of recreational,  
 480 social, or educational services to the public. Any person who  
 481 violates this paragraph with respect to:

482 1. A controlled substance named or described in s.  
 483 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 484 commits a felony of the first degree, punishable as provided in  
 485 s. 775.082, s. 775.083, or s. 775.084. The defendant must be  
 486 sentenced to a minimum term of imprisonment of 3 calendar years  
 487 unless the offense was committed within 1,000 feet of the real  
 488 property comprising a child care facility as defined in s.  
 489 402.302.

490 2. A controlled substance named or described in s.  
 491 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 492 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 493 the second degree, punishable as provided in s. 775.082, s.  
 494 775.083, or s. 775.084.

495 3. Any other controlled substance, except as lawfully  
 496 sold, manufactured, or delivered, must be sentenced to pay a  
 497 \$500 fine and to serve 100 hours of public service in addition  
 498 to any other penalty prescribed by law.

499  
 500 This paragraph does not apply to a child care facility unless  
 501 the owner or operator of the facility posts a sign that is not  
 502 less than 2 square feet in size with a word legend identifying  
 503 the facility as a licensed child care facility and that is  
 504 posted on the property of the child care facility in a

505 conspicuous place where the sign is reasonably visible to the  
 506 public.

507 (d) Except as authorized by this chapter, it is unlawful  
 508 for any person to sell, manufacture, or deliver, or possess with  
 509 intent to sell, manufacture, or deliver, a controlled substance  
 510 in, on, or within 1,000 feet of the real property comprising a  
 511 public or private college, university, or other postsecondary  
 512 educational institution. Any person who violates this paragraph  
 513 with respect to:

514 1. A controlled substance named or described in s.  
 515 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 516 commits a felony of the first degree, punishable as provided in  
 517 s. 775.082, s. 775.083, or s. 775.084.

518 2. A controlled substance named or described in s.  
 519 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 520 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 521 the second degree, punishable as provided in s. 775.082, s.  
 522 775.083, or s. 775.084.

523 3. Any other controlled substance, except as lawfully  
 524 sold, manufactured, or delivered, must be sentenced to pay a  
 525 \$500 fine and to serve 100 hours of public service in addition  
 526 to any other penalty prescribed by law.

527 (e) Except as authorized by this chapter, it is unlawful  
 528 for any person to sell, manufacture, or deliver, or possess with  
 529 intent to sell, manufacture, or deliver, a controlled substance  
 530 not authorized by law in, on, or within 1,000 feet of a physical  
 531 place for worship at which a church or religious organization  
 532 regularly conducts religious services or within 1,000 feet of a

533 convenience business as defined in s. 812.171. Any person who  
 534 violates this paragraph with respect to:

535 1. A controlled substance named or described in s.  
 536 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 537 commits a felony of the first degree, punishable as provided in  
 538 s. 775.082, s. 775.083, or s. 775.084.

539 2. A controlled substance named or described in s.  
 540 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 541 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 542 the second degree, punishable as provided in s. 775.082, s.  
 543 775.083, or s. 775.084.

544 3. Any other controlled substance, except as lawfully  
 545 sold, manufactured, or delivered, must be sentenced to pay a  
 546 \$500 fine and to serve 100 hours of public service in addition  
 547 to any other penalty prescribed by law.

548 (f) Except as authorized by this chapter, it is unlawful  
 549 for any person to sell, manufacture, or deliver, or possess with  
 550 intent to sell, manufacture, or deliver, a controlled substance  
 551 in, on, or within 1,000 feet of the real property comprising a  
 552 public housing facility at any time. For purposes of this  
 553 section, the term "real property comprising a public housing  
 554 facility" means real property, as defined in s. 421.03(12), of a  
 555 public corporation created as a housing authority pursuant to  
 556 part I of chapter 421. Any person who violates this paragraph  
 557 with respect to:

558 1. A controlled substance named or described in s.  
 559 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 560 commits a felony of the first degree, punishable as provided in

561 s. 775.082, s. 775.083, or s. 775.084.

562 2. A controlled substance named or described in s.  
 563 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 564 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 565 the second degree, punishable as provided in s. 775.082, s.  
 566 775.083, or s. 775.084.

567 3. Any other controlled substance, except as lawfully  
 568 sold, manufactured, or delivered, must be sentenced to pay a  
 569 \$500 fine and to serve 100 hours of public service in addition  
 570 to any other penalty prescribed by law.

571 (g) Except as authorized by this chapter, it is unlawful  
 572 for any person to manufacture methamphetamine or phencyclidine,  
 573 or possess any listed chemical as defined in s. 893.033 in  
 574 violation of s. 893.149 and with intent to manufacture  
 575 methamphetamine or phencyclidine. If any person violates this  
 576 paragraph and:

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

583 2. The commission of the crime causes any child under 16  
 584 years of age to suffer great bodily harm, the person commits a  
 585 felony of the first degree, punishable as provided in s.  
 586 775.082, s. 775.083, or s. 775.084. In addition, the defendant  
 587 must be sentenced to a minimum term of imprisonment of 10  
 588 calendar years.

589 (h) Except as authorized by this chapter, it is unlawful  
 590 for any person to sell, manufacture, or deliver, or possess with  
 591 intent to sell, manufacture, or deliver, a controlled substance  
 592 in, on, or within 1,000 feet of the real property comprising an  
 593 assisted living facility, as that term is used in chapter 429.

594 Any person who violates this paragraph with respect to:

595 1. A controlled substance named or described in s.  
 596 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.  
 597 commits a felony of the first degree, punishable as provided in  
 598 s. 775.082, s. 775.083, or s. 775.084.

599 2. A controlled substance named or described in s.  
 600 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 601 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 602 the second degree, punishable as provided in s. 775.082, s.  
 603 775.083, or s. 775.084.

604 (2)(a) Except as authorized by this chapter and chapter  
 605 499, it is unlawful for any person to purchase, or possess with  
 606 intent to purchase, a controlled substance. Any person who  
 607 violates this provision with respect to:

608 1. A controlled substance named or described in s.  
 609 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 610 commits a felony of the second degree, punishable as provided in  
 611 s. 775.082, s. 775.083, or s. 775.084.

612 2. A controlled substance named or described in s.  
 613 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 614 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 615 the third degree, punishable as provided in s. 775.082, s.  
 616 775.083, or s. 775.084.



617 3. A controlled substance named or described in s.  
 618 893.03(5) commits a misdemeanor of the first degree, punishable  
 619 as provided in s. 775.082 or s. 775.083.

620 (b) Except as provided in this chapter, it is unlawful to  
 621 purchase in excess of 10 grams of any substance named or  
 622 described in s. 893.03(1)(a) or (1)(b), or any combination  
 623 thereof, or any mixture containing any such substance. Any  
 624 person who violates this paragraph commits a felony of the first  
 625 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 626 775.084.

627 (3) Any person who delivers, without consideration, not  
 628 more than 20 grams of cannabis, as defined in this chapter,  
 629 commits a misdemeanor of the first degree, punishable as  
 630 provided in s. 775.082 or s. 775.083. For the purposes of this  
 631 paragraph, "cannabis" does not include the resin extracted from  
 632 the plants of the genus *Cannabis* or any compound manufacture,  
 633 salt, derivative, mixture, or preparation of such resin.

634 (4) Except as authorized by this chapter, it is unlawful  
 635 for any person 18 years of age or older to deliver any  
 636 controlled substance to a person under the age of 18 years, or  
 637 to use or hire a person under the age of 18 years as an agent or  
 638 employee in the sale or delivery of such a substance, or to use  
 639 such person to assist in avoiding detection or apprehension for  
 640 a violation of this chapter. Any person who violates this  
 641 provision with respect to:

642 (a) A controlled substance named or described in s.  
 643 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 644 commits a felony of the first degree, punishable as provided in

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645 s. 775.082, s. 775.083, or s. 775.084.

646 (b) A controlled substance named or described in s.  
 647 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 648 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 649 the second degree, punishable as provided in s. 775.082, s.  
 650 775.083, or s. 775.084.

651  
 652 Imposition of sentence may not be suspended or deferred, nor  
 653 shall the person so convicted be placed on probation.

654 (5) It is unlawful for any person to bring into this state  
 655 any controlled substance unless the possession of such  
 656 controlled substance is authorized by this chapter or unless  
 657 such person is licensed to do so by the appropriate federal  
 658 agency. Any person who violates this provision with respect to:

659 (a) A controlled substance named or described in s.  
 660 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 661 commits a felony of the second degree, punishable as provided in  
 662 s. 775.082, s. 775.083, or s. 775.084.

663 (b) A controlled substance named or described in s.  
 664 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 665 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 666 the third degree, punishable as provided in s. 775.082, s.  
 667 775.083, or s. 775.084.

668 (c) A controlled substance named or described in s.  
 669 893.03(5) commits a misdemeanor of the first degree, punishable  
 670 as provided in s. 775.082 or s. 775.083.

671 (6)(a) It is unlawful for any person to be in actual or  
 672 constructive possession of a controlled substance unless such

673 | controlled substance was lawfully obtained from a practitioner  
 674 | or pursuant to a valid prescription or order of a practitioner  
 675 | while acting in the course of his or her professional practice  
 676 | or to be in actual or constructive possession of a controlled  
 677 | substance except as otherwise authorized by this chapter. Any  
 678 | person who violates this provision commits a felony of the third  
 679 | degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 680 | 775.084.

681 |         (b) If the offense is the possession of not more than 20  
 682 | grams of cannabis, as defined in this chapter, or 3 grams or  
 683 | less of a controlled substance described in s. 893.03(1)(c)46.-  
 684 | 50. and 114.-142., the person commits a misdemeanor of the first  
 685 | degree, punishable as provided in s. 775.082 or s. 775.083. For  
 686 | the purposes of this subsection, "cannabis" does not include the  
 687 | resin extracted from the plants of the genus *Cannabis*, or any  
 688 | compound manufacture, salt, derivative, mixture, or preparation  
 689 | of such resin, and a controlled substance described in s.  
 690 | 893.03(1)(c)46.-50. and 114.-142. does not include the substance  
 691 | in a powdered form.

692 |         (c) Except as provided in this chapter, it is unlawful to  
 693 | possess in excess of 10 grams of any substance named or  
 694 | described in s. 893.03(1)(a) or (1)(b), or any combination  
 695 | thereof, or any mixture containing any such substance. Any  
 696 | person who violates this paragraph commits a felony of the first  
 697 | degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 698 | 775.084.

699 |         (d) Notwithstanding any provision to the contrary of the  
 700 | laws of this state relating to arrest, a law enforcement officer

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701 may arrest without warrant any person who the officer has  
 702 probable cause to believe is violating the provisions of this  
 703 chapter relating to possession of cannabis.

704 Section 5. For the purpose of incorporating the amendment  
 705 made by this act to section 893.03, Florida Statutes, in a  
 706 reference thereto, paragraphs (b), (c), (d), and (e) of  
 707 subsection (3) of section 921.0022, Florida Statutes, are  
 708 reenacted to read:

709 921.0022 Criminal Punishment Code; offense severity  
 710 ranking chart.—

711 (3) OFFENSE SEVERITY RANKING CHART

712 (b) LEVEL 2

713

Florida Statute	Felony Degree	Description
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714

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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715

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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716

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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717	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
718	590.28(1)	3rd	Intentional burning of lands.
719	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
720	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
721	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
722	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
723	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
724	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
725	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more

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			but less than \$300, taken from unenclosed curtilage of dwelling.
726	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
727	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
728	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
729	817.52(3)	3rd	Failure to redeliver hired vehicle.
730	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
731	817.60(5)	3rd	Dealing in credit cards of another.
732	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
733	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
734	826.04	3rd	Knowingly marries or has sexual

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			intercourse with person to whom related.
735			
	831.01	3rd	Forgery.
736			
	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
737			
	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
738			
	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
739			
	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
740			
	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
741			
	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
742			
	843.08	3rd	Falsely impersonating an officer.
743			
	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.,

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744			(3), or (4) drugs other than cannabis.
	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
745			
746	(c)	LEVEL 3	
747			
	Florida	Felony	
	Statute	Degree	Description
748			
	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
749			
	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
750			
	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
751			
	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
752			
	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
753			
	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.



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754	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
755	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
756	327.35(2)(b)	3rd	Felony BUI.
757	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
758	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
759	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
760	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.
761			

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762	379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
763	400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
764	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
765	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
766	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
767	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
768	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
769	697.08	3rd	Equity skimming.

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770	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
771	796.05(1)	3rd	Live on earnings of a prostitute.
772	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
773	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
774	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
775	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
776	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
777	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
	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.
778	817.233	3rd	Burning to defraud insurer.
779	817.234	3rd	Unlawful solicitation of persons
	(8) (b) - (c)		involved in motor vehicle accidents.
780	817.234 (11) (a)	3rd	Insurance fraud; property value less
			than \$20,000.
781	817.236	3rd	Filing a false motor vehicle insurance
			application.
782	817.2361	3rd	Creating, marketing, or presenting a
			false or fraudulent motor vehicle
			insurance card.
783	817.413 (2)	3rd	Sale of used goods as new.
784	817.505 (4)	3rd	Patient brokering.
785	828.12 (2)	3rd	Tortures any animal with intent to
			inflict intense pain, serious physical
			injury, or death.
786	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with
			intent to defraud or possessing a
			counterfeit payment instrument.

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787	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
788	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
789	843.19	3rd	Injure, disable, or kill police dog or horse.
790	860.15(3)	3rd	Overcharging for repairs and parts.
791	870.01(2)	3rd	Riot; inciting or encouraging.
792	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).
793	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.
794	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s.

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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.

795

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

796

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

797

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

798

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

799

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

800

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

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

801

893.13(8)(a)2. 3rd Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

802

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

803

893.13(8)(a)4. 3rd Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

804

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

805

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

806

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





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			issuer of securities to register.
817			
	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
818			
	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
819			
	784.075	3rd	Battery on detention or commitment facility staff.
820			
	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
821			
	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
822			
	784.081(3)	3rd	Battery on specified official or employee.
823			
	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
824			
	784.083(3)	3rd	Battery on code inspector.
825			
	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids

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826			or materials.
	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
827			
	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
828			
	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
829			
	787.07	3rd	Human smuggling.
830			
	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
831			
	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
832			
	790.115(2)(c)	3rd	Possessing firearm on school property.
833			
	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
834			

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835	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
836	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
837	810.06	3rd	Burglary; possession of tools.
838	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
839	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
840	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
841	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
842	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
	817.568(2)(a)	3rd	Fraudulent use of personal identification information.

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817.625(2)(a) 3rd Fraudulent use of scanning device or reencoder.

828.125(1) 2nd Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.

837.02(1) 3rd Perjury in official proceedings.

837.021(1) 3rd Make contradictory statements in official proceedings.

838.022 3rd Official misconduct.

839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.

839.13(2)(c) 3rd Falsifying records of the Department of Children and Family Services.

843.021 3rd Possession of a concealed handcuff key by a person in custody.

843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

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853	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
854	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
855	874.05(1)	3rd	Encouraging or recruiting another to join a criminal gang.
856	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).
857	914.14(2)	3rd	Witnesses accepting bribes.
858	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
859	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
860	918.12	3rd	Tampering with jurors.
861	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
862	(e) LEVEL 5		

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863	Florida Statute	Felony Degree	Description
864	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
865	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
866	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
867	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
868	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
869	379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
870	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
871			

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872	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
873	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
874	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
875	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
876	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
877	790.01(2)	3rd	Carrying a concealed firearm.
878	790.162	2nd	Threat to throw or discharge destructive device.
879	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
	790.221(1)	2nd	Possession of short-barreled shotgun or

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880			machine gun.
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
881			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
882			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
883			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
884			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
885			
	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
886			
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
887			
	812.131(2)(b)	3rd	Robbery by sudden snatching.



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888	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
889	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
890	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
891	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
892	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.
893	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
894	825.1025(4)	3rd	Lewd or lascivious exhibition in the

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			presence of an elderly person or disabled adult.
895	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
896	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
897	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
898	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
899	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
900	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
901	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device

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902			or equipment.
	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
903			
	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
904			
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
905			
	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.
906			
	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s.

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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.

907

893.13(1)(f)1.      1st      Sell, manufacture, or deliver cocaine  
 (or other s. 893.03(1)(a), (1)(b),  
 (1)(d), or (2)(a), (2)(b), or (2)(c)4.  
 drugs) within 1,000 feet of public  
 housing facility.

908

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).

909

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

910

911      Section 6. This act shall take effect upon becoming a law.