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# **Criminal Justice Subcommittee**

**March 27, 2013**

**8:00 AM**

**404 HOB**

**Will W. Weatherford**  
Speaker

**Matt Gaetz**  
Chair

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Wednesday, March 27, 2013 08:00 am  
**End Date and Time:** Wednesday, March 27, 2013 10:00 am  
**Location:** 404 HOB  
**Duration:** 2.00 hrs

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

CS/HB 253 Protection of Vulnerable Adults by Healthy Families Subcommittee, Passidomo  
CS/HB 317 Mental Health Treatment by Healthy Families Subcommittee, Schwartz  
HB 759 Offenses Against Unborn Children by Ahern  
HB 787 Computer or Electronic Device Harassment by Goodson  
HB 845 Termination of Pregnancy Based on Sex or Race of Unborn Child by Van Zant  
HB 1041 Controlled Substances by Berman  
HB 1183 Pub. Rec./Forensic Behavioral Health Evaluations by Gibbons  
HB 1185 Pub. Rec./Participants in Treatment-Based Drug Court Programs by Gibbons  
CS/HB 1393 Agricultural Storage and Shipping Containers by Agriculture & Natural Resources Subcommittee, Beshears  
PCS for HB 691 -- Personal Identification Theft

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

PCB CRJS 13-06 -- Juvenile Sentencing

**NOTICE FINALIZED on 03/25/2013 16:24 by hudson.jessica**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 253 Protection of Vulnerable Adults  
**SPONSOR(S):** Healthy Families Subcommittee; Passidomo and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	11 Y, 0 N, As CS	Poche	Schoolfield
2) Criminal Justice Subcommittee		Cunningham <i>SK</i>	Cunningham <i>SK</i>
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Section 812.0145, F.S., reclassifies theft offenses committed against persons who are 65 years of age or older. The statute provides, in part, that if the funds, assets, or property involved is valued at \$300 or more, but less than \$10,000, the theft is a third degree felony. The bill deletes the minimum threshold amount (\$300) necessary to trigger the third degree felony penalty. As a result, the theft of funds, assets, or property having any value will be a felony offense.

Chapter 825, F.S., establishes a variety of offenses relating to the abuse, neglect, and exploitation of elderly persons and disabled adults. The chapter currently provides the following definitions, which apply to all of the criminal offenses contained therein:

- "Disabled adult" means a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.
- "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning to the extent that the ability to provide adequately for his or her own care is impaired.

The bill replaces the terms "elderly person" and "disabled adult" throughout all of ch. 825, F.S., with the term "vulnerable adult." The bill defines the terms:

- "Vulnerable adult" as "a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired," and
- "Impaired" as "having any loss or abnormality of a psychological, physiological, or anatomical structure or function due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction; brain damage; or the infirmities of aging that results in a vulnerable adult's decreased ability to perform mental tasks and physical activities of daily living as defined in s. 415.102, F.S."

Because the definition of "vulnerable adult" includes more individuals than the definitions of "elderly person" and "disabled adult," each of the offenses in ch. 825, F.S., will apply to a broader range of people.

The bill also replaces the terms "elderly person" and "disabled adult" with the term "vulnerable adult" in a multitude of other statutes that affect hearsay exceptions, manslaughter, level 2 background screenings, court-ordered HIV testing, and aggravated white collar crime offenses.

On February 27, 2013, the Criminal Justice Impact Conference determined that the bill, as originally filed, will have an insignificant prison bed impact on the Department of Corrections. The amendment adopted by the Healthy Families Subcommittee will likely not affect this determination.

The bill provides an effective date of October 1, 2013.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### *Elder Population in the U.S. and Florida*

The 2010 Census recorded the greatest number and proportion of people aged 65 and over in the history of the United States- 40,300,000, or 13% of the total population.<sup>1</sup> By 2050, people aged 65 and over are expected to comprise 20% of the total population of the U.S.<sup>2</sup>

Many counties in Florida have an elder population that is greater than 15% of total county population.<sup>3</sup> In 2010, Florida had the highest proportion of people over the age of 65, making up 17% of the total state population.<sup>4</sup> Sumter County had the highest proportion of people over the age of 65 in the nation, accounting for 43% of total county population.<sup>5</sup> Several other counties had the population of individuals age 65 and over exceed 30% of total county population.<sup>6</sup>

Nationwide, life expectancies of individuals reaching the ages of 65 and 85 are increasing. Individuals who survive to the age of 65 can be expected to live another 19.2 years.<sup>7</sup> A larger and older population in Florida greatly increases the pool of potential victims of elder abuse, neglect, or exploitation.

##### *Disabled Population in the U.S. and Florida*

In 2011, there were 11,468,487 people aged 18 to 64 in Florida.<sup>8</sup> Of that number of people, 1,131,661, or 9.9%, people had at least one disability.<sup>9</sup> The number of individuals aged 65 and older in Florida in 2011 totaled 3,296,861.<sup>10</sup> Of that number of people, 1,136,372, or 34.5%, had at least one disability.<sup>11</sup>

According to the Alzheimer's Association (association), it is estimated that the number of people suffering from Alzheimer's disease in Florida in 2010 totaled 450,000.<sup>12</sup> The association estimates that 590,000 people in Florida will have Alzheimer's disease in 2025.<sup>13</sup> A study in 2009 found that nearly 50% of people with dementia experience some form of abuse.<sup>14</sup> Another study in 2010 found that 47% of participants with dementia had been mistreated by their caregivers.<sup>15</sup>

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<sup>1</sup> Administration on Aging, National Center for Elder Abuse, *America's Growing Elderly Population*, available at [www.ncea.aoa.gov/Library/Data/index.aspx](http://www.ncea.aoa.gov/Library/Data/index.aspx) (citing U.S. Department of Commerce, U.S. Census Bureau, *The older population: 2010*, 2011, Publication C2010BR-09) (last visited on March 21, 2013).

<sup>2</sup> *Id.*, (citing U.S. Department of Commerce, U.S. Census Bureau, *The next four decades: The older population in the United States: 2010 to 2050*, 2010, Publication P25-1138).

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

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

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

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at page 24.

<sup>8</sup> U.S. Department of Commerce, U.S. Census Bureau, American FactFinder, *Selected Social Characteristics in the U.S.-Florida-2011 American Community Survey 1 year estimates*, available at [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_11\\_1YR\\_DP02&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_DP02&prodType=table) (last visited on March 21, 2013).

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

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

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

<sup>12</sup> Alzheimer's Association, *2012 Alzheimer's disease facts and figures*, *Alzheimer's and Dementia: The Journal of the Alzheimer's Association*, March 2012; 8:131-168.

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

<sup>14</sup> See supra, FN 1 (citing Cooper, C., Selwood, A., et al., *Abuse of people with dementia by family carers: Representative cross sectional survey*, *British Medical Journal*, 338, b155).

<sup>15</sup> *Id.* (citing Wigglesworth, A., Mosqueda, L., et al., *Screening for abuse and neglect of people with dementia*, *Journal of the American Geriatrics Society*, 58(3), 493-500).

In 2011, there were an estimated 35,044,480 disabled persons in the United States who were victims of a crime.<sup>16</sup> Of that number, an estimated 14,467,280, or 41.3%, were aged 65 and over. An estimated 19,000,000 were aged 18 to 64.

#### *Abuse, Neglect, and Exploitation of the Elderly*

The true incidence of elder abuse, neglect, or exploitation is difficult to assess. According to the Centers for Disease Control and Prevention, between 1,000,000 and 2,000,000 persons aged 65 and older have been abused, neglected, or exploited by a caregiver.<sup>17</sup> The average annual rate of violent victimization against persons with disabilities aged 65 and older increased from 2010 (3 per 1,000) to 2011 (4.4 to 1,000), a nearly 50% increase.<sup>18</sup>

During fiscal year 2011-2012, the most prevalent relationships of an elder abuse perpetrator to the victim in verified reports of abuse, neglect, or exploitation were son or daughter (29% of total reports), institution employee (nearly 21% of total reports, and "other" (10.5% of total reports).<sup>19</sup>

According to the Florida Department of Elder Affairs, during fiscal year 2011-2012, the three most prevalent forms of maltreatment of elders were self-neglect, inadequate supervision, and exploitation.<sup>20</sup>

#### *Abuse, Neglect, and Exploitation of the Disabled*

The vast majority of individuals who abuse, neglect, or exploit persons with disabilities are most often family members and caregivers. Thirty percent of adults with disabilities who used personal assistance services to support activities of daily living, reported one or more types of mistreatment, including physical abuse, verbal abuse, or financial abuse, by their primary care provider.<sup>21</sup> Abuse, neglect, and exploitation most frequently occur in the home environment. However, such maltreatment also occurs in facilities. According to the National Ombudsman Reporting System statistics for 2011, there were a total of 7,550 complaints against facilities in Florida.<sup>22</sup> Of those complaints, 189, or 2.5 percent, involved abuse, gross neglect, or exploitation.<sup>23</sup>

In 2011, the statewide abuse hotline received a total of 15,238 reports involving the alleged abuse, neglect or exploitation of a person between the age of 18 and 59. 1,109 of those reports were substantiated and required additional investigation or action. The hotline received 38,394 reports involving someone aged 60 and over. 3,654 of those reports were substantiated and required additional investigation or action. The following chart<sup>24</sup> illustrates the number of reports received, broken down by type of abuse, total reports, substantiated reports, and age:

<sup>16</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Harrell, Erika, *Crime Against Persons with Disabilities 2009-2011, Statistical Tables*, December 19, 2012, page 18; available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd0911st.pdf> (last visited on March 21, 2013).

<sup>17</sup> Centers for Disease Control and Prevention, *Elder Maltreatment: Consequences*, available at <http://www.cdc.gov/violenceprevention/eldermaltreatment/consequences.html> (citing National Research Council, *Elder mistreatment: abuse, neglect, and exploitation in an aging American*, 2003, In: Bonnie R.J., and Wallace R.B., editors, *Panel to Review Risk and Prevalence of Elder Abuse and Neglect*, Washington, D.C.: The National Academies Press) (last visited on March 21, 2013).

<sup>18</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Truman, J., and Planty, M., *Criminal Victimization, 2011*, October 2012, page 5; available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cv11.pdf> (last visited on March 21, 2013).

<sup>19</sup> See supra, FN 16 at slide 28.

<sup>20</sup> Florida Department of Elder Affairs, *Brochure: The Power to Prevent Elder Abuse Is In Your Hands*, available at [http://elderaffairs.state.fl.us/doea/elderabuseprevention/Elder\\_Abuse\\_Brochure\\_English.pdf](http://elderaffairs.state.fl.us/doea/elderabuseprevention/Elder_Abuse_Brochure_English.pdf) (last visited on March 21, 2013).

<sup>21</sup> Oktay, J., and Tompkins, C., *Personal assistance providers' mistreatment of disabled adults*, *Health & Social Work*, 29(3), 177-188; available at [http://pascenter.org/publications/publication\\_home.php?id=372](http://pascenter.org/publications/publication_home.php?id=372) (last visited on March 21, 2013).

<sup>22</sup> Administration on Aging, Aging Integrated Database (AGID), National Ombudsman Reporting System (NORS), *Complaints 2011*, available at [www.agidnet.org/CustomTables/NORS/Complaints/Data/](http://www.agidnet.org/CustomTables/NORS/Complaints/Data/) (last visited on March 21, 2013).

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

<sup>24</sup> The chart was created using information contained in Florida's 2012 State of Adult Protective Services Baseline Assessment. The assessment is available through the National Adult Protective Services Association at [www.napsa-now.org/wp-content/uploads/2013/02/APS-Report-FL.pdf](http://www.napsa-now.org/wp-content/uploads/2013/02/APS-Report-FL.pdf) (last visited on March 21, 2013), also, during FY 2011-2012, the Department of Children and Families made three referrals to law enforcement involving false reports of adult abuse, neglect, or exploitation, as required by s. 415.111(5)(a), F.S. The department is also required to report the number of false reports of adult abuse, neglect, or exploitation to the Legislature. The report, entitled *2012 Number of False Reports of Abuse, Neglect or Exploitation of Disabled Adult or Elderly Person*

	Age 60+	Substantiated (60+)	Age 18-59	Substantiated (18-59)
Self-Neglect	11,533	1,991 (17%)	2,601	527 (2%)
Physical Abuse	4,638	270 (6%)	3,317	140 (4%)
Emotional Abuse	2,585	76 (3%)	1,351	21 (2%)
Sexual Abuse	296	4 (1%)	603	20 (3%)
Neglect by others	12,841	736 (6%)	5,796	310 (5%)
Financial abuse	6,320	569 (9%)	1,551	87 (6%)
Other abuse (death)	171	8 (5%)	49	4 (8%)
<b>TOTAL</b>	<b>38,384</b>	<b>3,654 (9.5%)</b>	<b>15,238</b>	<b>1,109 (7%)</b>

### *Financial Exploitation*

According to the National Center on Elder Abuse, financial exploitation can include “the illegal or improper use of an elder’s funds, property, or assets.”<sup>25</sup> Examples of financial exploitation include, but are not limited to, forging an older person’s signature, misusing or stealing an older person’s money or possessions, coercing or deceiving an older person into signing a document, and the improper use of a conservatorship, guardianship, or power of attorney.<sup>26</sup>

Financial exploitation is reported less than other forms of abuse. It is believed that only 1 in 14 cases of financial exploitation against disabled adults is reported and that the yearly number of cases nationwide could exceed 850,000. The “typical” victim of financial exploitation is between 70 and 89 years of age, Caucasian, female, frail, and cognitively impaired.<sup>27</sup>

### *Impact of Elder and Disabled Abuse*

Elders who experience abuse had a 300 percent higher risk of death when compared to elders who did not experience abuse.<sup>28</sup> Victims of elder abuse also experience significantly higher levels of psychological distress and lower perceived self-efficacy than elders who have not been abused.<sup>29</sup> Elders who have experienced abuse also have more health problems than their peers who have not been victims of abuse. A study has also shown that elder financial abuse has led to a decrease in quality of life for victims and an increase in unnecessary institutionalizations.<sup>30</sup>

The direct medical costs associated with elder abuse are substantial. The costs of treatment following instances of violent abuse to elders add an estimated \$5.3 billion to annual health care expenditures in the U.S.<sup>31</sup> The annual financial loss by elders as a result of financial exploitation were estimated to be \$2.9 billion, which is a 12% increase over the costs of financial exploitation in 2008.<sup>32</sup>

*Referred to Law Enforcement*, is available at [www.dcf.state.fl.us/programs/aps/docs/2012NumberFalseRptsANE.pdf](http://www.dcf.state.fl.us/programs/aps/docs/2012NumberFalseRptsANE.pdf) (last visited on March 21, 2013).

<sup>25</sup> The National Center on Elder Abuse, *Types of Abuse- Financial or Material Exploitation*, available at [http://www.ncea.aoa.gov/FAQ/Type\\_Abuse/index.aspx#financial](http://www.ncea.aoa.gov/FAQ/Type_Abuse/index.aspx#financial) (last visited on March 21, 2013).

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

<sup>27</sup> MetLife Mature Market Institute, the National Committee for the Prevention of Elder Abuse, and the Center for Gerontology at Virginia Polytechnic Institute and State University, *Broken Trust: Elders, Family, and Finances, A Study on Elder Financial Abuse Prevention*, March 2009, page 8; see also The National Committee for the Prevention of Elder Abuse and The National Adult Protective Services Association, *The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older*, February 2006, page 20.

<sup>28</sup> *Id.*; (citing Dong, X., Simon, M.A., et al., *Elder abuse and mortality: The role of psychological and social wellbeing*, *Gerontology*, 57(6), 549-558 (2011)).

<sup>29</sup> *Id.*; (citing Lachs, M.S., Williams, C.S., et al., *The mortality of elder mistreatment*, *Journal of the American Medical Association*, 280(5), 428-432 (1998); see also Comijis, H.C., Penninx, B.W.J.H., et al., *Psychological distress in victims of elder mistreatment: The effects of social support and coping*, *Journal of Gerontology*, 54B(4), 240-245 (1999)).

<sup>30</sup> Kemp, B.J., and Mosqueda, L.A., *Elder financial abuse: an evaluation framework and supporting evidence*, *Journal of the American Geriatrics Society*, 53(7), 1123-1127 (2005).

<sup>31</sup> Mouton, C.P., Rodabough, R.J., et al., *Prevalence and 3-year incidence of abuse among postmenopausal women*, *American Journal of Public Health*, 94(4), 605-612 (2004).

<sup>32</sup> National Committee for the Prevention of Elder Abuse, Virginia Tech, MetLife Mature Market Institute, *The MetLife study of elder financial abuse: Crimes of occasion, desperation and predation against America's elders*, page 2 (2011)(available at [https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse\[1\].pdf](https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse[1].pdf)); see supra, FN 17 at page 5.

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## **Florida Law - Theft from the Elderly**

Section 812.0145, F.S., reclassifies theft<sup>33</sup> offenses committed against persons who are 65 years of age or older. The statute provides, in part, that whenever a person is charged with committing theft from a person 65 years of age or older, when he or she knows or has reason to believe that the victim was 65 years of age or older, the offense for which the person is charged shall be reclassified as follows:

- If the funds, assets, or property involved is valued at \$300 or more, but less than \$10,000, it is a third degree felony.<sup>34</sup>

### Effect of the Bill

The bill amends s. 812.0145, F.S., to delete the minimum threshold amount (\$300) necessary to trigger the third degree felony penalty. As a result, the theft of funds, assets, or property having any value is a felony offense.

## **Florida Law - Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults**

Chapter 825, F.S., establishes the following offenses relating to the abuse, neglect, and exploitation of elderly persons and disabled adults.

### *1. Abuse, Aggravated Abuse, and Neglect of an Elderly Person or Disabled Adult*

Section 825.102, F.S., defines "abuse of an elderly person or disabled adult" as:

- Intentional infliction of physical or psychological injury upon an elderly person or disabled adult;
- An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or
- Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult.

A person who knowingly or willfully abuses an elderly person or disabled adult without causing great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a third degree felony.

"Aggravated abuse of an elderly person or disabled adult," occurs when a person:

- Commits aggravated battery on an elderly person or disabled adult;
- Willfully tortures, maliciously punishes, or willfully and unlawfully cages, an elderly person or disabled adult; or
- Knowingly or willfully abuses an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult.<sup>35</sup>

A person who commits aggravated abuse of an elderly person or disabled adult commits a first degree felony.<sup>36</sup>

"Neglect of an elderly person or disabled adult" means:

- A caregiver's failure or omission to provide an elderly person or disabled adult with the care, supervision, and services necessary to maintain the elderly person's or disabled adult's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the elderly person or disabled adult; or

<sup>33</sup> Section 812.014, F.S., the general theft statute, specifies that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property.
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

<sup>34</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>35</sup> Section 825.102(2), F.S.

<sup>36</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.

- A caregiver's failure to make a reasonable effort to protect an elderly person or disabled adult from abuse, neglect, or exploitation by another person.<sup>37</sup>

A person who willfully or by culpable negligence neglects an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement commits a second degree felony.<sup>38</sup> Otherwise, the offense is a third degree felony.

2. *Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person*  
Section 825.1025, F.S., specifies that "lewd or lascivious battery upon an elderly or disabled person," a second degree felony, occurs when a person encourages, forces, or entices an elderly or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity,<sup>39</sup> when the person knows or reasonably should know that the elderly or disabled person either lacks the capacity to consent or fails to give consent.

The statute also makes it a third degree felony for a person to commit lewd or lascivious molestation upon an elderly or disabled person.<sup>40</sup> "Lewd or lascivious molestation of an elderly person or disabled person" occurs when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of an elderly or disabled person when the person knows or reasonably should know that the elderly or disabled person either lacks the capacity to consent or fails to give consent.<sup>41</sup>

"Lewd or lascivious exhibition in the presence of an elderly or disabled person," a third degree felony, occurs when the person commits any of the following acts, and knows or reasonably should know that the elderly or disabled person either lacks the capacity to consent or fails to give consent to having such an act committed in his or her presence:

- Intentionally masturbates;
- Intentionally exposes his or her genitals in a lewd or lascivious manner; or
- Intentionally commits any other lewd or lascivious act that does not involve actual physical or sexual contact with the elderly person or disabled person, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.<sup>42</sup>

3. *Exploitation of an Elderly Person or Disabled Adult*

Section 825.103, F.S., defines exploitation of an elderly person or disabled adult to mean:

- Knowingly, by deception<sup>43</sup> or intimidation<sup>44</sup>, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit,

<sup>37</sup> Neglect of an elderly person or disabled adult may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or psychological injury, or a substantial risk of death, to an elderly person or disabled adult. Section 825.102(3), F.S.

<sup>38</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>39</sup> Section 825.1025(1), F.S., defines "sexual activity" as the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

<sup>40</sup> Section 825.1025(3), F.S.

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

<sup>42</sup> Section 825.1025(4), F.S.

<sup>43</sup> Section 825.101(3), F.S., defines "deception" as misrepresenting or concealing a material fact relating to: services rendered, disposition of property, or use of property, when such services or property are intended to benefit an elderly person or disabled adult; terms of a contract or agreement entered into with an elderly person or disabled adult; or an existing or preexisting condition of any property involved in a contract or agreement entered into with an elderly person or disabled adult; or using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit an elderly person or disabled adult to enter into a contract or agreement.

<sup>44</sup> Section 825.101(8), F.S., defines "intimidation" as the communication by word or act to an elderly person or disabled adult that the elderly person or disabled adult will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

- Stands in a position of trust and confidence with the elderly person or disabled adult;  
or
- Has a business relationship with the elderly person or disabled adult;
- Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;<sup>45</sup> or
- Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.

If the funds, assets, or property involved in a violation of s. 825.103, F.S., are:

- Valued at \$100,000 or more, it is a first degree felony;
- Valued at \$20,000 or more but less than \$100,000, it is a second degree felony; and
- Valued at less than \$20,000, it is a third degree felony.

#### *Definitions*

Chapter 825, F.S., currently provides the following definitions, which apply to all of the criminal offenses described above:

- "Disabled adult" means a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.<sup>46</sup>
- "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning to the extent that the ability to provide adequately for his or her own care is impaired.<sup>47</sup>

In contrast, ch. 415, F.S., the "Adult Protective Services Act," which provides protective services for persons in need because of age or disability, does not use the terms "disabled adult" or "elderly person." Instead, ch. 415, F.S., uses the term "vulnerable adult." Section 415.102, F.S., defines "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

#### Effect of the Bill

The bill replaces the terms "elderly person" and "disabled adult" throughout all of ch. 825, F.S., with the term "vulnerable adult." The bill defines the terms:

- "Vulnerable adult" as "a person 18 years of age or older whose ability to perform the normal activities of daily living<sup>48</sup> or to provide for his or her own care or protection is impaired;" and
- "Impaired" as "having any loss or abnormality of a psychological, physiological, or anatomical structure or function due to a mental, emotional, sensory, long-term physical, or developmental

<sup>45</sup> Section 825.101(9), F.S., defines "lacks capacity to consent" as an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property.

<sup>46</sup> Section 825.101(4), F.S.

<sup>47</sup> Section 825.101(5), F.S.

<sup>48</sup> Section 415.102, F.S., defines "activities of daily living" as functions and tasks for self-care, including ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

disability or dysfunction; brain damage; or the infirmities of aging that results in a vulnerable adult's decreased ability to perform mental tasks and physical activities of daily living as defined in s. 415.102, F.S."

Because the definition of "vulnerable adult" includes more individuals than the definitions of "elderly person" and "disabled adult," each of the above-described offenses in ch. 825, F.S., will apply to a broader range of people.

The bill amends s. 825.1025, F.S., relating to lewd or lascivious offenses upon vulnerable adults, to apply the definitions of "lewd or lascivious battery upon a vulnerable adult," "lewd or lascivious molestation of a vulnerable adult," and "lewd or lascivious exhibition in the presence of a vulnerable adult" to a person who knows or reasonably should know that the vulnerable adult's ability to consent is *impaired* (rather than knowing that the vulnerable adult lacks *the capacity to consent*).

The bill also amends the definition of "exploitation of a vulnerable adult" in s. 825.103(1), F.S., to:

- Delete the requirement that a person use *deception or intimidation* to obtain or use a vulnerable adult's funds, assets, or property; and
- Apply to a person who knows or reasonably should know that the vulnerable adult's ability to consent is *impaired* (rather than knowing that the vulnerable adult *lacks the capacity to consent*).

The removal of "deception" and "intimidation" as elements necessary to prove exploitation allows a prosecutor to pursue charges against an individual who exploits a vulnerable adult in a broader range of instances.

The bill also deletes definitions of the terms "deception," "intimidation," and "lacks capacity to consent," as these terms are no longer applicable to ch. 825, F.S.

### Hearsay in Criminal Cases

"Hearsay" is a statement,<sup>49</sup> other than one made by the declarant<sup>50</sup> while testifying at trial or a hearing,<sup>51</sup> offered in evidence to prove the truth of the matter asserted.<sup>52</sup> Currently, hearsay statements are not admissible at trial unless a statutory exception applies.<sup>53</sup>

Currently, s. 90.803(24), F.S., creates a hearsay exception specifically relating to elderly persons and disabled adults. The statute specifies that unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by an elderly person or disabled adult, as defined in s. 825.101, F.S., describing any act of abuse or neglect, any act of exploitation, the offense of battery or aggravated battery or assault or aggravated assault or sexual battery, or any other violent act on the declarant elderly person or disabled adult, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability;<sup>54</sup> and
- The elderly person or disabled adult either:
  - Testifies; or
  - Is unavailable as a witness, provided that there is corroborative evidence of the abuse or offense. Unavailability must include a finding by the court that the elderly person's or

<sup>49</sup> A "statement" is either an oral or written assertion or nonverbal conduct of a person if it is intended by the person as an assertion; see s. 90.801(1)(a), F.S.

<sup>50</sup> The "declarant" is the person who made the statement; see s. 90.801(1)(b), F.S.

<sup>51</sup> Often referred to simply as an "out-of-court statement."

<sup>52</sup> Section 90.801(1)(c), F.S.

<sup>53</sup> Section 90.802, F.S.

<sup>54</sup> In making its determination, the court may consider the mental and physical age and maturity of the elderly person or disabled adult, the nature and duration of the abuse or offense, the relationship of the victim to the offender, the reliability of the assertion, the reliability of the elderly person or disabled adult, and any other factor deemed appropriate.

disabled adult's participation in the trial or proceeding would result in a substantial likelihood of severe emotional, mental, or physical harm, in addition to findings pursuant to s. 90.804(1), F.S.<sup>55</sup>

The party seeking to introduce a hearsay statement under the exception at s. 90.804, F.S., bears the burden of establishing that the declarant is unavailable as a witness. The trial judge makes the determination of such unavailability at a pretrial hearing.<sup>56</sup>

#### Effect of the Bill

The bill amends s. 90.803(24), F.S., to replace the terms "elderly person" and "disabled adult" with the term "vulnerable adult," and defines this term in accordance with ch. 825, F.S. The bill also adds to the instances in which a court can find that a person is "unavailable as a witness" by specifying that such finding can be made if the vulnerable adult is impaired (as defined above).

#### **Manslaughter**

Section 782.07(2), F.S., specifies that a person commits aggravated manslaughter of an elderly person or disabled adult, a felony of the first degree, if such person causes the death of any elderly person or disabled adult by culpable negligence under s. 825.102(3), F.S.

#### Effect of the Bill

The bill broadens the application of s. 782.07(2), F.S., by replacing the terms "elderly person" and "disabled adult" with the term "vulnerable adult," and defining this term in accordance with ch. 825, F.S.

#### Effect of the Bill - Conforming Changes

The bill makes numerous conforming changes to replace the terms "elderly person" and "disabled adult" with the term "vulnerable adult." These include:

- Amending s. 435.04, F.S., to specify that a Level 2 background screening must ensure that persons subject to such screenings have not been arrested for or convicted of a violation of ss. 825.102, 825.1025, and 825.103, F.S., relating to vulnerable adults;
- Amending s. 775.084, F.S., to include persons with specified prior convictions, including aggravated abuse of a vulnerable adult, in the definition of a "violent career criminal;"
- Amending s. 775.0844, F.S., to specify that it is a first degree felony for a person to commit an aggravated white collar crime if, in doing so, he or she victimizes 10 or more vulnerable adults and thereby obtains or attempts to obtain \$50,000 or more;
- Amending s. 775.0877, F.S., to require the court to order persons convicted vulnerable person abuse or aggravated vulnerable person abuse (s. 825.102(1) and (2), F.S.) to undergo HIV testing;
- Amending s. 921.0022, F.S., to conform terminology in the offense severity ranking chart;
- Amending s. 948.06, F.S., to include "lewd or lascivious offenses upon or in the presence of a vulnerable person" in the definition of "qualifying offense" for purposes of determining who is a violent offender of special concern;
- Amends s. 960.003, F.S., to allow vulnerable adults who are the victim of a specified sexual offense to request the court to order hepatitis and HIV testing; and

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<sup>55</sup> Section 90.804(1), F.S., specifies that "unavailability as a witness" means that the declarant:

- Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;
- Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;
- Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial;
- Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or
- Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.

<sup>56</sup> See *Jones v. State*, 678 So.2d 309, 314 (Fla. 1996).



- Amending s. 1012.315, F.S., to disqualify a person from employment as certain educational positions if the person has been convicted of any offense in ch. 825, F.S., relating to vulnerable adults.

## B. SECTION DIRECTORY:

- Section 1:** Amends s. 812.0145, F.S., relating to theft from persons 65 years of age or older; reclassification of offenses.
- Section 2:** Renames ch. 825, F.S., to "Abuse, Neglect, and Exploitation of Vulnerable Adults."
- Section 3:** Amends s. 825.101, F.S., relating to definitions.
- Section 4:** Amends s. 825.102, F.S., relating to abuse, aggravated abuse, and neglect of an elderly person or disabled adult; penalties.
- Section 5:** Amends s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.
- Section 6:** Amends s. 825.103, F.S., relating to exploitation of an elderly person or disabled adult; penalties.
- Section 7:** Amends s. 825.105, F.S., relating to good faith assistance.
- Section 8:** Amends s. 825.106, F.S., relating to criminal actions involving elderly persons or disabled adults; speedy trial.
- Section 9:** Amends s. 90.803, F.S., relating to hearsay exceptions; availability of declarant immaterial.
- Section 10:** Amends s. 435.04, F.S., relating to level 2 screening standards.
- Section 11:** Amends s. 775.084, F.S., relating to violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.
- Section 12:** Amends s. 775.0844, F.S., relating to White Collar Crime Victim Protection Act.
- Section 13:** Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.
- Section 14:** Amends s. 782.07, F.S., relating to manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- Section 15:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 16:** Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.
- Section 17:** Amends s. 960.003, F.S., relating to hepatitis and HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.
- Section 18:** Amends s. 1012.315, F.S., relating to disqualification from employment.
- Section 19:** Provides an effective date of October 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

On February 27, 2013, the Criminal Justice Impact Conference determined that the bill, as originally filed, will have an insignificant prison bed impact on the Department of Corrections. The amendment adopted by the Healthy Families Subcommittee will likely not affect this determination..

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

DCF has sufficient rule-making authority to implement the provisions of the bill.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 13, 2013, the Healthy Families Subcommittee adopted a strike-all amendment to the bill. The strike-all amendment made the following changes to the bill:

- Removed all proposed revisions to chapter 415, F.S., relating to adult protective services, which eliminated the fiscal impact.
- Renames chapter 825, F.S., to "Abuse, Neglect, and Exploitation of Vulnerable Adults."
- Deletes the definitions of "deception" and "intimidation" from s. 825.101, F.S., and adds the definition of "impaired" to the same section.
- Clarifies the definition of "vulnerable adult" in s. 825.101, F.S.
- Deletes, from the definition of "exploitation of a vulnerable adult", the requirement an individual use deception or intimidation to prove exploitation.
- Changes the title of s. 90.803(24), F.S., to read "HEARSAY EXCEPTION; STATEMENT OF VULNERABLE ADULT."

- Allows a court, for purposes of determining admissibility of an out-of-court statement of a vulnerable adult under the hearsay exception, to determine that the vulnerable adult is unavailable because he or she is impaired, as defined in s. 825.101, F.S.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.

CS/HB 253

2013

1                                A bill to be entitled  
2            An act relating to protection of vulnerable adults;  
3            amending s. 812.0145, F.S.; reducing the minimum  
4            amount of a theft from a person 65 years of age or  
5            older that constitutes a felony of the third degree;  
6            providing criminal penalties; renaming ch. 825, F.S.,  
7            as "Abuse, Neglect, and Exploitation of Vulnerable  
8            Adults"; amending s. 825.101, F.S.; revising  
9            definitions; defining the terms "impaired" and  
10           "vulnerable adult"; amending s. 825.102, F.S.;  
11           revising terminology to prohibit specified offenses  
12           against a vulnerable adult; amending s. 825.1025,  
13           F.S.; revising terminology to prohibit specified lewd  
14           and lascivious offenses committed upon or in the  
15           presence of a vulnerable adult; conforming provisions  
16           to changes made by the act; amending s. 825.103, F.S.;  
17           revising terminology to prohibit specified offenses  
18           involving exploitation of a vulnerable adult;  
19           eliminating deception or intimidation as an element of  
20           committing exploitation of a vulnerable adult;  
21           conforming provisions to changes made by the act;  
22           amending s. 825.105, F.S.; revising terminology to  
23           provide legislative intent relating to good faith  
24           assistance to a vulnerable adult; amending s. 825.106,  
25           F.S.; revising terminology concerning speedy trial of  
26           specified offenses; amending s. 90.803, F.S.;  
27           conforming provisions to changes made by the act;  
28           revising findings necessary to determine that a person

29 is unavailable as a witness; amending ss. 435.04,  
 30 775.084, 775.0844, 775.0877, 782.07, 921.0022, 948.06,  
 31 960.003, and 1012.315, F.S.; conforming provisions to  
 32 changes made by the act; providing an effective date.  
 33

34 Be It Enacted by the Legislature of the State of Florida:  
 35

36 Section 1. Paragraph (c) of subsection (2) of section  
 37 812.0145, Florida Statutes, is amended to read:

38 812.0145 Theft from persons 65 years of age or older;  
 39 reclassification of offenses.—

40 (2) Whenever a person is charged with committing theft  
 41 from a person 65 years of age or older, when he or she knows or  
 42 has reason to believe that the victim was 65 years of age or  
 43 older, the offense for which the person is charged shall be  
 44 reclassified as follows:

45 (c) If the funds, assets, or property involved in the  
 46 theft from a person 65 years of age or older is valued at ~~\$300~~  
 47 ~~or more, but~~ less than \$10,000, the offender commits a felony of  
 48 the third degree, punishable as provided in s. 775.082, s.  
 49 775.083, or s. 775.084.

50 Section 2. Chapter 825, Florida Statutes, entitled "Abuse,  
 51 Neglect, and Exploitation of Elderly Persons and Disabled  
 52 Adults," is renamed "Abuse, Neglect, and Exploitation of  
 53 Vulnerable Adults."

54 Section 3. Section 825.101, Florida Statutes, is amended  
 55 to read:

56 825.101 Definitions.—As used in this chapter:

57 (1) "Business relationship" means a relationship between  
 58 two or more individuals or entities where there exists an oral  
 59 or written contract or agreement for goods or services.

60 (2) "Caregiver" means a person who has been entrusted with  
 61 or has assumed responsibility for the care or the property of a  
 62 vulnerable ~~an elderly person or disabled~~ adult. "Caregiver"  
 63 includes, but is not limited to, relatives, court-appointed or  
 64 voluntary guardians, adult household members, neighbors, health  
 65 care providers, and employees and volunteers of facilities as  
 66 defined in subsection (4) ~~(7)~~.

67 ~~(3) "Deception" means:~~

68 ~~(a) Misrepresenting or concealing a material fact relating~~  
 69 ~~to:~~

70 ~~1. Services rendered, disposition of property, or use of~~  
 71 ~~property, when such services or property are intended to benefit~~  
 72 ~~an elderly person or disabled adult;~~

73 ~~2. Terms of a contract or agreement entered into with an~~  
 74 ~~elderly person or disabled adult; or~~

75 ~~3. An existing or preexisting condition of any property~~  
 76 ~~involved in a contract or agreement entered into with an elderly~~  
 77 ~~person or disabled adult; or~~

78 ~~(b) Using any misrepresentation, false pretense, or false~~  
 79 ~~promise in order to induce, encourage, or solicit an elderly~~  
 80 ~~person or disabled adult to enter into a contract or agreement.~~

81 ~~(4) "Disabled adult" means a person 18 years of age or~~  
 82 ~~older who suffers from a condition of physical or mental~~  
 83 ~~incapacitation due to a developmental disability, organic brain~~  
 84 ~~damage, or mental illness, or who has one or more physical or~~

85 ~~mental limitations that restrict the person's ability to perform~~  
 86 ~~the normal activities of daily living.~~

87 ~~(5) "Elderly person" means a person 60 years of age or~~  
 88 ~~elder who is suffering from the infirmities of aging as~~  
 89 ~~manifested by advanced age or organic brain damage, or other~~  
 90 ~~physical, mental, or emotional dysfunctioning, to the extent~~  
 91 ~~that the ability of the person to provide adequately for the~~  
 92 ~~person's own care or protection is impaired.~~

93 ~~(3)(6)~~ "Endeavor" means to attempt or try.

94 ~~(4)(7)~~ "Facility" means any location providing day or  
 95 residential care or treatment for vulnerable elderly persons or  
 96 ~~disabled~~ adults. The term "facility" may include, but is not  
 97 limited to, any hospital, training center, state institution,  
 98 nursing home, assisted living facility, adult family-care home,  
 99 adult day care center, group home, mental health treatment  
 100 center, or continuing care community.

101 ~~(5)~~ "Impaired" means having any loss or abnormality of a  
 102 psychological, physiological, or anatomical structure or  
 103 function due to a mental, emotional, sensory, long-term  
 104 physical, or developmental disability or dysfunction; brain  
 105 damage; or the infirmities of aging that results in a vulnerable  
 106 adult's decreased ability to perform mental tasks and physical  
 107 activities of daily living as defined in s. 415.102.

108 ~~(8) "Intimidation" means the communication by word or act~~  
 109 ~~to an elderly person or disabled adult that the elderly person~~  
 110 ~~or disabled adult will be deprived of food, nutrition, clothing,~~  
 111 ~~shelter, supervision, medicine, medical services, money, or~~  
 112 ~~financial support or will suffer physical violence.~~

113 ~~(9) "Lacks capacity to consent" means an impairment by~~  
 114 ~~reason of mental illness, developmental disability, organic~~  
 115 ~~brain disorder, physical illness or disability, chronic use of~~  
 116 ~~drugs, chronic intoxication, short-term memory loss, or other~~  
 117 ~~cause, that causes an elderly person or disabled adult to lack~~  
 118 ~~sufficient understanding or capacity to make or communicate~~  
 119 ~~reasonable decisions concerning the elderly person's or disabled~~  
 120 ~~adult's person or property.~~

121 (6)~~(10)~~ "Obtains or uses" means any manner of:

- 122 (a) Taking or exercising control over property; or
- 123 (b) Making any use, disposition, or transfer of property.

124 (7)~~(11)~~ "Position of trust and confidence" with respect to  
 125 a vulnerable ~~an elderly person or a disabled~~ adult means the  
 126 position of a person who:

127 (a) Is a parent, spouse, adult child, or other relative by  
 128 blood or marriage of the vulnerable ~~elderly person or disabled~~  
 129 ~~adult;~~

130 (b) Is a joint tenant or tenant in common with the  
 131 vulnerable ~~elderly person or disabled~~ adult;

132 (c) Has a legal or fiduciary relationship with the  
 133 vulnerable ~~elderly person or disabled~~ adult, including, but not  
 134 limited to, a court-appointed or voluntary guardian, trustee,  
 135 attorney, or conservator;

136 (d) Is a caregiver of the vulnerable ~~elderly person or~~  
 137 ~~disabled~~ adult; or

138 (e) Is any other person who has been entrusted with or has  
 139 assumed responsibility for the use or management of the  
 140 vulnerable ~~elderly person's or disabled~~ adult's funds, assets,



141 or property.

142 (8)~~(12)~~ "Property" means anything of value and includes:

143 (a) Real property, including things growing on, affixed  
144 to, and found in land.

145 (b) Tangible or intangible personal property, including  
146 rights, privileges, interests, and claims.

147 (c) Services.

148 (9)~~(13)~~ "Services" means anything of value resulting from  
149 a person's physical or mental labor or skill, or from the use,  
150 possession, or presence of property, and includes:

151 (a) Repairs or improvements to property.

152 (b) Professional services.

153 (c) Private, public, or governmental communication,  
154 transportation, power, water, or sanitation services.

155 (d) Lodging accommodations.

156 (e) Admissions to places of exhibition or entertainment.

157 (10)~~(14)~~ "Value" means value determined according to any  
158 of the following:

159 (a)1. The market value of the property at the time and  
160 place of the offense or, if the market value cannot be  
161 satisfactorily ascertained, the cost of replacing the property  
162 within a reasonable time after the offense.

163 2. In the case of a written instrument such as a check,  
164 draft, or promissory note, which does not have a readily  
165 ascertainable market value, the value is the amount due or  
166 collectible. The value of any other instrument that creates,  
167 releases, discharges, or otherwise affects any valuable legal  
168 right, privilege, or obligation is the greatest amount of

169 economic loss that the owner of the instrument might reasonably  
 170 suffer by the loss of the instrument.

171 3. The value of a trade secret that does not have a  
 172 readily ascertainable market value is any reasonable value  
 173 representing the damage to the owner suffered by reason of  
 174 losing advantage over those who do not know of or use the trade  
 175 secret.

176 (b) If the value of the property cannot be ascertained,  
 177 the trier of fact may find the value to be not less than a  
 178 certain amount; if no such minimum value can be ascertained, the  
 179 value is an amount less than \$100.

180 (c) Amounts of value of separate properties involved in  
 181 exploitation committed pursuant to one scheme or course of  
 182 conduct, whether the exploitation involves the same person or  
 183 several persons, may be aggregated in determining the degree of  
 184 the offense.

185 (11) "Vulnerable adult" means a person 18 years of age or  
 186 older whose ability to perform the normal activities of daily  
 187 living as defined in s. 415.102 or to provide for his or her own  
 188 care or protection is impaired.

189 Section 4. Section 825.102, Florida Statutes, is amended  
 190 to read:

191 825.102 Abuse, aggravated abuse, and neglect of a  
 192 vulnerable ~~an elderly person or disabled~~ adult; penalties.-

193 (1) "Abuse of a vulnerable ~~an elderly person or disabled~~  
 194 adult" means:

195 (a) Intentional infliction of physical or psychological  
 196 injury upon a vulnerable ~~an elderly person or disabled~~ adult;

197 (b) An intentional act that could reasonably be expected  
 198 to result in physical or psychological injury to a vulnerable ~~an~~  
 199 ~~elderly person or disabled~~ adult; or

200 (c) Active encouragement of any person to commit an act  
 201 that results or could reasonably be expected to result in  
 202 physical or psychological injury to a vulnerable ~~an elderly~~  
 203 ~~person or disabled~~ adult.

204

205 A person who knowingly or willfully abuses a vulnerable ~~an~~  
 206 ~~elderly person or disabled~~ adult without causing great bodily  
 207 harm, permanent disability, or permanent disfigurement to the  
 208 vulnerable elderly person or disabled adult commits a felony of  
 209 the third degree, punishable as provided in s. 775.082, s.  
 210 775.083, or s. 775.084.

211 (2) "Aggravated abuse of a vulnerable ~~an elderly person or~~  
 212 ~~disabled~~ adult" occurs when a person:

213 (a) Commits aggravated battery on a vulnerable ~~an elderly~~  
 214 ~~person or disabled~~ adult;

215 (b) Willfully tortures, maliciously punishes, or willfully  
 216 and unlawfully cages a vulnerable, ~~an elderly person or disabled~~  
 217 ~~adult~~; or

218 (c) Knowingly or willfully abuses a vulnerable ~~an elderly~~  
 219 ~~person or disabled~~ adult and in so doing causes great bodily  
 220 harm, permanent disability, or permanent disfigurement to the  
 221 vulnerable elderly person or disabled adult.

222

223 A person who commits aggravated abuse of a vulnerable ~~an elderly~~  
 224 ~~person or disabled~~ adult commits a felony of the first degree,

225 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

226 (3) (a) "Neglect of a vulnerable ~~an elderly person or~~  
 227 ~~disabled~~ adult" means:

228 1. A caregiver's failure or omission to provide a  
 229 vulnerable ~~an elderly person or disabled~~ adult with the care,  
 230 supervision, and services necessary to maintain the vulnerable  
 231 ~~elderly person's or disabled~~ adult's physical and mental health,  
 232 including, but not limited to, food, nutrition, clothing,  
 233 shelter, supervision, medicine, and medical services that a  
 234 prudent person would consider essential for the well-being of  
 235 the vulnerable ~~elderly person or disabled~~ adult; or

236 2. A caregiver's failure to make a reasonable effort to  
 237 protect a vulnerable ~~an elderly person or disabled~~ adult from  
 238 abuse, neglect, or exploitation by another person.

239  
 240 Neglect of a vulnerable ~~an elderly person or disabled~~ adult may  
 241 be based on repeated conduct or on a single incident or omission  
 242 that results in, or could reasonably be expected to result in,  
 243 serious physical or psychological injury, or a substantial risk  
 244 of death, to a vulnerable ~~an elderly person or disabled~~ adult.

245 (b) A person who willfully or by culpable negligence  
 246 neglects a vulnerable ~~an elderly person or disabled~~ adult and in  
 247 so doing causes great bodily harm, permanent disability, or  
 248 permanent disfigurement to the vulnerable ~~elderly person or~~  
 249 ~~disabled~~ adult commits a felony of the second degree, punishable  
 250 as provided in s. 775.082, s. 775.083, or s. 775.084.

251 (c) A person who willfully or by culpable negligence  
 252 neglects a vulnerable ~~an elderly person or disabled~~ adult

253 without causing great bodily harm, permanent disability, or  
 254 permanent disfigurement to the vulnerable elderly person or  
 255 ~~disabled~~ adult commits a felony of the third degree, punishable  
 256 as provided in s. 775.082, s. 775.083, or s. 775.084.

257 Section 5. Section 825.1025, Florida Statutes, is amended  
 258 to read:

259 825.1025 Lewd or lascivious offenses committed upon or in  
 260 the presence of a vulnerable adult ~~an elderly person or disabled~~  
 261 ~~person.~~-

262 (1) As used in this section, "sexual activity" means the  
 263 oral, anal, or vaginal penetration by, or union with, the sexual  
 264 organ of another or the anal or vaginal penetration of another  
 265 by any other object; however, sexual activity does not include  
 266 an act done for a bona fide medical purpose.

267 (2)(a) "Lewd or lascivious battery upon a vulnerable adult  
 268 ~~an elderly person or disabled person~~" occurs when a person  
 269 encourages, forces, or entices a vulnerable adult ~~an elderly~~  
 270 ~~person or disabled person~~ to engage in sadomasochistic abuse,  
 271 sexual bestiality, prostitution, or any other act involving  
 272 sexual activity, when the person knows or reasonably should know  
 273 that the vulnerable adult's ability ~~elderly person or disabled~~  
 274 ~~person either lacks the capacity to consent is impaired or the~~  
 275 vulnerable adult fails to give consent.

276 (b) A person who commits lewd or lascivious battery upon a  
 277 vulnerable adult ~~an elderly person or disabled person~~ commits a  
 278 felony of the second degree, punishable as provided in s.  
 279 775.082, s. 775.083, or s. 775.084.

280 (3)(a) "Lewd or lascivious molestation of a vulnerable

281 adult ~~an elderly person or disabled person~~" occurs when a person  
 282 intentionally touches in a lewd or lascivious manner the  
 283 breasts, genitals, genital area, or buttocks, or the clothing  
 284 covering them, of a vulnerable adult ~~an elderly person or~~  
 285 ~~disabled person~~ when the person knows or reasonably should know  
 286 that the vulnerable adult's ability ~~elderly person or disabled~~  
 287 ~~person either lacks the capacity to consent~~ is impaired or the  
 288 vulnerable adult fails to give consent.

289 (b) A person who commits lewd or lascivious molestation of  
 290 a vulnerable adult ~~an elderly person or disabled person~~ commits  
 291 a felony of the third degree, punishable as provided in s.  
 292 775.082, s. 775.083, or s. 775.084.

293 (4)(a) "Lewd or lascivious exhibition in the presence of a  
 294 vulnerable adult ~~an elderly person or disabled person~~" occurs  
 295 when a person, in the presence of a vulnerable adult ~~an elderly~~  
 296 ~~person or disabled person~~:

- 297 1. Intentionally masturbates;
- 298 2. Intentionally exposes his or her genitals in a lewd or  
 299 lascivious manner; or
- 300 3. Intentionally commits any other lewd or lascivious act  
 301 that does not involve actual physical or sexual contact with the  
 302 vulnerable adult ~~elderly person or disabled person~~, including,  
 303 but not limited to, sadomasochistic abuse, sexual bestiality, or  
 304 the simulation of any act involving sexual activity;

305  
 306 when the person knows or reasonably should know that the  
 307 vulnerable adult's ability ~~elderly person or disabled person~~  
 308 ~~either lacks the capacity to consent or fails to give consent to~~

309 having such act committed in his or her presence is impaired or  
 310 the vulnerable adult fails to give consent.

311 (b) A person who commits a lewd or lascivious exhibition  
 312 in the presence of a vulnerable adult ~~an elderly person or~~  
 313 ~~disabled person~~ commits a felony of the third degree, punishable  
 314 as provided in s. 775.082, s. 775.083, or s. 775.084.

315 Section 6. Section 825.103, Florida Statutes, is amended  
 316 to read:

317 825.103 Exploitation of a vulnerable ~~an elderly person or~~  
 318 ~~disabled~~ adult; penalties.—

319 (1) "Exploitation of a vulnerable ~~an elderly person or~~  
 320 ~~disabled~~ adult" means:

321 (a) Knowingly, ~~by deception or intimidation,~~ obtaining or  
 322 using, or endeavoring to obtain or use, the vulnerable ~~an~~  
 323 ~~elderly person's or disabled~~ adult's funds, assets, or property  
 324 with the intent to temporarily or permanently deprive the  
 325 vulnerable ~~elderly person or disabled~~ adult of the use, benefit,  
 326 or possession of the funds, assets, or property, or to benefit  
 327 someone other than the vulnerable ~~elderly person or disabled~~  
 328 adult, by a person who:

329 1. Stands in a position of trust and confidence with the  
 330 vulnerable ~~elderly person or disabled~~ adult; or

331 2. Has a business relationship with the vulnerable ~~elderly~~  
 332 ~~person or disabled~~ adult;

333 (b) Obtaining or using, endeavoring to obtain or use, or  
 334 conspiring with another to obtain or use a vulnerable ~~an elderly~~  
 335 ~~person's or disabled~~ adult's funds, assets, or property with the  
 336 intent to temporarily or permanently deprive the vulnerable

337 ~~elderly person or disabled~~ adult of the use, benefit, or  
 338 possession of the funds, assets, or property, or to benefit  
 339 someone other than the vulnerable ~~elderly person or disabled~~  
 340 adult, by a person who knows or reasonably should know that the  
 341 vulnerable adult's ability ~~elderly person or disabled adult~~  
 342 ~~lacks the capacity~~ to consent is impaired; or

343 (c) Breach of a fiduciary duty to a vulnerable ~~an elderly~~  
 344 ~~person or disabled~~ adult by his or her ~~the person's~~ guardian or  
 345 agent under a power of attorney which results in an unauthorized  
 346 appropriation, sale, or transfer of property.

347 (2)(a) If the funds, assets, or property involved in the  
 348 exploitation of the vulnerable ~~elderly person or disabled~~ adult  
 349 is valued at \$100,000 or more, the offender commits a felony of  
 350 the first degree, punishable as provided in s. 775.082, s.  
 351 775.083, or s. 775.084.

352 (b) If the funds, assets, or property involved in the  
 353 exploitation of the vulnerable ~~elderly person or disabled~~ adult  
 354 is valued at \$20,000 or more, but less than \$100,000, the  
 355 offender commits a felony of the second degree, punishable as  
 356 provided in s. 775.082, s. 775.083, or s. 775.084.

357 (c) If the funds, assets, or property involved in the  
 358 exploitation of a vulnerable ~~an elderly person or disabled~~ adult  
 359 is valued at less than \$20,000, the offender commits a felony of  
 360 the third degree, punishable as provided in s. 775.082, s.  
 361 775.083, or s. 775.084.

362 Section 7. Section 825.105, Florida Statutes, is amended  
 363 to read:

364 825.105 Good faith assistance.—This chapter is not



365 intended to impose criminal liability on a person who makes a  
 366 good faith effort to assist a vulnerable ~~an elderly person or~~  
 367 ~~disabled~~ adult in the management of the funds, assets, or  
 368 property of the vulnerable ~~elderly person or disabled~~ adult,  
 369 which effort fails through no fault of the person.

370 Section 8. Section 825.106, Florida Statutes, is amended  
 371 to read:

372 825.106 Criminal actions involving vulnerable ~~elderly~~  
 373 ~~persons or disabled~~ adults; speedy trial.—In a criminal action  
 374 in which a vulnerable ~~an elderly person or disabled~~ adult is a  
 375 victim, the state may move the court to advance the trial on the  
 376 docket. The presiding judge, after consideration of the age and  
 377 health of the victim, may advance the trial on the docket. The  
 378 motion may be filed and served with the information or charges  
 379 or at any time thereafter.

380 Section 9. Subsection (24) of section 90.803, Florida  
 381 Statutes, is amended to read:

382 90.803 Hearsay exceptions; availability of declarant  
 383 immaterial.—The provision of s. 90.802 to the contrary  
 384 notwithstanding, the following are not inadmissible as evidence,  
 385 even though the declarant is available as a witness:

386 (24) HEARSAY EXCEPTION; STATEMENT OF VULNERABLE ~~ELDERLY~~  
 387 ~~PERSON OR DISABLED~~ ADULT.—

388 (a) Unless the source of information or the method or  
 389 circumstances by which the statement is reported indicates a  
 390 lack of trustworthiness, an out-of-court statement made by a  
 391 vulnerable ~~an elderly person or disabled~~ adult, as defined in s.  
 392 825.101, describing any act of abuse or neglect, any act of

393 exploitation, the offense of battery or aggravated battery or  
 394 assault or aggravated assault or sexual battery, or any other  
 395 violent act on the declarant vulnerable ~~elderly person or~~  
 396 ~~disabled~~ adult, not otherwise admissible, is admissible in  
 397 evidence in any civil or criminal proceeding if:

398 1. The court finds in a hearing conducted outside the  
 399 presence of the jury that the time, content, and circumstances  
 400 of the statement provide sufficient safeguards of reliability.  
 401 In making its determination, the court may consider the mental  
 402 and physical age and maturity of the vulnerable ~~elderly person~~  
 403 ~~or disabled~~ adult, the nature and duration of the abuse or  
 404 offense, the relationship of the victim to the offender, the  
 405 reliability of the assertion, the reliability of the vulnerable  
 406 ~~elderly person or disabled~~ adult, and any other factor deemed  
 407 appropriate; and

408 2. The vulnerable ~~elderly person or disabled~~ adult either:

409 a. Testifies; or

410 b. Is unavailable as a witness, provided that there is  
 411 corroborative evidence of the abuse or offense. Unavailability  
 412 shall include a finding by the court that the vulnerable adult  
 413 is impaired, as defined in s. 825.101, or the vulnerable elderly  
 414 ~~person's or disabled~~ adult's participation in the trial or  
 415 proceeding would result in a substantial likelihood of severe  
 416 emotional, mental, or physical harm, in addition to findings  
 417 pursuant to s. 90.804(1).

418 (b) In a criminal action, the defendant shall be notified  
 419 no later than 10 days before the trial that a statement which  
 420 qualifies as a hearsay exception pursuant to this subsection

421 will be offered as evidence at trial. The notice shall include a  
 422 written statement of the content of the vulnerable elderly  
 423 ~~person's or disabled~~ adult's statement, the time at which the  
 424 statement was made, the circumstances surrounding the statement  
 425 which indicate its reliability, and such other particulars as  
 426 necessary to provide full disclosure of the statement.

427 (c) The court shall make specific findings of fact, on the  
 428 record, as to the basis for its ruling under this subsection.

429 Section 10. Paragraphs (dd), (ee), and (ff) of subsection  
 430 (2) of section 435.04, Florida Statutes, are amended to read:

431 435.04 Level 2 screening standards.-

432 (2) The security background investigations under this  
 433 section must ensure that no persons subject to the provisions of  
 434 this section have been arrested for and are awaiting final  
 435 disposition of, have been found guilty of, regardless of  
 436 adjudication, or entered a plea of nolo contendere or guilty to,  
 437 or have been adjudicated delinquent and the record has not been  
 438 sealed or expunged for, any offense prohibited under any of the  
 439 following provisions of state law or similar law of another  
 440 jurisdiction:

441 (dd) Section 825.102, relating to abuse, aggravated abuse,  
 442 or neglect of a vulnerable ~~an elderly person or disabled~~ adult.

443 (ee) Section 825.1025, relating to lewd or lascivious  
 444 offenses committed upon or in the presence of a vulnerable ~~an~~  
 445 ~~elderly person or disabled~~ adult.

446 (ff) Section 825.103, relating to exploitation of a  
 447 vulnerable ~~an elderly person or disabled~~ adult, if the offense  
 448 was a felony.

449 Section 11. Paragraph (d) of subsection (1) of section  
 450 775.084, Florida Statutes, is amended to read:

451 775.084 Violent career criminals; habitual felony  
 452 offenders and habitual violent felony offenders; three-time  
 453 violent felony offenders; definitions; procedure; enhanced  
 454 penalties or mandatory minimum prison terms.-

455 (1) As used in this act:

456 (d) "Violent career criminal" means a defendant for whom  
 457 the court must impose imprisonment pursuant to paragraph (4)(d),  
 458 if it finds that:

459 1. The defendant has previously been convicted as an adult  
 460 three or more times for an offense in this state or other  
 461 qualified offense that is:

- 462 a. Any forcible felony, as described in s. 776.08;
- 463 b. Aggravated stalking, as described in s. 784.048(3) and  
 464 (4);
- 465 c. Aggravated child abuse, as described in s.  
 466 827.03(2)(a);
- 467 d. Aggravated abuse of a vulnerable ~~an elderly person or~~  
 468 ~~disabled~~ adult, as described in s. 825.102(2);
- 469 e. Lewd or lascivious battery, lewd or lascivious  
 470 molestation, lewd or lascivious conduct, or lewd or lascivious  
 471 exhibition, as described in s. 800.04 or s. 847.0135(5);
- 472 f. Escape, as described in s. 944.40; or
- 473 g. A felony violation of chapter 790 involving the use or  
 474 possession of a firearm.

475 2. The defendant has been incarcerated in a state prison  
 476 or a federal prison.

477 3. The primary felony offense for which the defendant is  
 478 to be sentenced is a felony enumerated in subparagraph 1. and  
 479 was committed on or after October 1, 1995, and:

480 a. While the defendant was serving a prison sentence or  
 481 other sentence, or court-ordered or lawfully imposed supervision  
 482 that is imposed as a result of a prior conviction for an  
 483 enumerated felony; or

484 b. Within 5 years after the conviction of the last prior  
 485 enumerated felony, or within 5 years after the defendant's  
 486 release from a prison sentence, probation, community control,  
 487 control release, conditional release, parole, or court-ordered  
 488 or lawfully imposed supervision or other sentence that is  
 489 imposed as a result of a prior conviction for an enumerated  
 490 felony, whichever is later.

491 4. The defendant has not received a pardon for any felony  
 492 or other qualified offense that is necessary for the operation  
 493 of this paragraph.

494 5. A conviction of a felony or other qualified offense  
 495 necessary to the operation of this paragraph has not been set  
 496 aside in any postconviction proceeding.

497 Section 12. Paragraph (a) of subsection (5) of section  
 498 775.0844, Florida Statutes, is amended to read:

499 775.0844 White Collar Crime Victim Protection Act.—

500 (5) Any person who commits an aggravated white collar  
 501 crime as defined in this section and in so doing either:

502 (a) Victimized 10 or more vulnerable adults ~~elderly~~  
 503 ~~persons~~, as defined in s. 825.101(5);

504

505 and thereby obtains or attempts to obtain \$50,000 or more,  
 506 commits a felony of the first degree, punishable as provided in  
 507 s. 775.082, s. 775.083, or s. 775.084.

508 Section 13. Paragraphs (j) and (k) of subsection (1) of  
 509 section 775.0877, Florida Statutes, are amended to read:

510 775.0877 Criminal transmission of HIV; procedures;  
 511 penalties.—

512 (1) In any case in which a person has been convicted of or  
 513 has pled nolo contendere or guilty to, regardless of whether  
 514 adjudication is withheld, any of the following offenses, or the  
 515 attempt thereof, which offense or attempted offense involves the  
 516 transmission of body fluids from one person to another:

517 (j) Section 825.102(1), relating to abuse of a vulnerable  
 518 ~~an elderly person or disabled~~ adult;

519 (k) Section 825.102(2), relating to aggravated abuse of a  
 520 vulnerable ~~an elderly person or disabled~~ adult;

521  
 522 the court shall order the offender to undergo HIV testing, to be  
 523 performed under the direction of the Department of Health in  
 524 accordance with s. 381.004, unless the offender has undergone  
 525 HIV testing voluntarily or pursuant to procedures established in  
 526 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or  
 527 rule providing for HIV testing of criminal offenders or inmates,  
 528 subsequent to her or his arrest for an offense enumerated in  
 529 paragraphs (a)-(n) for which she or he was convicted or to which  
 530 she or he pled nolo contendere or guilty. The results of an HIV  
 531 test performed on an offender pursuant to this subsection are  
 532 not admissible in any criminal proceeding arising out of the

533 | alleged offense.

534 | Section 14. Subsection (2) of section 782.07, Florida  
 535 | Statutes, is amended to read:

536 | 782.07 Manslaughter; aggravated manslaughter of a  
 537 | vulnerable ~~an elderly person or disabled~~ adult; aggravated  
 538 | manslaughter of a child; aggravated manslaughter of an officer,  
 539 | a firefighter, an emergency medical technician, or a paramedic.—

540 | (2) A person who causes the death of a vulnerable ~~any~~  
 541 | ~~elderly person or disabled~~ adult by culpable negligence under s.  
 542 | 825.102(3) commits aggravated manslaughter of a vulnerable ~~an~~  
 543 | ~~elderly person or disabled~~ adult, a felony of the first degree,  
 544 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

545 | Section 15. Paragraphs (c), (e), (f), (g), and (h) of  
 546 | subsection (3) of section 921.0022, Florida Statutes, are  
 547 | amended to read:

548 | 921.0022 Criminal Punishment Code; offense severity  
 549 | ranking chart.—

550 | (3) OFFENSE SEVERITY RANKING CHART

551 | (c) LEVEL 3

552 |

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

553 |

554 |

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555	(3) (b) - (d)		confidential crash reports.
556	316.193(2) (b)	3rd	Felony DUI, 3rd conviction.
557	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
558	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
559	319.33(1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
560	319.33(1) (c)	3rd	Procure or pass title on stolen vehicle.
561	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
562	327.35(2) (b)	3rd	Felony BUI.
	328.05(2)	3rd	Possess, sell, or counterfeit



			fictitious, stolen, or fraudulent titles or bills of sale of vessels.
563	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
564	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
565	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.
566	379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
567	400.9935(4)	3rd	Operating a clinic without a

			license or filing false license application or other required information.
568	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
569	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
570	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
571	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
572	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
573	697.08	3rd	Equity skimming.
574	790.15(3)	3rd	Person directs another to

			discharge firearm from a vehicle.
575	796.05 (1)	3rd	Live on earnings of a prostitute.
576	806.10 (1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
577	806.10 (2)	3rd	Interferes with or assaults firefighter in performance of duty.
578	810.09 (2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
579	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
580	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; <u>\$1</u> <del>\$300</del> or more but less than \$10,000.
581	815.04 (4) (b)	2nd	Computer offense devised to defraud or obtain property.

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582	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
583	817.233	3rd	Burning to defraud insurer.
584	817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
585	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
586	817.236	3rd	Filing a false motor vehicle insurance application.
587	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
588	817.413(2)	3rd	Sale of used goods as new.
589	817.505(4)	3rd	Patient brokering.
590	828.12(2)	3rd	Tortures any animal with intent

			to inflict intense pain, serious physical injury, or death.
591	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
592	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
593	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
594	843.19	3rd	Injure, disable, or kill police dog or horse.
595	860.15(3)	3rd	Overcharging for repairs and parts.
596	870.01(2)	3rd	Riot; inciting or encouraging.
597	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1.,

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			(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).
598	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.
599	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
600	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
601	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

602

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

603

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

604

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

605

893.13(8)(a)1. 3rd Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.

606

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.
607	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
608	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.
609	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
610	944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
611	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
612	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment



facility).

613

614 (e) LEVEL 5

615

Florida Statute	Felony Degree	Description
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616

316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
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617

316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
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618

322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
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619

327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
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620

379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
------------	-----	--

621

379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap
------------------	-----	--

			contents or trap gear by another harvester.
622	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
623	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
624	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
625	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
626	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
627	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
628	790.01(2)	3rd	Carrying a concealed firearm.

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629

790.162 2nd Threat to throw or discharge  
destructive device.

630

790.163(1) 2nd False report of deadly  
explosive or weapon of mass  
destruction.

631

790.221(1) 2nd Possession of short-barreled  
shotgun or machine gun.

632

790.23 2nd Felons in possession of  
firearms, ammunition, or  
electronic weapons or devices.

633

800.04(6)(c) 3rd Lewd or lascivious conduct;  
offender less than 18 years.

634

800.04(7)(b) 2nd Lewd or lascivious exhibition;  
offender 18 years or older.

635

806.111(1) 3rd Possess, manufacture, or  
dispense fire bomb with intent  
to damage any structure or  
property.

636

812.0145(2)(b) 2nd Theft from person 65 years of  
age or older; \$10,000 or more

			but less than \$50,000.
637	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
638	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
639	812.131(2)(b)	3rd	Robbery by sudden snatching.
640	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
641	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
642	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
643	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
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	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.
645	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
646	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of <u>a vulnerable</u> <del>an elderly person or disabled</del> adult.
647	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
648	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion

			picture, etc., which includes sexual conduct by a child.
649	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.
650	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
651	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
652	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
653	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
654	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

655

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).

656

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.

657

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.

658

893.13(1)(e)2.            2nd    Sell, manufacture, or deliver

			cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
659	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.
660	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).
661	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
662			



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663	(f) LEVEL 6		
664			
	Florida Statute	Felony Degree	Description
665	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
666	499.0051(3)	2nd	Knowing forgery of pedigree papers.
667	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
668	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
669	775.0875(1)	3rd	Taking firearm from law enforcement officer.
670	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
671	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
672			

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673	784.041	3rd	Felony battery; domestic battery by strangulation.
674	784.048(3)	3rd	Aggravated stalking; credible threat.
675	784.048(5)	3rd	Aggravated stalking of person under 16.
676	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
677	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
678	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
679	784.081(2)	2nd	Aggravated assault on specified official or employee.
680	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
	784.083(2)	2nd	Aggravated assault on code inspector.

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681	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
682	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
683	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
684	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
685	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
686	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
687	794.05(1)	2nd	Unlawful sexual activity with specified minor.

688	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
689	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
690	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
691	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
692	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
693	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
694	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.

695	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
696	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
697	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
698	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
699	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
700	825.102(1)	3rd	Abuse of <u>a vulnerable</u> <del>an elderly person or disabled</del> adult.
701	825.102(3)(c)	3rd	Neglect of <u>a vulnerable</u> <del>an elderly person or disabled</del> adult.
702	825.1025(3)	3rd	Lewd or lascivious molestation

			of <u>a vulnerable</u> <del>an elderly</del> <del>person or disabled</del> adult.
703	825.103(2)(c)	3rd	Exploiting <u>a vulnerable</u> <del>an</del> <del>elderly person or disabled</del> adult and property is valued at less than \$20,000.
704	827.03(2)(c)	3rd	Abuse of a child.
705	827.03(2)(d)	3rd	Neglect of a child.
706	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
707	836.05	2nd	Threats; extortion.
708	836.10	2nd	Written threats to kill or do bodily injury.
709	843.12	3rd	Aids or assists person to escape.
710	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

711	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
712	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
713	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
714	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
715	944.40	2nd	Escapes.
716	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
717	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

718	951.22 (1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
719			
720	(g) LEVEL 7		
721			
	Florida	Felony	
	Statute	Degree	Description
722			
	316.027 (1) (b)	1st	Accident involving death, failure to stop; leaving scene.
723			
	316.193 (3) (c) 2.	3rd	DUI resulting in serious bodily injury.
724			
	316.1935 (3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
725			
	327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.
726			



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727	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
728	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
729	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
730	456.065(2)	3rd	Practicing a health care profession without a license.
731	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
732	458.327(1)	3rd	Practicing medicine without a license.
733	459.013(1)	3rd	Practicing osteopathic medicine without a license.
	460.411(1)	3rd	Practicing chiropractic

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			medicine without a license.
734	461.012(1)	3rd	Practicing podiatric medicine without a license.
735	462.17	3rd	Practicing naturopathy without a license.
736	463.015(1)	3rd	Practicing optometry without a license.
737	464.016(1)	3rd	Practicing nursing without a license.
738	465.015(2)	3rd	Practicing pharmacy without a license.
739	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
740	467.201	3rd	Practicing midwifery without a license.
741	468.366	3rd	Delivering respiratory care services without a license.
742	483.828(1)	3rd	Practicing as clinical laboratory personnel without a

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			license.
743	483.901(9)	3rd	Practicing medical physics without a license.
744	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
745	484.053	3rd	Dispensing hearing aids without a license.
746	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
747	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
748	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

749	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
750	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
751	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
752	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
753	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
754	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable

			negligence of another (manslaughter).
755	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
756	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
757	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
758	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
759	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
760	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
761	784.048(7)	3rd	Aggravated stalking; violation

			of court order.
762	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
763	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
764	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
765	784.081(1)	1st	Aggravated battery on specified official or employee.
766	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
767	784.083(1)	1st	Aggravated battery on code inspector.
768	787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
769	787.06(3)(e)	1st	Human trafficking using coercion for labor and services

			by the transfer or transport of any individual from outside Florida to within the state.
770	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
771	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
772	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
773	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
774	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
775	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting

			to commit a felony.
776	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
777	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
778	796.03	2nd	Procuring any person under 16 years for prostitution.
779	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
780	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
781	806.01(2)	2nd	Maliciously damage structure by fire or explosive.



782

810.02(3)(a) 2nd Burglary of occupied dwelling;  
unarmed; no assault or battery.

783

810.02(3)(b) 2nd Burglary of unoccupied  
dwelling; unarmed; no assault  
or battery.

784

810.02(3)(d) 2nd Burglary of occupied  
conveyance; unarmed; no assault  
or battery.

785

810.02(3)(e) 2nd Burglary of authorized  
emergency vehicle.

786

812.014(2)(a)1. 1st Property stolen, valued at  
\$100,000 or more or a  
semitrailer deployed by a law  
enforcement officer; property  
stolen while causing other  
property damage; 1st degree  
grand theft.

787

812.014(2)(b)2. 2nd Property stolen, cargo valued  
at less than \$50,000, grand  
theft in 2nd degree.

788

812.014(2)(b)3. 2nd Property stolen, emergency

			medical equipment; 2nd degree grand theft.
789	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
790	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
791	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
792	812.131(2)(a)	2nd	Robbery by sudden snatching.
793	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
794	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
795	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
796			

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797	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
798	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
799	825.102(3)(b)	2nd	Neglecting <u>a vulnerable</u> <del>an elderly person or disabled</del> adult causing great bodily harm, disability, or disfigurement.
800	825.103(2)(b)	2nd	Exploiting <u>a vulnerable</u> <del>an elderly person or disabled</del> adult and property is valued at \$20,000 or more, but less than \$100,000.
801	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
	827.04(3)	3rd	Impregnation of a child under

			16 years of age by person 21 years of age or older.
802	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
803	838.015	2nd	Bribery.
804	838.016	2nd	Unlawful compensation or reward for official behavior.
805	838.021(3)(a)	2nd	Unlawful harm to a public servant.
806	838.22	2nd	Bid tampering.
807	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
808	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
809	872.06	2nd	Abuse of a dead human body.
810	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs,

811	893.13(1)(c)1.	1st	<p>manages, or supervises criminal gang-related activity.</p> <p>Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p>
812	893.13(1)(e)1.	1st	<p>Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.</p>
813	893.13(4)(a)	1st	<p>Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).</p>

814

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

815

893.135(1)(b)1.a. 1st Trafficking in cocaine, more than 28 grams, less than 200 grams.

816

893.135(1)(c)1.a. 1st Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

817

893.135(1)(d)1. 1st Trafficking in phencyclidine, more than 28 grams, less than 200 grams.

818

893.135(1)(e)1. 1st Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.

819

893.135(1)(f)1. 1st Trafficking in amphetamine, more than 14 grams, less than 28 grams.

820

893.135(1)(g)1.a. 1st Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

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821

893.135 1st Trafficking in gamma-  
 (1) (h) 1.a. hydroxybutyric acid (GHB), 1  
 kilogram or more, less than 5  
 kilograms.

822

893.135 1st Trafficking in 1,4-Butanediol,  
 (1) (j) 1.a. 1 kilogram or more, less than 5  
 kilograms.

823

893.135 1st Trafficking in Phenethylamines,  
 (1) (k) 2.a. 10 grams or more, less than 200  
 grams.

824

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

825

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

826

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

827

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828	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
829	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
830	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
831	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
832	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
833	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.



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834	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
835	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
836	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
837	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
838	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
839	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

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840	(h) LEVEL 8		
841	Florida Statute	Felony Degree	Description
842	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
843	316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
844	327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
845	499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
846	499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
847	560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
848	560.125 (5) (b)	2nd	Money transmitter business by

			unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
849	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
850	777.03(2)(a)	1st	Accessory after the fact, capital felony.
851	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
852	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).

853

782.071(1)(b) 1st Committing vehicular homicide and failing to render aid or give information.

854

782.072(2) 1st Committing vessel homicide and failing to render aid or give information.

855

787.06(3)(b) 1st Human trafficking using coercion for commercial sexual activity.

856

787.06(3)(c) 1st Human trafficking using coercion for labor and services of an unauthorized alien.

857

787.06(3)(f) 1st Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the state.

858

790.161(3) 1st Discharging a destructive device which results in bodily harm or property damage.

859

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860	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
861	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
862	800.04(4)	2nd	Lewd or lascivious battery.
863	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
864	810.02(2)(a)	1st, PBL	Burglary with assault or battery.
865	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
866	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
	812.014(2)(a)2.	1st	Property stolen; cargo valued

			at \$50,000 or more, grand theft in 1st degree.
867	812.13(2)(b)	1st	Robbery with a weapon.
868	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
869	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
870	825.102(2)	1st	Aggravated abuse of <u>a</u> <del>vulnerable an elderly person or</del> <del>disabled</del> adult.
871	825.1025(2)	2nd	Lewd or lascivious battery upon <u>a vulnerable</u> <del>an elderly person</del> <del>or disabled</del> adult.
872	825.103(2)(a)	1st	Exploiting <u>a vulnerable</u> <del>an</del> <del>elderly person or disabled</del> adult and property is valued at \$100,000 or more.
873	837.02(2)	2nd	Perjury in official proceedings

874			relating to prosecution of a capital felony.
875	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
876	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
877	860.16	1st	Aircraft piracy.
878	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
879	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
880	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

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881	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
882	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
883	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
884	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
885	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
886	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
887	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.



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888	893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
889	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
890	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
891	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
892	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
893	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
	895.03(3)	1st	Conduct or participate in any

enterprise through pattern of racketeering activity.

894

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

895

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

896

897 Section 16. Paragraph (c) of subsection (8) of section  
898 948.06, Florida Statutes, is amended to read:

899 948.06 Violation of probation or community control;  
900 revocation; modification; continuance; failure to pay  
901 restitution or cost of supervision.-

902 (8)

903 (c) For purposes of this section, the term "qualifying  
904 offense" means any of the following:

905 1. Kidnapping or attempted kidnapping under s. 787.01,  
906 false imprisonment of a child under the age of 13 under s.  
907 787.02(3), or luring or enticing a child under s. 787.025(2) (b)  
908 or (c).

909 2. Murder or attempted murder under s. 782.04, attempted

910 felony murder under s. 782.051, or manslaughter under s. 782.07.

911 3. Aggravated battery or attempted aggravated battery  
912 under s. 784.045.

913 4. Sexual battery or attempted sexual battery under s.  
914 794.011(2), (3), (4), or (8)(b) or (c).

915 5. Lewd or lascivious battery or attempted lewd or  
916 lascivious battery under s. 800.04(4), lewd or lascivious  
917 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious  
918 conduct under s. 800.04(6)(b), lewd or lascivious exhibition  
919 under s. 800.04(7)(b), or lewd or lascivious exhibition on  
920 computer under s. 847.0135(5)(b).

921 6. Robbery or attempted robbery under s. 812.13,  
922 carjacking or attempted carjacking under s. 812.133, or home  
923 invasion robbery or attempted home invasion robbery under s.  
924 812.135.

925 7. Lewd or lascivious offense upon or in the presence of a  
926 vulnerable adult ~~an elderly or disabled person~~ or attempted lewd  
927 or lascivious offense upon or in the presence of a vulnerable  
928 adult ~~an elderly or disabled person~~ under s. 825.1025.

929 8. Sexual performance by a child or attempted sexual  
930 performance by a child under s. 827.071.

931 9. Computer pornography under s. 847.0135(2) or (3),  
932 transmission of child pornography under s. 847.0137, or selling  
933 or buying of minors under s. 847.0145.

934 10. Poisoning food or water under s. 859.01.

935 11. Abuse of a dead human body under s. 872.06.

936 12. Any burglary offense or attempted burglary offense  
937 that is either a first degree felony or second degree felony

- 938 under s. 810.02(2) or (3).
- 939 13. Arson or attempted arson under s. 806.01(1).
- 940 14. Aggravated assault under s. 784.021.
- 941 15. Aggravated stalking under s. 784.048(3), (4), (5), or
- 942 (7).
- 943 16. Aircraft piracy under s. 860.16.
- 944 17. Unlawful throwing, placing, or discharging of a
- 945 destructive device or bomb under s. 790.161(2), (3), or (4).
- 946 18. Treason under s. 876.32.
- 947 19. Any offense committed in another jurisdiction which
- 948 would be an offense listed in this paragraph if that offense had
- 949 been committed in this state.

950 Section 17. Paragraph (b) of subsection (2) of section

951 960.003, Florida Statutes, is amended to read:

952 960.003 Hepatitis and HIV testing for persons charged with

953 or alleged by petition for delinquency to have committed certain

954 offenses; disclosure of results to victims.-

955 (2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION

956 FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.-

957 (b) However, when a victim of any sexual offense

958 enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at

959 the time the offense was committed or when a victim of any

960 sexual offense enumerated in s. 775.0877(1)(a)-(n) or s.

961 825.1025 is a vulnerable ~~disabled~~ adult ~~or elderly person~~ as

962 defined in s. 825.101 ~~825.1025~~ regardless of whether the offense

963 involves the transmission of bodily fluids from one person to

964 another, then upon the request of the victim or the victim's

965 legal guardian, or of the parent or legal guardian, the court

966 shall order such person to undergo hepatitis and HIV testing  
 967 within 48 hours after the information, indictment, or petition  
 968 for delinquency is filed. In the event the victim or, if the  
 969 victim is a minor, the victim's parent or legal guardian  
 970 requests hepatitis and HIV testing after 48 hours have elapsed  
 971 from the filing of the indictment, information, or petition for  
 972 delinquency, the testing shall be done within 48 hours after the  
 973 request. The testing shall be performed under the direction of  
 974 the Department of Health in accordance with s. 381.004. The  
 975 results of a hepatitis and HIV test performed on a defendant or  
 976 juvenile offender pursuant to this subsection is ~~shall not be~~  
 977 admissible in any criminal or juvenile proceeding arising out of  
 978 the alleged offense.

979 Section 18. Paragraphs (gg), (hh), and (ii) of subsection  
 980 (1) of section 1012.315, Florida Statutes, are amended to read:

981 1012.315 Disqualification from employment.—A person is  
 982 ineligible for educator certification, and instructional  
 983 personnel and school administrators, as defined in s. 1012.01,  
 984 are ineligible for employment in any position that requires  
 985 direct contact with students in a district school system,  
 986 charter school, or private school that accepts scholarship  
 987 students under s. 1002.39 or s. 1002.395, if the person,  
 988 instructional personnel, or school administrator has been  
 989 convicted of:

990 (1) Any felony offense prohibited under any of the  
 991 following statutes:

992 (gg) Section 825.102, relating to abuse, aggravated abuse,  
 993 or neglect of a vulnerable ~~an elderly person or disabled~~ adult.

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994 (hh) Section 825.103, relating to exploitation of a  
995 vulnerable ~~an elderly person or disabled~~ adult.  
996 (ii) Section 825.1025, relating to lewd or lascivious  
997 offenses committed upon or in the presence of a vulnerable adult  
998 ~~an elderly person or disabled person~~.  
999 Section 19. This act shall take effect October 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 253 (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: Criminal Justice  
2 Subcommittee  
3 Representative Passidomo offered the following:  
4

5 **Amendment**

6 Remove lines 46-47 and insert:  
7 theft from a person 65 years of age or older is valued at \$150  
8 ~~\$300~~ or more, but less than \$10,000, the offender commits a  
9 felony of  
10

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 253 (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: Criminal Justice  
2 Subcommittee  
3 Representative Passidomo offered the following:

**Amendment**

Remove line 580 and insert:



812.0145(2)(c) 3rd Theft from person 65 years of  
age or older; \$150 ~~\$300~~ or more  
but less than \$10,000.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 317 Mental Health Treatment  
**SPONSOR(S):** Healthy Families Subcommittee; Schwartz and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1420

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	10 Y, 0 N, As CS	Entress	Schoolfield
2) Criminal Justice Subcommittee		Cox 	Cunningham 
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

The bill makes changes to ch. 916, F.S., Mentally Deficient and Mentally Ill Defendants, and section 985.19, F.S., Incompetency in Juvenile Delinquency Cases as follows:

- An admitting physician for a state forensic or civil facility may continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client. This authority is limited to the time period required to obtain a court order for the medication.
- The bill establishes a 30 day time frame for a competency hearing after the court receives notification that the defendant no longer meets criteria for continued commitment.
- The bill establishes standards for the evaluation of competency and the mental condition of juveniles, under s. 985.19, F.S.
- The bill reduces the number of years, from five to three, that an individual charged with a nonviolent crime and declared incompetent to proceed, must wait until the charges against that individual are dismissed under s. 916.145, F.S.

Department of Children and Families and the Agency for Persons with Disabilities report that the bill does not have a fiscal impact on their agencies.

The bill provides an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Adult Competency and Competency Evaluations – Generally**

The Department of Children and Families (DCF) serves individuals who have been committed to DCF, pursuant to ch. 916, F.S., due to having been adjudicated incompetent to proceed at trial due to mental illness or because they have been found not guilty by reason of insanity. DCF currently provides competency restoration training and mental health services in four state forensic facilities (two state operated and two operated under contract with a private provider), with a total of 1,108 beds.<sup>1</sup> In FY 2011-12, DCF reported serving 2,531 individuals as a result of a chapter 916, F.S., commitment.<sup>2</sup>

##### **Competency Hearings**

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed, or who has been found not guilty by reason of insanity. If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.<sup>3</sup>

The statutes are silent as to a time frame in which the court must hold a hearing to determine continued competency or the continued need for involuntary commitment. However, the Florida Rules of Criminal Procedure require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates that a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.<sup>4</sup>

##### *Effect of the Bill*

The bill amends ss. 916.13 and 916.15, F.S., to require a competency hearing to be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. This requirement is consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure and should help ensure timely processing by the courts for persons who have completed competency training regimens in state facilities.

##### **Psychotherapeutic Medication Treatment**

Current law requires that forensic clients must give express and informed consent to treatment. If they refuse and the situation is deemed an emergency that puts the client's safety at risk, then treatment may be given for 48 hours. If the person still refuses to give consent, then a court order must be sought for continuation of the treatment. In non-emergency situations, the treatment may not be given (without consent) and a court order must be sought for continued treatment.<sup>5</sup> DCF reports that in the non-emergency situations, the abrupt halt of medications to the individual can place them at risk for significant harm to their health and safety.<sup>6</sup>

##### *Effect of the Bill*

The bill requires jail physicians to provide a current psychotherapeutic medication order at the time of an inmate's transfer to a forensic or civil facility. The bill authorizes an admitting physician at a state

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<sup>1</sup> DCF Analysis of HB 317 dated February 1, 2013. On file with Healthy Families Subcommittee staff.

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

<sup>3</sup> S. 916.13(2), F.S.; S. 916.15(3), F.S.

<sup>4</sup> Rules 3.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

<sup>5</sup> S. 916.107(3), F.S.

<sup>6</sup> DCF Analysis of HB 317 dated February 1, 2013. On file with Healthy Families Subcommittee staff.

forensic or civil facility to order the continued administration of psychotherapeutic medications previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client during the time a court order to medicate is pursued. This authority is for non-emergency situations<sup>7</sup> and is limited to the time period required to obtain a court order for the medication. This provision would apply to all forensic clients since it appears in the general provisions of ch. 916, F.S. Therefore, forensic clients who are either mentally ill, or have autism or mental retardation as a diagnosis would be subject to this provision when admitted to facilities operated by DCF or the APD.

The bill specifies that the administrator or designee of the civil or forensic facility must petition the committing court or the circuit court serving the county where the facility is located within 5 days after the inmate's admission, excluding weekends and legal holidays, for an order authorizing the continued treatment.<sup>8</sup> Court ordered medication of an individual has been the subject of judicial review.<sup>9</sup>

### **Dismissal of Charges Based on Continued Incompetency**

Currently, Florida Statute requires all charges against any defendant adjudicated incompetent to proceed due to mental illness be dropped if the defendant remains incompetent to proceed after five years of the initial determination. However, the charges will not be dropped if the court specifies in its order reasons for believing that the defendant will become competent to proceed in the foreseeable future and specifies a timeframe in which the defendant is expected to become competent to proceed.<sup>10</sup> According to the Department of Children and Families, forensic data from the last thirteen fiscal years shows that 99.6% of individuals restored to competency were restored in three years or less.<sup>11</sup>

### *Effect of the Bill*

The bill amends s. 916.145, F.S., to require that charges be dismissed for an individual who is incompetent to proceed after 3 years, rather than the current 5 year requirement, unless the court in its order specifies its reason for believing that the defendant will become competent to proceed in the foreseeable future and specifies a timeframe in which the defendant is expected to become competent to proceed. However, the bill maintains the 5 year requirement if the individual who is incompetent to proceed is charged with allegations related to a violent crime against a person.

### **Juvenile Competency and Competency Evaluations**

Chapter 985, F.S., relating to juvenile justice, provides DCF, the Agency for Persons with Disabilities (APD), and the Department of Juvenile Justice (DJJ) with delegated authority and legislative guidance as to delinquency and competency issues for juveniles. If the court has reason to believe that a child named in a petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.<sup>12</sup> The evaluation of the juvenile's mental health must specifically state the basis for determinations of juvenile incompetency.<sup>13</sup> DCF is directed by statute to provide competency training for juveniles who have been found incompetent to proceed to trial as a result of mental illness, mental retardation or autism.<sup>14</sup> In FY 2011-12, DCF reported that it served 405 children who were adjudicated incompetent to proceed.<sup>15</sup>

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<sup>7</sup> Emergency treatment is already addressed in s. 916.107(3)(a)1., F.S.

<sup>8</sup> The administrator or designee has the authority to choose which court is petition or the order authorizing continued treatment.

<sup>9</sup> See *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006)(Noting that statutory provisions governing authorization of nonconsensual treatment with psychotropic medications violated the patient's state constitutional guarantees of liberty and privacy and in the absence of emergency, could not authorize the state to administer such medication, unless this was in the best interests of the patient and that no less intrusive treatment was available.) Currently, Florida law provides that a forensic client may, in the existence of an immediate danger to the safety of themselves or others, be given medication for no more than 48 hours. S. 916.107(3)(a)1., F.S.

<sup>10</sup> S. 916.145, F.S.

<sup>11</sup> DCF Analysis of HB 317 dated February 1, 2013. On file with Healthy Families Subcommittee staff.

<sup>12</sup> S. 985.19(1), F.S.

<sup>13</sup> S. 985.19(1)(b), F.S.

<sup>14</sup> S. 985.19(4), F.S.

<sup>15</sup> DCF Analysis of HB 317 dated February 1, 2013. On file with Healthy Families Subcommittee staff.

In the juvenile system, the court appoints 2-3 mental health experts to conduct competency evaluations.<sup>16</sup> For incompetency evaluations related to mental illness, DCF must provide the court a list of experts who have completed DCF-approved training.<sup>17</sup> A child is deemed competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings.<sup>18</sup>

#### *Effect of the Bill*

The bill establishes criteria that a forensic evaluator must use when reporting to the court as to whether a child is competent to proceed. The bill keeps the standard that a child is competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings, but changes the finding which must be included in the report. The expert's competency evaluation report must specifically state the basis for the determination of the child's mental condition and include written findings which:

- Identify the specific matters referred for evaluation;
- Identify the sources of information used by the expert;
- Describe the procedures, techniques, and diagnostic tests used in the examination to determine the basis of the child's mental condition;
- Address the child's capacity to:
  - Appreciate the charges or allegations against the child.
  - Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable.
  - Understand the adversarial nature of the legal process.
  - Disclose to counsel facts pertinent to the proceedings at issue.
  - Display appropriate courtroom behavior.
  - Testify relevantly.
- Present the factual basis for the expert's clinical findings and opinions of the child's mental condition, with a separate section of "summary of the findings" including:
  - The date and length of time of the face-to-face diagnostic clinical interview;
  - A statement that identifies the mental health disorder, including the DSM name and associated diagnostic code;
  - A statement of how the child would benefit from competency restoration in the community or in a secure residential treatment facility;
  - An assessment of probable treatment length, and whether the juvenile will attain competence in the future; and
  - A description of recommended mental health treatment and education; and
- Report the mental disorder that forms the basis of the finding that the child is incompetent to proceed.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 916.107, F.S., relating to rights of forensic clients.

**Section 2:** Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

**Section 3:** Amends s. 916.145, F.S., relating to dismissal of charges.

**Section 4:** Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

**Section 5:** Amends s. 985.19, F.S., relating to incompetency in juvenile cases.

**Section 6:** Provides for an effective date.

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<sup>16</sup> S. 985.19(1)(b), F.S.

<sup>17</sup> S. 985.19(1)(d), F.S.

<sup>18</sup> S. 985.19(1)(f), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

Department of Children and Families and the Agency for Persons with Disabilities report that the bill will not have a fiscal impact on their agencies.<sup>19</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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

#### 2. Other:

Statutes which purport to create or modify a procedural rule of court, rather than substantive rule of court, are constitutionally infirm.<sup>20</sup> This principle is grounded in Art. V, Section 2(a) of the Florida Constitution, which requires the Florida Supreme Court to adopt rules for the practice and procedure in all courts. Furthermore, Art. II, Section 3, of the Florida Constitution, the separation of powers provision, provides that powers constitutionally bestowed upon the courts may not be exercised by the Legislature.

The bill amends ss. 916.13 and 916.15, F.S., to require a competency hearing to be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. This provision could be challenged on grounds that it violates the separation of powers provision of the state constitution by dealing with procedural matters that are the province of the court.

<sup>19</sup> DCF Analysis of HB 317 dated February 1, 2013. On file with Healthy Families Subcommittee staff; APD Analysis of HB 317 dated February 8, 2013. On file with Criminal Justice Subcommittee.

<sup>20</sup> *State v. Raymond*, 906 So.2d 1045 (Fla. 2005) citing *Markert v. Johnston*, 367 So.2d 1003 (Fla.1978) and *Military Park Fire Control Tax Dist. No. 4 v. DeMarois*, 407 So.2d 1020 (Fla. 4th DCA 1981).

**B. RULE-MAKING AUTHORITY:**

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

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 13, 2013, the Healthy Families Subcommittee adopted a strike-all amendment and an amendment to the strike-all amendment for House Bill 317.

The amendments made the following changes to the bill:

- Retained the provision to allow an admitting physician for a state forensic or civil facility continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client. This authority is limited to the time period required to obtain a court order for the medication.
- Retained the provision to establish a 30 day time frame for a competency hearing after the court receives notification that the defendant no longer meets criteria for continued commitment.
- Retained the provision to establish standards for the evaluation of competency and the mental condition of juveniles.
- Added a provision to reduce the number of years that an individual charged with a nonviolent crime and declared incompetent to proceed must wait until the charges against that individual are dismissed.
- Deleted the provision which would require court appointed mental health experts who conduct competency evaluations in both adult and juvenile settings to complete training once every five years in order to conduct evaluations for the court and remain on the forensic evaluator registry.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.

1                                   A bill to be entitled  
 2       An act relating to mental health treatment; amending  
 3       s. 916.107, F.S.; authorizing forensic and civil  
 4       facilities to order the continuation of  
 5       psychotherapeutics for individuals receiving such  
 6       medications in the jail before admission; amending s.  
 7       916.13, F.S.; providing timeframes within which  
 8       competency hearings must be held; amending s. 916.145,  
 9       F.S.; revising the time for dismissal of certain  
 10      charges for defendants that remain incompetent to  
 11      proceed to trial; amending s. 916.15, F.S.; providing  
 12      a timeframe within which commitment hearings must be  
 13      held; amending s. 985.19, F.S.; standardizing the  
 14      protocols, procedures, diagnostic criteria, and  
 15      information and findings that must be included in an  
 16      expert's competency evaluation report; providing an  
 17      effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:

20  
 21       Section 1. Paragraph (a) of subsection (3) of section  
 22       916.107, Florida Statutes, is amended to read:

23       916.107 Rights of forensic clients.—

24       (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

25       (a) A forensic client shall be asked to give express and  
 26       informed written consent for treatment. If a client refuses such  
 27       treatment as is deemed necessary and essential by the client's  
 28       multidisciplinary treatment team for the appropriate care of the



29 | client, such treatment may be provided under the following  
 30 | circumstances:

31 |       1. In an emergency situation in which there is immediate  
 32 | danger to the safety of the client or others, such treatment may  
 33 | be provided upon the written order of a physician for a period  
 34 | not to exceed 48 hours, excluding weekends and legal holidays.  
 35 | If, after the 48-hour period, the client has not given express  
 36 | and informed consent to the treatment initially refused, the  
 37 | administrator or designee of the civil or forensic facility  
 38 | shall, within 48 hours, excluding weekends and legal holidays,  
 39 | petition the committing court or the circuit court serving the  
 40 | county in which the facility is located, at the option of the  
 41 | facility administrator or designee, for an order authorizing the  
 42 | continued treatment of the client. In the interim, the need for  
 43 | treatment shall be reviewed every 48 hours and may be continued  
 44 | without the consent of the client upon the continued written  
 45 | order of a physician who has determined that the emergency  
 46 | situation continues to present a danger to the safety of the  
 47 | client or others.

48 |       2. In a situation other than an emergency situation, the  
 49 | administrator or designee of the facility shall petition the  
 50 | court for an order authorizing necessary and essential treatment  
 51 | for the client.

52 |       a. If the client has been receiving psychotherapeutic  
 53 | medications at the jail at the time of transfer to the forensic  
 54 | or civil facility and lacks the capacity to make an informed  
 55 | decision regarding mental health treatment at the time of  
 56 | admission, the admitting physician may order continued

57 administration of psychotherapeutic medications if, in the  
 58 clinical judgment of the physician, abrupt cessation of  
 59 psychotherapeutic medications could pose a risk to the health or  
 60 safety of the client during the time a court order to medicate  
 61 is pursued. The administrator or designee of the civil or  
 62 forensic facility shall, within 5 days after admission,  
 63 excluding weekends and legal holidays, petition the committing  
 64 court or the circuit court serving the county in which the  
 65 facility is located, at the option of the facility administrator  
 66 or designee, for an order authorizing the continued treatment of  
 67 a client. The jail physician shall provide a current  
 68 psychotherapeutic medication order at the time of transfer to  
 69 the forensic or civil facility or upon request of the admitting  
 70 physician after the client is evaluated.

71 b. The court order shall allow such treatment for up to a  
 72 period not to exceed 90 days after following the date of the  
 73 entry of the order. Unless the court is notified in writing that  
 74 the client has provided express and informed consent in writing  
 75 or that the client has been discharged by the committing court,  
 76 the administrator or designee shall, before ~~prior to~~ the  
 77 expiration of the initial 90-day order, petition the court for  
 78 an order authorizing the continuation of treatment for another  
 79 90 days ~~90-day period~~. This procedure shall be repeated until  
 80 the client provides consent or is discharged by the committing  
 81 court.

82 3. At the hearing on the issue of whether the court should  
 83 enter an order authorizing treatment for which a client was  
 84 unable to or refused to give express and informed consent, the

85 | court shall determine by clear and convincing evidence that the  
 86 | client has mental illness, retardation, or autism, that the  
 87 | treatment not consented to is essential to the care of the  
 88 | client, and that the treatment not consented to is not  
 89 | experimental and does not present an unreasonable risk of  
 90 | serious, hazardous, or irreversible side effects. In arriving at  
 91 | the substitute judgment decision, the court must consider at  
 92 | least the following factors:

- 93 |       a. The client's expressed preference regarding treatment;
- 94 |       b. The probability of adverse side effects;
- 95 |       c. The prognosis without treatment; and
- 96 |       d. The prognosis with treatment.

97 |  
 98 | The hearing shall be as convenient to the client as may be  
 99 | consistent with orderly procedure and shall be conducted in  
 100 | physical settings not likely to be injurious to the client's  
 101 | condition. The court may appoint a general or special magistrate  
 102 | to preside at the hearing. The client or the client's guardian,  
 103 | and the representative, shall be provided with a copy of the  
 104 | petition and the date, time, and location of the hearing. The  
 105 | client has the right to have an attorney represent him or her at  
 106 | the hearing, and, if the client is indigent, the court shall  
 107 | appoint the office of the public defender to represent the  
 108 | client at the hearing. The client may testify or not, as he or  
 109 | she chooses, and has the right to cross-examine witnesses and  
 110 | may present his or her own witnesses.

111 |       Section 2. Subsection (2) of section 916.13, Florida  
 112 | Statutes, is amended to read:

113 916.13 Involuntary commitment of defendant adjudicated  
 114 incompetent.-

115 (2) A defendant who has been charged with a felony and who  
 116 has been adjudicated incompetent to proceed due to mental  
 117 illness, and who meets the criteria for involuntary commitment  
 118 ~~to the department under the provisions of this chapter,~~ may be  
 119 committed to the department, and the department shall retain and  
 120 treat the defendant.

121 (a) Within ~~No later than~~ 6 months after the date of  
 122 admission and at the end of any period of extended commitment,  
 123 or at any time the administrator or designee has ~~shall have~~  
 124 determined that the defendant has regained competency to proceed  
 125 or no longer meets the criteria for continued commitment, the  
 126 administrator or designee shall file a report with the court  
 127 pursuant to the applicable Florida Rules of Criminal Procedure.

128 (b) A competency hearing must be held within 30 days after  
 129 the court receives notification that the defendant is competent  
 130 to proceed or no longer meets the criteria for continued  
 131 commitment.

132 Section 3. Section 916.145, Florida Statutes, is amended  
 133 to read:

134 916.145 Dismissal of charges.-The charges against any  
 135 defendant adjudicated incompetent to proceed due to the  
 136 defendant's mental illness shall be dismissed without prejudice  
 137 to the state if the defendant remains incompetent to proceed 3 ~~5~~  
 138 years after such determination or 5 years after such  
 139 determination if a charge related to commitment includes an  
 140 allegation of a violent crime against a person, unless the court

141 in its order specifies its reasons for believing that the  
 142 defendant will become competent to proceed within the  
 143 foreseeable future and specifies the time within which the  
 144 defendant is expected to become competent to proceed. The  
 145 charges against the defendant are dismissed without prejudice to  
 146 the state to refile the charges should the defendant be declared  
 147 competent to proceed in the future.

148 Section 4. Subsection (5) is added to section 916.15,  
 149 Florida Statutes, to read:

150 916.15 Involuntary commitment of defendant adjudicated not  
 151 guilty by reason of insanity.—

152 (5) The commitment hearing must be held within 30 days  
 153 after the court receives notification that the defendant no  
 154 longer meets the criteria for continued commitment.

155 Section 5. Subsection (1) of section 985.19, Florida  
 156 Statutes, is amended to read:

157 985.19 Incompetency in juvenile delinquency cases.—

158 (1) If, at any time prior to or during a delinquency case,  
 159 the court has reason to believe that the child named in the  
 160 petition may be incompetent to proceed with the hearing, the  
 161 court on its own motion may, or on the motion of the child's  
 162 attorney or state attorney must, stay all proceedings and order  
 163 an evaluation of the child's mental condition.

164 (a) Any motion questioning the child's competency to  
 165 proceed must be served upon the child's attorney, the state  
 166 attorney, the attorneys representing the Department of Juvenile  
 167 Justice, and the attorneys representing the Department of  
 168 Children and Families ~~Family Services~~. Thereafter, any motion,

169 notice of hearing, order, or other legal pleading relating to  
 170 the child's competency to proceed with the hearing must be  
 171 served upon the child's attorney, the state attorney, the  
 172 attorneys representing the Department of Juvenile Justice, and  
 173 the attorneys representing the Department of Children and  
 174 Families ~~Family Services~~.

175 (b) All determinations of competency must ~~shall~~ be made at  
 176 a hearing, with findings of fact based on an evaluation of the  
 177 child's mental condition made by at least ~~not less than~~ two but  
 178 not ~~nor~~ more than three experts appointed by the court. ~~The~~  
 179 ~~basis for the determination of incompetency must be specifically~~  
 180 ~~stated in the evaluation. In addition, a recommendation as to~~  
 181 ~~whether residential or nonresidential treatment or training is~~  
 182 ~~required must be included in the evaluation.~~ Experts appointed  
 183 by the court to determine the mental condition of a child shall  
 184 be allowed reasonable fees for services rendered. State  
 185 employees may be paid expenses pursuant to s. 112.061. The fees  
 186 shall be taxed as costs in the case.

187 (c) A child is competent to proceed if the child has  
 188 sufficient present ability to consult with counsel with a  
 189 reasonable degree of rational understanding and the child has a  
 190 rational and factual understanding of the present proceedings.  
 191 The expert's competency evaluation report must specifically  
 192 state the basis for the determination of the child's mental  
 193 condition and must include written findings that:

- 194 1. Identify the specific matters referred for evaluation.
- 195 2. Identify the sources of information used by the expert.
- 196 3. Describe the procedures, techniques, and diagnostic

197 tests used in the examination to determine the basis of the  
 198 child's mental condition.

199 4. Address the child's capacity to:

200 a. Appreciate the charges or allegations against the  
 201 child.

202 b. Appreciate the range and nature of possible penalties  
 203 that may be imposed in the proceedings against the child, if  
 204 applicable.

205 c. Understand the adversarial nature of the legal process.

206 d. Disclose to counsel facts pertinent to the proceedings  
 207 at issue.

208 e. Display appropriate courtroom behavior.

209 f. Testify relevantly.

210 5. Present the factual basis for the expert's clinical

211 findings and opinions of the child's mental condition. The

212 expert's factual basis of his or her clinical findings and

213 opinions must be supported by the diagnostic criteria found in

214 the most recent edition of the Diagnostic and Statistical Manual

215 of Mental Disorders (DSM) published by the American Psychiatric

216 Association and must be presented in a separate section of the

217 report entitled "summary of findings." This section must

218 include:

219 a. The day, month, year, and length of time of the face-  
 220 to-face diagnostic clinical interview to determine the child's  
 221 mental condition.

222 b. A statement that identifies the DSM clinical name and  
 223 associated diagnostic code for the specific mental disorder that  
 224 forms the basis of the child's incompetency.

225 c. A statement of how the child would benefit from  
 226 competency restoration services in the community or in a secure  
 227 residential treatment facility.

228 d. An assessment of the probable duration of the treatment  
 229 to restore competence and the probability that the child will  
 230 attain competence to proceed in the foreseeable future.

231 e. A description of recommended treatment or education  
 232 appropriate for the mental disorder.

233 6. If the evaluator determines the child to be incompetent  
 234 to proceed to trial, the evaluator must report on the mental  
 235 disorder that forms the basis of the incompetency.

236 (d)-(e) All court orders determining incompetency must  
 237 include specific written findings by the court as to the nature  
 238 of the incompetency and whether the child requires secure or  
 239 nonsecure treatment or training environment ~~environments~~.

240 (e)-(d) For competency ~~incompetency~~ evaluations related to  
 241 mental illness, the Department of Children and Families ~~Family~~  
 242 ~~Services~~ shall maintain and annually provide the courts with a  
 243 list of available mental health professionals who have completed  
 244 a training program approved by the Department of Children and  
 245 Families ~~Family Services~~ to perform the evaluations.

246 (f)-(e) For competency ~~incompetency~~ evaluations related to  
 247 mental retardation or autism, the court shall order the Agency  
 248 for Persons with Disabilities to examine the child to determine  
 249 if the child meets the definition of "retardation" or "autism"  
 250 in s. 393.063 and, provide a clinical opinion as to if so,  
 251 whether the child is competent to proceed with delinquency  
 252 proceedings.



253 ~~(f) A child is competent to proceed if the child has~~  
 254 ~~sufficient present ability to consult with counsel with a~~  
 255 ~~reasonable degree of rational understanding and the child has a~~  
 256 ~~rational and factual understanding of the present proceedings.~~

257 ~~The report must address the child's capacity to:~~

258 ~~1. Appreciate the charges or allegations against the~~  
 259 ~~child.~~

260 ~~2. Appreciate the range and nature of possible penalties~~  
 261 ~~that may be imposed in the proceedings against the child, if~~  
 262 ~~applicable.~~

263 ~~3. Understand the adversarial nature of the legal process.~~

264 ~~4. Disclose to counsel facts pertinent to the proceedings~~  
 265 ~~at issue.~~

266 ~~5. Display appropriate courtroom behavior.~~

267 ~~6. Testify relevantly.~~

268 (g) Immediately upon the filing of the court order finding  
 269 a child incompetent to proceed, the clerk of the court shall  
 270 notify the Department of Children and Families ~~Family Services~~  
 271 and the Agency for Persons with Disabilities and fax or hand  
 272 deliver to the department and to the agency a referral packet  
 273 that includes, at a minimum, the court order, the charging  
 274 documents, the petition, and the court-appointed evaluator's  
 275 reports.

276 (h) After placement of the child in the appropriate  
 277 setting, the Department of Children and Families ~~Family Services~~  
 278 in consultation with the Agency for Persons with Disabilities,  
 279 as appropriate, must, within 30 days after placement of the  
 280 child, prepare and submit to the court a treatment or training

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281 | plan for the child's restoration of competency. A copy of the  
282 | plan must be served upon the child's attorney, the state  
283 | attorney, and the attorneys representing the Department of  
284 | Juvenile Justice.

285 |       Section 6. This act shall take effect July 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 759 Offenses Against Unborn Children  
**SPONSOR(S):** Ahern and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 876

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Keegan <i>JK</i>	Cunningham <i>JK</i>
2) Judiciary Committee			

### SUMMARY ANALYSIS

In Florida, killing an "unborn quick child" is only considered a separate offense when specifically designated by statute. There are currently three statutes that make it a crime to cause the death of an "unborn quick child" – vehicular homicide, DUI manslaughter, and killing of an unborn quick child by injury to the mother. The term "unborn quick child" is currently defined to mean a fetus that is "capable of meaningful life outside the womb."

The bill replaces the term "unborn quick child" that is currently used in the vehicular homicide, DUI manslaughter, and killing of an unborn quick child by injury to the mother statutes, with the term "unborn child." The bill defines "unborn child" as, "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

The bill also creates a new rule of statutory construction specifying that if a person commits any crime that causes the death of, or bodily injury to, an unborn child, such person commits a separate offense, unless otherwise provided for in the criminal statute that was violated. The punishment for the separate offense is the same as the punishment that applies to the criminal statute that was violated, had the death or injury occurred to the mother.

The separate offense does not require proof that the person committing the criminal offense:

- Had knowledge or should have had knowledge that the victim was pregnant; or
- Intended to cause the death of, or bodily injury to, the unborn child.

The bill specifies that the above-described provision cannot be used to prosecute a woman with respect to her unborn child. Additionally, a person may not be prosecuted pursuant to the above-described provision:

- For conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law; or
- For any medical treatment of the pregnant woman or her unborn child.

On February 27, 2013, the Criminal Justice Impact Conference determined that this bill will have an indeterminate prison bed impact on the Department of Corrections.

This bill takes effect October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Federal Law**

Currently, federal law provides criminal penalties for causing death or bodily harm to an unborn child. In 2004, the Unborn Victims of Violence Act (Act) was enacted by Congress to provide increased protection to unborn children by modifying the language of 18 U.S.C. s. 1841.<sup>1</sup> Under the Act, any person who commits specified offenses causing death or bodily injury to a child who is in utero during the commission of the offense commits an offense separate from any act committed against the unborn child's mother.<sup>2</sup> Punishment for the offense is the same as if the offense had been committed against the pregnant woman.<sup>3</sup> However, in no instance may the death penalty be imposed.<sup>4</sup> The Act does not require proof that the person engaging in the offense had knowledge or should have had knowledge that the victim of the underlying offense was pregnant, or that the defendant intended to cause death or bodily injury to the child in utero.<sup>5</sup>

The Act defines the term "child in utero" to mean "a member of the species homo sapiens, at any stage of development, who is carried in the womb."<sup>6</sup> The Act specifies that the offense does not require that the person engaged in the conduct had knowledge or should have had knowledge that the mother was pregnant, or intended to cause death or bodily injury to the unborn child.<sup>7</sup> The Act creates an exception to prosecution for abortions performed under authorized consent, or for medical treatment of the woman or her unborn child, or for any actions by the woman with respect to her unborn child.<sup>8</sup>

##### **State Law**

At least thirty-six states have statutes that criminalize the killing of a fetus or "unborn child."<sup>9</sup> These state laws vary with respect to the gestational stage at which criminal liability will attach.<sup>10</sup>

In Florida, the killing of a viable fetus or unborn quick child is only considered a separate and independent offense when specifically designated by statute. There are currently three statutes that make it a crime to cause the death of a "viable fetus" or "unborn quick child." Unlike federal law, both of these terms are defined to mean a fetus that is capable of meaningful life outside the womb.

##### Vehicular Homicide

Section 782.071, F.S., defines vehicular homicide as "the killing of a human being, or the killing of a viable fetus by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another."<sup>11</sup> The statute specifies that a fetus is viable when it "becomes capable of meaningful life outside the womb through standard medical measures."<sup>12</sup>

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<sup>1</sup> Unborn Victims of Violence Act of 2004, Pub. L. No. 108-212, 118 Stat. 568 (2004).

<sup>2</sup> 18 U.S.C. s. 1841(a)(1).

<sup>3</sup> 18 U.S.C. s. 1841(a)(2)(A).

<sup>4</sup> 18 U.S.C. s. 1841(a)(2)(D).

<sup>5</sup> 18 U.S.C. s. 1841(a)(2)(B).

<sup>6</sup> 18 U.S.C. s. 1841(d).

<sup>7</sup> 18 U.S.C. s. 1841(a)(2)(B).

<sup>8</sup> 18 U.S.C. s. 1841(c).

<sup>9</sup> Nat'l Right to Life Comm., *State Homicide Laws That Recognize Unborn Victims*, NATIONAL RIGHT TO LIFE (July 5, 2012), [http://www.nrlc.org/Unborn\\_Victims/Statehomicidelaws092302.html](http://www.nrlc.org/Unborn_Victims/Statehomicidelaws092302.html) (last visited March 5, 2013).

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

<sup>11</sup> The vehicular homicide statute specifies that a right of action for civil damages exists under s. 768.19, F.S., for all deaths described in the statute. Section 782.071(3), F.S.

<sup>12</sup> Section 782.071(2), F.S.

### Killing of an Unborn Quick Child by Injury to the Mother

Section 782.09, F.S., provides that the killing of an unborn quick child is murder if the killing was the result of an injury to the unborn child's mother which would have been murder if it resulted in the mother's death.<sup>13</sup> The term "unborn quick child," as used in s. 782.09, F.S., is defined in accordance with the definition of "viable fetus" set forth in the vehicular homicide statute.<sup>14</sup>

### DUI Manslaughter

Section 316.193(3), F.S., provides, in part, that in order to prove a DUI manslaughter case, the state must establish the following elements:

- The defendant operated a vehicle.
- The defendant, by reason of such operation, caused or contributed to the cause of the death of any human being or unborn quick child.<sup>15</sup>
- At the time of such operation, the defendant was under the influence of alcoholic beverages or a controlled substance to the extent that the defendant's normal faculties were impaired or the defendant had a blood alcohol level of .08 or higher.

The term "unborn quick child," is defined in accordance with the definition of "viable fetus" set forth in the vehicular homicide statute.<sup>16</sup>

### **Effect of the Bill**

The bill cites the act as the "Florida Unborn Victims of Violence Act."

The bill replaces the terms "viable fetus" and "unborn quick child" that are currently used in the vehicular homicide, killing of an unborn quick child by injury to the mother, and DUI manslaughter statutes, with the term "unborn child." The bill defines "unborn child" in accordance with federal law as, "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

The bill also amends s. 775.021, F.S., to create a new rule of statutory construction specifying that if a person commits any crime that causes the death of, or bodily injury to, an unborn child, such person commits a separate offense, unless otherwise provided for in the criminal statute that was violated. The punishment for the separate offense is the same as the punishment that applies to the criminal statute that was violated, had the death or injury occurred to the mother. However, in no instance can the death penalty be imposed for the separate offense.

The bill specifies that the separate offense does not require proof that the person committing the criminal offense:

- Had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or
- Intended to cause the death of, or bodily injury to, the unborn child.

The bill also specifies that the above-described provision cannot be used to prosecute a woman with respect to her unborn child. Additionally, a person may not be prosecuted pursuant to the above-described provision:

- For conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law; or
- For any medical treatment of the pregnant woman or her unborn child.

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<sup>13</sup> Murder of an unborn quick child is deemed murder in the same degree as that which would have been committed against the mother. Section 782.09(1), F.S.

<sup>14</sup> Section 782.071(2), F.S.

<sup>15</sup> Pursuant to s. 316.193(3)(c), F.S., the term "unborn quick child" shares the same definition as "viable fetus," defined under s. 782.071(2), F.S., as a viable fetus "when it becomes capable of meaningful life outside the womb through standard medical measures."

<sup>16</sup> Section 316.193(3)(c), F.S.

The bill makes conforming changes to s 435.04(2), F.S., relating to employment screening standards, and s. 921.0022, F.S., the offense severity ranking chart.

**B. SECTION DIRECTORY:**

Section 1. Cites the Act as the "Florida Unborn Victims of Violence Act."

Section 2. Amends s. 775.021, F.S., relating to rules of construction.

Section 3. Amends s. 316.193, F.S., relating to driving under the influence; penalties.

Section 4. Amends s. 435.04, F.S., relating to level 2 screening standards.

Section 5. Amends s. 782.071, F.S., relating to vehicular homicide.

Section 6. Amends s. 782.09, F.S., relating to killing of unborn quick child by injury to mother.

Section 7. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 8. Provides an effective date of October 1, 2013.

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

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

1. Revenues:

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

2. Expenditures:

On February 27, 2013, the Criminal Justice Impact Conference determined that this bill will have an indeterminate prison bed impact on the Department of Corrections.

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

1. Revenues:

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

2. Expenditures:

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

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

None.

**D. FISCAL COMMENTS:**

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**



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A bill to be entitled  
 An act relating to offenses against unborn children;  
 providing a short title; amending s. 775.021, F.S.;  
 providing a rule of construction that a person who  
 engages in conduct that violates any provision of the  
 Florida Criminal Code or of a criminal offense defined  
 by another statute and causes the death of, or bodily  
 injury to, an unborn child commits a separate offense  
 if such an offense is not otherwise specifically  
 provided for; providing for criminal penalties for  
 such an offense; specifying that certain types of  
 knowledge or intent are not necessary for such an  
 offense; providing exceptions; providing a definition;  
 amending s. 316.193, 435.04, 782.071, 782.09, and  
 921.0022, F.S.; defining and substituting the term  
 "unborn child" for similar terms used in provisions  
 relating to driving under the influence, employment  
 background screening standards, vehicular homicide,  
 the killing of an unborn quick child by injury to the  
 child's mother; and the offense severity ranking chart  
 of the Criminal Punishment Code, respectively;  
 conforming terminology; providing an effective date.

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

Section 1. This act may be cited as the "Florida Unborn  
 Victims of Violence Act."

Section 2. Subsection (5) is added to section 775.021,

29 Florida Statutes, to read:

30 775.021 Rules of construction.-

31 (5) Whoever commits an act that violates any provision of  
 32 this code or commits a criminal offense defined by another  
 33 statute and thereby causes the death of, or bodily injury to, an  
 34 unborn child commits a separate offense if the provision or  
 35 statute does not otherwise specifically provide a separate  
 36 offense for such death or injury to an unborn child.

37 (a) Except as otherwise provided in this subsection, the  
 38 punishment for a separate offense under this subsection is the  
 39 same as the punishment provided under this code or other statute  
 40 for that conduct had the injury or death occurred to the mother  
 41 of the unborn child.

42 (b) An offense under this subsection does not require  
 43 proof that the person engaging in the conduct:

44 1. Had knowledge or should have had knowledge that the  
 45 victim of the underlying offense was pregnant; or

46 2. Intended to cause the death of, or bodily injury to,  
 47 the unborn child.

48 (c) Notwithstanding any other provision of law, the death  
 49 penalty may not be imposed for an offense under this subsection.

50 (d) This subsection does not permit the prosecution:

51 1. Of any person for conduct relating to an abortion for  
 52 which the consent of the pregnant woman, or a person authorized  
 53 by law to act on her behalf, has been obtained or for which such  
 54 consent is implied by law;

55 2. Of any person for any medical treatment of the pregnant  
 56 woman or her unborn child; or

57       3. Of any woman with respect to her unborn child.  
 58       (e) As used in this subsection, the term "unborn child"  
 59 means a member of the species homo sapiens, at any stage of  
 60 development, who is carried in the womb.

61       Section 3. Paragraph (c) of subsection (3) of section  
 62 316.193, Florida Statutes, is amended to read:

63       316.193 Driving under the influence; penalties.—

64       (3) Any person:

65       (c) Who, by reason of such operation, causes or  
 66 contributes to causing:

67       1. Damage to the property or person of another commits a  
 68 misdemeanor of the first degree, punishable as provided in s.  
 69 775.082 or s. 775.083.

70       2. Serious bodily injury to another, as defined in s.  
 71 316.1933, commits a felony of the third degree, punishable as  
 72 provided in s. 775.082, s. 775.083, or s. 775.084.

73       3. The death of any human being or unborn ~~quick~~ child  
 74 commits DUI manslaughter, and commits:

75       a. A felony of the second degree, punishable as provided  
 76 in s. 775.082, s. 775.083, or s. 775.084.

77       b. A felony of the first degree, punishable as provided in  
 78 s. 775.082, s. 775.083, or s. 775.084, if:

79       (I) At the time of the crash, the person knew, or should  
 80 have known, that the crash occurred; and

81       (II) The person failed to give information and render aid  
 82 as required by s. 316.062.

83

84 For purposes of this subsection, the ~~definition of the term~~

85 "unborn ~~quick~~ child" has the same meaning as provided in s.  
 86 775.021(5) ~~shall be determined in accordance with the definition~~  
 87 ~~of viable fetus as set forth in s. 782.071.~~ A person who is  
 88 convicted of DUI manslaughter shall be sentenced to a mandatory  
 89 minimum term of imprisonment of 4 years.

90 Section 4. Paragraph (g) of subsection (2) of section  
 91 435.04, Florida Statutes, is amended to read:

92 435.04. Level 2 screening standards.—

93 (2) The security background investigations under this  
 94 section must ensure that no persons subject to the provisions of  
 95 this section have been arrested for and are awaiting final  
 96 disposition of, have been found guilty of, regardless of  
 97 adjudication, or entered a plea of nolo contendere or guilty to,  
 98 or have been adjudicated delinquent and the record has not been  
 99 sealed or expunged for, any offense prohibited under any of the  
 100 following provisions of state law or similar law of another  
 101 jurisdiction:

102 (g) Section 782.09, relating to killing of an unborn ~~quick~~  
 103 child by injury to the mother.

104 Section 5. Section 782.071, Florida Statutes, is amended  
 105 to read:

106 782.071 Vehicular homicide.—"Vehicular homicide" is the  
 107 killing of a human being, or the killing of an unborn child ~~a~~  
 108 ~~viable fetus~~ by any injury to the mother, caused by the  
 109 operation of a motor vehicle by another in a reckless manner  
 110 likely to cause the death of, or great bodily harm to, another.

111 (1) Vehicular homicide is:

112 (a) A felony of the second degree, punishable as provided

113 | in s. 775.082, s. 775.083, or s. 775.084.

114 |       (b) A felony of the first degree, punishable as provided  
115 | in s. 775.082, s. 775.083, or s. 775.084, if:

116 |       1. At the time of the accident, the person knew, or should  
117 | have known, that the accident occurred; and

118 |       2. The person failed to give information and render aid as  
119 | required by s. 316.062.

120 |

121 | This paragraph does not require that the person knew that the  
122 | accident resulted in injury or death.

123 |       (2) For purposes of this section, the term "unborn child"  
124 | has the same meaning as provided in s. 775.021(5) a fetus is  
125 | ~~viable when it becomes capable of meaningful life outside the~~  
126 | ~~womb through standard medical measures.~~

127 |       (3) A right of action for civil damages shall exist under  
128 | s. 768.19, under all circumstances, for all deaths described in  
129 | this section.

130 |       (4) In addition to any other punishment, the court may  
131 | order the person to serve 120 community service hours in a  
132 | trauma center or hospital that regularly receives victims of  
133 | vehicle accidents, under the supervision of a registered nurse,  
134 | an emergency room physician, or an emergency medical technician  
135 | pursuant to a voluntary community service program operated by  
136 | the trauma center or hospital.

137 |       Section 6. Section 782.09, Florida Statutes, is amended to  
138 | read:

139 |       782.09 Killing of unborn ~~quick~~ child by injury to mother.—

140 |       (1) The unlawful killing of an unborn ~~quick~~ child, by any

141 injury to the mother of such child which would be murder if it  
 142 resulted in the death of such mother, shall be deemed murder in  
 143 the same degree as that which would have been committed against  
 144 the mother. Any person, other than the mother, who unlawfully  
 145 kills an unborn ~~quick~~ child by any injury to the mother:

146 (a) Which would be murder in the first degree constituting  
 147 a capital felony if it resulted in the mother's death commits  
 148 murder in the first degree constituting a capital felony,  
 149 punishable as provided in s. 775.082.

150 (b) Which would be murder in the second degree if it  
 151 resulted in the mother's death commits murder in the second  
 152 degree, a felony of the first degree, punishable as provided in  
 153 s. 775.082, s. 775.083, or s. 775.084.

154 (c) Which would be murder in the third degree if it  
 155 resulted in the mother's death commits murder in the third  
 156 degree, a felony of the second degree, punishable as provided in  
 157 s. 775.082, s. 775.083, or s. 775.084.

158 (2) The unlawful killing of an unborn ~~quick~~ child by any  
 159 injury to the mother of such child which would be manslaughter  
 160 if it resulted in the death of such mother shall be deemed  
 161 manslaughter. A person who unlawfully kills an unborn ~~quick~~  
 162 child by any injury to the mother which would be manslaughter if  
 163 it resulted in the mother's death commits manslaughter, a felony  
 164 of the second degree, punishable as provided in s. 775.082, s.  
 165 775.083, or s. 775.084.

166 (3) The death of the mother resulting from the same act or  
 167 criminal episode that caused the death of the unborn ~~quick~~ child  
 168 does not bar prosecution under this section.

169 (4) This section does not authorize the prosecution of any  
 170 person in connection with a termination of pregnancy pursuant to  
 171 chapter 390.

172 (5) For purposes of this section, the ~~definition of the~~  
 173 term "unborn ~~quick~~ child" has the same meaning as provided in s.  
 174 775.021(5) ~~shall be determined in accordance with the definition~~  
 175 ~~of viable fetus as set forth in s. 782.071.~~

176 Section 7. Paragraph (g) of subsection (3) of section  
 177 921.0022, Florida Statutes, is amended to read:

178 921.0022 Criminal Punishment Code; offense severity  
 179 ranking chart.-

180 (3) OFFENSE SEVERITY RANKING CHART

181 (g) LEVEL 7

182

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to

183

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186			elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
187	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
188	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
189	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
190	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
191	456.065(2)	3rd	Practicing a health care profession without a license.
192	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.



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193	458.327(1)	3rd	Practicing medicine without a license.
194	459.013(1)	3rd	Practicing osteopathic medicine without a license.
195	460.411(1)	3rd	Practicing chiropractic medicine without a license.
196	461.012(1)	3rd	Practicing podiatric medicine without a license.
197	462.17	3rd	Practicing naturopathy without a license.
198	463.015(1)	3rd	Practicing optometry without a license.
199	464.016(1)	3rd	Practicing nursing without a license.
200	465.015(2)	3rd	Practicing pharmacy without a license.
201	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
	467.201	3rd	Practicing midwifery without a

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			license.
202	468.366	3rd	Delivering respiratory care services without a license.
203	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
204	483.901(9)	3rd	Practicing medical physics without a license.
205	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
206	484.053	3rd	Dispensing hearing aids without a license.
207	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
208	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a

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209			money services business.
	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
210	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
211	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
212	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
213	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
214	782.051(3)	2nd	Attempted felony murder of a

			person by a person other than the perpetrator or the perpetrator of an attempted felony.
215	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
216	782.071	2nd	Killing of a human being or <u>unborn child</u> <del>viable fetus</del> by the operation of a motor vehicle in a reckless manner (vehicular homicide).
217	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
218	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
219	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
220			

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221	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
222	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
223	784.048(7)	3rd	Aggravated stalking; violation of court order.
224	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
225	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
226	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
227	784.081(1)	1st	Aggravated battery on specified official or employee.
228	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
	784.083(1)	1st	Aggravated battery on code inspector.

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787.06(3)(a) 1st Human trafficking using coercion for labor and services.

230

787.06(3)(e) 1st Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.

231

790.07(4) 1st Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

232

790.16(1) 1st Discharge of a machine gun under specified circumstances.

233

790.165(2) 2nd Manufacture, sell, possess, or deliver hoax bomb.

234

790.165(3) 2nd Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

235

790.166(3) 2nd Possessing, selling, using, or

236	790.166(4)	2nd	attempting to use a hoax weapon of mass destruction.
237	790.23	1st, PBL	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
238	794.08(4)	3rd	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
239	796.03	2nd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
240	800.04(5)(c)1.	2nd	Procuring any person under 16 years for prostitution.
241			Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.

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242	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
243	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
244	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
245	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
246	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
247	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree



			grand theft.
248	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
249	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
250	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
251	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
252	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
253	812.131(2)(a)	2nd	Robbery by sudden snatching.
254	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
255	817.234(8)(a)	2nd	Solicitation of motor vehicle

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			accident victims with intent to defraud.
256	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
257	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
258	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
259	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
260	825.103 (2) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
261			

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262	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
263	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
264	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
265	838.015	2nd	Bribery.
266	838.016	2nd	Unlawful compensation or reward for official behavior.
267	838.021(3)(a)	2nd	Unlawful harm to a public servant.
268	838.22	2nd	Bid tampering.
269	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.

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270

872.06                    2nd     Abuse of a dead human body.

271

874.10                    1st,PBL     Knowingly initiates, organizes,  
plans, finances, directs,  
manages, or supervises criminal  
gang-related activity.

272

893.13(1)(c)1.            1st     Sell, manufacture, or deliver  
cocaine (or other drug  
prohibited under s.  
893.03(1)(a), (1)(b), (1)(d),  
(2)(a), (2)(b), or (2)(c)4.)  
within 1,000 feet of a child  
care facility, school, or  
state, county, or municipal  
park or publicly owned  
recreational facility or  
community center.

273

893.13(1)(e)1.            1st     Sell, manufacture, or deliver  
cocaine or other drug  
prohibited under s.  
893.03(1)(a), (1)(b), (1)(d),  
(2)(a), (2)(b), or (2)(c)4.,  
within 1,000 feet of property  
used for religious services or  
a specified business site.

274	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
275	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
276	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
277	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
278	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
279	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
280	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than

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			28 grams.
281	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
282	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
283	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
284	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
285	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
286	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
287	896.104(4)(a)1.	3rd	Structuring transactions to

			evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
288	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
289	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
290	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
291	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
292	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

293	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
294	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
295	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
296	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
297	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
298	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
299			



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

300

301

Section 8. This act shall take effect October 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 787 Computer or Electronic Device Harassment

**SPONSOR(S):** Goodson

**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 946

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

### SUMMARY ANALYSIS

A recent survey found that one in ten people have threatened to expose risqué photos of their ex-partners online, and that these threats were carried out nearly 60 percent of the time. In Florida, there are no criminal laws that specifically prohibit the posting of nude adult photos or videos on the Internet.

The bill creates s. 847.0042, F.S., to criminalize the non-consensual transmission or posting of nude adult photographs and videos that include personal information to websites or social networking services. Specifically, the bill makes it a third degree felony for a person to knowingly use a computer (or other device capable of electronic data transmission or distribution) to transmit or post to a website or any other social networking service, or cause to be posted to a website or any other social networking service, any photograph or video of an individual which depicts nudity and contains the depicted individual's personal identification information, or counterfeit or fictitious information purporting to be such personal identification information, without first obtaining the depicted person's written consent (unless the victim was photographed or videotaped in public and a lack of objection to the photography or videotaping could reasonably be implied by the victim's conduct).

The bill makes it a second degree felony if the person is 18 years old or older when they transmit or post the nude photo or video and the individual in the photo of video is younger than 16 when the photo or video was created.

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, because the bill creates a new felony offense, it may have a negative prison bed impact on the Department of Corrections.

The bill provides an effective date of October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

McAfee, an Internet security provider, recently published the results of a survey exploring the connection between romantic breakups and loss of privacy online.<sup>1</sup> Among other results, the survey found that 1 in 10 ex-partners have threatened to expose risqué photos online, and that these threats were carried out nearly 60 percent of the time.<sup>2</sup> Men reported being threatened with such exposure more often than women, and also reported that a higher proportion of the threats were carried out.<sup>3</sup> Some victims of such activity have been so emotionally affected that they have committed or attempted suicide.<sup>4</sup>

Recently, nude photographs and videos of a young woman in Brevard County were posted online by the woman's ex-boyfriend.<sup>5</sup> Along with the photos, her name, e-mail address, and the name of the city where she lived were also posted.<sup>6</sup> The woman said she called the Brevard County Sheriff's Office for help and was told it's not a crime to post nude photos without a person's consent, even if the person and the person's address are identified.<sup>7</sup>

In Florida, there are no criminal laws that specifically prohibit the posting of nude adult photos on the Internet. However, in some circumstances posting such pictures could be an element of the offenses of stalking (s. 784.048, F.S.), or extortion (s. 836.05, F.S.). Additionally, s. 817.568(4), F.S., makes the non-consensual use of a person's personal identification information to harass<sup>8</sup> that person a first degree misdemeanor.<sup>9</sup> "Personal identification information" is defined as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.<sup>10</sup>

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<sup>1</sup> *Lovers Beware: Scorned Exes May Share Intimate Data And Images Online*, McAfee.com, <http://www.mcafee.com/us/about/news/2013/q1/20130204-01.aspx> (last viewed on March 25, 2013).

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

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

<sup>4</sup> *Supra* note 1.

<sup>5</sup> See <http://www.wftv.com/news/news/local/9-investigates-issue-nude-photos-posted-online-wit/nWgdb/> (last viewed March 25, 2013).

<sup>6</sup> *Id.*

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

<sup>8</sup> Section 817.568, F.S., defines "harass" as engaging in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose.

<sup>9</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>10</sup> Section 817.568, F.S.

### **Effect of the Bill**

The bill creates s. 847.0042, F.S., to criminalize the non-consensual transmission or posting of nude photographs or videos that include personal information to websites or social networking services.

The bill makes it a third degree felony<sup>11</sup> for a person to knowingly use a computer (or other device capable of electronic data transmission or distribution) to transmit or post to a website or any other social networking service, or cause to be posted to a website or any other social networking service, any photograph or video of an individual which depicts nudity<sup>12</sup> and contains the depicted individual's personal identification information (as defined above), or counterfeit or fictitious information purporting to be such personal identification information, without first obtaining the depicted person's written consent (unless the victim was photographed or videotaped in public and a lack of objection to the photography or videotaping could reasonably be implied by the victim's conduct).

The bill makes it a second degree felony<sup>13</sup> if the person is 18 years old or older when they transmit or post the nude photo or video and the individual in the photo or video is younger than 16 when the photo or video was created.

The offense is considered to be committed in Florida if any conduct that is an element of the offense or any harm to the depicted person, including harm to the depicted person's privacy interests, resulting from the offense occurs within Florida.

The bill also amends s. 921.244, F.S.,<sup>14</sup> to add s. 847.0042, F.S., to the list of offenses for which a court must issue a no contact order with the victim.

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

Section 1. Creates s. 847.0042, F.S., relating to nude depictions with personal identifying information.

Section 2. Amends s. 921.244, F.S., relating to order of no contact; penalties.

Section 3. 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 has not met to determine the prison bed impact of the bill. However, because the bill creates a new third degree felony offense, it may have a negative prison bed impact on the Department of Corrections.

<sup>11</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>12</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. A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.

<sup>13</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>14</sup> Section 921.244, F.S., requires a court to order a defendant not to have contact with a victim, directly or indirectly, including through a third person, if the defendant was convicted for violating ss. 794.011, 800.04, 847.0135(5), or 775.084(1)(b)1.a.-o., F.S. A violation of this court order is a third degree felony.

## 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:

Private individuals or companies who engage in the behavior prohibited by the bill for profit will face criminal penalties for doing so.

## 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>15</sup> Put another way, statutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct.<sup>16</sup>

When legislation is drafted so that it may be applied to conduct that is protected by the First Amendment, it is said to be unconstitutionally overbroad. 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>17</sup> The doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected speech.<sup>18</sup> If statutes are not narrowly constructed they may be challenged as being overbroad.

In *Reno v. American Civil Liberties Union*, the United States Supreme Court stated:

[T]he growth of the Internet has been and continues to be phenomenal. As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free

<sup>15</sup> *NAACP v. Button*, 371 U.S. 415, 433 (1963).

<sup>16</sup> *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

<sup>17</sup> *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985).

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

exchange of ideas than encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.<sup>19</sup>

The bill makes it a crime to knowingly transmit or post to a website or social networking service any photograph or video that depicts nudity of an individual, contains the personal identification information of that individual, and is transmitted or posted without the individual's consent. To the extent that the bill regulates content of speech protected by the First Amendment, it could be challenged as being unconstitutional.

**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 computer or electronic device  
 3 harassment; creating s. 847.0042, F.S.; prohibiting  
 4 knowing use of a computer or other device to transmit  
 5 or post any photograph or video of an individual which  
 6 depicts nudity and contains specified information  
 7 relating to the depicted individual without first  
 8 obtaining the depicted person's written consent;  
 9 providing an exception; providing criminal penalties;  
 10 providing enhanced penalties for violations by persons  
 11 18 years of age or older involving victims younger  
 12 than 16 years of age; providing for jurisdiction;  
 13 amending s. 921.244, F.S.; providing that a person  
 14 convicted of a violation of s. 847.0042, F.S., be  
 15 ordered to have no contact with the victim; providing  
 16 criminal penalties for violation of such an order;  
 17 providing an effective date.

18  
 19 Be It Enacted by the Legislature of the State of Florida:

20  
 21 Section 1. Section 847.0042, Florida Statutes, is created  
 22 to read:

23 847.0042 Nude depictions with personal identifying  
 24 information.-

25 (1) A person may not knowingly use a computer or other  
 26 device capable of electronic data transmission or distribution  
 27 to transmit or post to a website or any other social networking  
 28 service, or cause to be posted to a website or any other social



29 networking service, any photograph or video of an individual  
 30 which depicts nudity and contains any of the depicted  
 31 individual's personal identification information, as defined in  
 32 s. 817.568, or counterfeit or fictitious information purporting  
 33 to be such personal identification information, without first  
 34 obtaining the depicted person's written consent unless the  
 35 victim was photographed or videotaped in public and a lack of  
 36 objection to the photography or videotaping could reasonably be  
 37 implied by the victim's conduct.

38 (2) (a) Except as provided in paragraph (b), a person who  
 39 violates this section commits a felony of the third degree,  
 40 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

41 (b) A person who is 18 years of age or older at the time  
 42 of the transmission or posting of a video or photograph to a  
 43 website or any other social networking service, or the causing  
 44 to be posted to a website or any other social networking service  
 45 of a video or photograph, who violates this section through such  
 46 conduct and the violation involves a photograph or video of a  
 47 person who was younger than 16 years of age at the time of  
 48 making the photograph or video commits a felony of the second  
 49 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 50 775.084.

51 (3) An offense is committed within this state if any  
 52 conduct that is an element of the offense or any harm to the  
 53 depicted person, including any harm to the depicted person's  
 54 privacy interests, resulting from the offense occurs within this  
 55 state.

56 Section 2. Section 921.244, Florida Statutes, is amended

57 to read:

58 921.244 Order of no contact; penalties.-

59 (1) At the time of sentencing an offender convicted of a  
 60 violation of s. 794.011, s. 800.04, s. 847.0042, s. 847.0135(5),  
 61 or any offense in s. 775.084(1)(b)1.a.-o., the court shall order  
 62 that the offender be prohibited from having any contact with the  
 63 victim, directly or indirectly, including through a third  
 64 person, for the duration of the sentence imposed. The court may  
 65 reconsider the order upon the request of the victim if the  
 66 request is made at any time after the victim has attained 18  
 67 years of age. In considering the request, the court shall  
 68 conduct an evidentiary hearing to determine whether a change of  
 69 circumstances has occurred which warrants a change in the court  
 70 order prohibiting contact and whether it is in the best interest  
 71 of the victim that the court order be modified or rescinded.

72 (2) Any offender who violates a court order issued under  
 73 this section commits a felony of the third degree, punishable as  
 74 provided in s. 775.082, s. 775.083, or s. 775.084.



75 (3) The punishment imposed under this section shall run  
 76 consecutive to any former sentence imposed for a conviction for  
 77 any offense under s. 794.011, s. 800.04, s. 847.0135(5), or any  
 78 offense in s. 775.084(1)(b)1.a.-o.

79 Section 3. This act shall take effect October 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 845 Termination of Pregnancy Based on Sex or Race of Unborn Child  
**SPONSOR(S):** Van Zant and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1072

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

### SUMMARY ANALYSIS

Currently, there is no federal prohibition against an abortion sought based solely on the sex or race of the fetus. There are four states that prohibit termination of a pregnancy based on the sex of the fetus: Arizona, Oklahoma, Illinois, and Pennsylvania. Of these four states, Arizona is the only one that also prohibits abortions based on the race of the fetus. In Florida, there is currently no prohibition against abortions performed based on the sex or race of the fetus.

The bill creates the "Prenatal Nondiscrimination Act." The bill amends s. 390.0111, F.S., to prohibit a person from knowingly performing an abortion before signing an affidavit that he or she is not performing the abortion due to the child's sex or race, and has no knowledge that the abortion is being performed due to the child's sex or race.

The bill also creates a new subsection (6) within s. 390.0111, F.S., which prohibits:

- Performing, inducing, or actively participating in an abortion knowing that it is sought based on the sex or race of the child or based on the race of the child's parent;
- Using force or the threat of force to intentionally injure or intimidate any person for the purpose of coercing an abortion based on sex or race of the child; and
- Soliciting or accepting money to finance an abortion based on the sex or race of the child.

A person who willfully performs, or actively participates in, a termination of pregnancy procedure in violation of the requirements of s. 390.0111, F.S., commits a third degree felony. The bill authorizes the Attorney General or the state attorney to bring an action in circuit court to enjoin any of the acts prohibited by subsection (6).

The bill also authorizes the following individuals to bring a civil suit on behalf of the unborn child to obtain "appropriate relief" with respect to a violation of an act prohibited by subsection (6):

- The father of the unborn child if he is married to the mother at the time she receives an abortion based on the sex or race of the child; or
- The maternal grandparents of the unborn child if the mother is not yet 18 years of age at the time of the abortion.

The bill establishes a civil fine of not more than \$10,000 against any physician, physician's assistant, nurse, counselor, or other medical or mental health professional who knowingly does not report known occurrences of any of the acts prohibited by subsection (6) to law enforcement.

The Criminal Justice Impact Conference has not determined the prison bed impact of the bill. However, because the bill broadens the application of a felony offense, it may have a negative prison bed impact on the Department of Corrections.

This bill is effective October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Federal Abortion Law**

In 1973, *Roe v. Wade* was decided by the U.S. Supreme Court (the "Court"), establishing legal access to abortions.<sup>1</sup> Using strict scrutiny, the Court determined that a woman's right to an abortion is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.<sup>2</sup> Further, the Court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.<sup>3</sup> The Court established a trimester framework for the regulation of abortions, holding that in the third trimester a state could prohibit termination to the extent that the woman's life or health was not at risk.<sup>4</sup>

Nineteen years later, in *Planned Parenthood v. Casey*,<sup>5</sup> the Court replaced the strict scrutiny standard and established the undue burden test to evaluate restrictions on the right to abortion.<sup>6</sup> "An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability."<sup>7</sup> The Court has held a variety of abortion restrictions to constitute an undue burden. Restrictions which amount to a third party veto on the mother's access to an abortion, such as spousal notice requirement<sup>8</sup> or a parental consent requirement,<sup>9</sup> constitute an undue burden. Laws that restrict the use of common methods of abortion without demonstrating that they are necessary for the preservation of the health of the mother also constitute an undue burden.<sup>10</sup>

The Court has recognized that states have a legitimate interest in protecting potential life throughout the pregnancy term;<sup>11</sup> however, this interest only becomes a compelling interest after the fetus becomes viable.<sup>12</sup> In *Stenberg v. Carhart*, the Court held that laws that further the state's legitimate interest in the life of the fetus are nevertheless unconstitutional if the law imposes an undue burden.<sup>13</sup>

##### **Florida Abortion Law**

Article I, Section 23 of the Florida Constitution provides an express right to privacy. The Florida Supreme Court has recognized that Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."<sup>14</sup>

In *In re T.W.*, the Florida Supreme Court determined that:

[p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests....Under our Florida Constitution, the state's interest becomes compelling

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<sup>1</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

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

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

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

<sup>5</sup> *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

<sup>6</sup> *Planned Parenthood*, 505 U.S. at 879.

<sup>7</sup> *Planned Parenthood*, 505 U.S. at 836.

<sup>8</sup> *Planned Parenthood*, 505 U.S. at 887-88 (holding that a spousal notification statute was unconstitutional because requiring proof of notification would often be tantamount to giving the husband veto power over the mother's decision).

<sup>9</sup> *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976); *Bellotti v. Baird*, 443 U.S. 622 (1979).

<sup>10</sup> *Stenberg v. Carhart*, 530 U.S. 914, 936-37 (2000).

<sup>11</sup> *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989).

<sup>12</sup> *City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1983).

<sup>13</sup> *Stenberg v. Carhart*, 530 U.S. at 914.

<sup>14</sup> *In re T.W.*, 551 So.2d 1186, 1192 (Fla. 1989).

upon viability....Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.

The court recognized that after viability, the state can regulate termination in the interest of the unborn child so long as the mother's health is not in jeopardy.<sup>15</sup> Florida courts have upheld a number of different types of regulations on abortion, providing they are not an undue burden on the mother's access to abortion. For example, in *Florida v. Presidential Women's Center*, the Florida Supreme Court upheld a Florida law that required the patient to be informed of the age of the fetus, and required that an ultrasound be performed prior to performing any abortion procedures.<sup>16</sup>

In Florida, abortion is addressed in ch. 390, F.S., and is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.<sup>17</sup> An abortion must be consensual<sup>18</sup> and must be performed by a physician licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.<sup>19</sup>

Section 390.0111, F.S., prohibits an abortion from being performed in the third trimester<sup>20</sup> unless:

- Two physicians certify in writing to the fact that, to a reasonable degree of medical probability, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman; or
- The physician certifies in writing to the medical necessity for legitimate emergency medical procedures for termination of pregnancy in the third trimester, and another physician is not available for consultation.<sup>21</sup>

Section 390.0111(10), F.S., specifies that any person who willfully performs, or actively participates in, a termination of pregnancy procedure in violation of the requirements of s. 390.0111, F.S.,<sup>22</sup> commits a third degree felony.<sup>23</sup> If doing so results in the death of the woman, the person commits a second degree felony.<sup>24</sup>

### **Sex- and Race-Motivated Abortions**

Currently, there is no federal prohibition against an abortion sought based solely on the sex or race of the fetus. There are four states that prohibit termination of a pregnancy based on the sex of the fetus: Arizona,<sup>25</sup> Oklahoma,<sup>26</sup> Illinois,<sup>27</sup> and Pennsylvania.<sup>28</sup> Of these four states, Arizona is the only one that also prohibits abortions based on the race of the fetus.<sup>29</sup> In Florida, there is currently no prohibition against abortions performed based on the sex or race of the fetus.<sup>30</sup>

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

<sup>16</sup> *State v. Presidential Women's Center*, 937 So.2d 114 (Fla. 2006).

<sup>17</sup> Section 390.011(1), F.S.

<sup>18</sup> A termination of pregnancy may not be performed or induced except with the voluntary and informed written consent of the pregnant woman or, in the case of a mental incompetent, the voluntary and informed written consent of her court-appointed guardian. Section 390.0111(3), F.S.

<sup>19</sup> Section 390.0111(2), F.S.

<sup>20</sup> Section 390.011(8), F.S., defines "third trimester" as the weeks of pregnancy after the 24<sup>th</sup>.

<sup>21</sup> Section 390.0111(1), F.S.

<sup>22</sup> Except for subsections (3) (relating to consent) and (7) (relating to disposition of fetal remains).

<sup>23</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>24</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>25</sup> AZ. REV. STAT. ANN. 13-3603.2.

<sup>26</sup> OKLA. STAT. ANN. tit. 63, § 1-731.2 .

<sup>27</sup> IL STAT. Ch. 720 § 510/6 (8).

<sup>28</sup> 18 PA. CONS. STAT. ANN. § 3204(c).

<sup>29</sup> AZ. REV. STAT. ANN. 13-3603.2.

<sup>30</sup> See ch. 390, F.S.

## Effect of the bill

The bill provides the following whereas clauses and a statement of legislative intent:

- Women are a vital part of American society and culture and possess the same fundamental human rights and civil rights as men;
- United States law prohibits the dissimilar treatment of males and females who are similarly situated and prohibits sex discrimination in various contexts, including the provision of employment, education, housing, health insurance coverage, and athletics;
- Sex is an immutable characteristic and is ascertainable at the earliest stages of human development through existing medical technology and procedures commonly in use, including maternal-fetal bloodstream DNA sampling, amniocentesis, chorionic villus sampling or "CVS," and medical sonography. In addition to medically assisted sex-determinations carried out by medical professionals, a growing sex-determination niche industry has developed and is marketing low-cost commercial products, widely advertised and available, that aid in the sex determination of an unborn child without the aid of medical professionals. Experts have demonstrated that the sex-selection industry is on the rise and predict that it will continue to be a growing trend in the United States. Sex determination is always a necessary step to the procurement of a sex-selection abortion;
- A "sex-selection abortion" is an abortion undertaken for purposes of eliminating an unborn child of an undesired sex. Sex-selection abortion is barbaric and described by scholars and civil rights advocates as an act of sex-based or gender-based violence predicated on sex discrimination. By definition, sex-selection abortions do not implicate the health of the mother of the unborn but instead are elective procedures motivated by sex or gender bias;
- The targeted victims of sex-selection abortions performed in the United States and worldwide are overwhelmingly female. The selective abortion of females is female infanticide, the intentional killing of unborn females, due to the preference for male offspring or "son preference." Son preference is reinforced by the low value associated, by some segments of the world community, with female offspring. Those segments tend to regard female offspring as financial burdens to a family over their lifetimes due to their perceived inability to earn or provide financially for the family unit as can a male. In addition, due to social and legal convention, female offspring are less likely to carry on the family name. Son preference is one of the most evident manifestations of sex or gender discrimination in any society, undermining female equality and fueling the elimination of a female's right to exist in instances of sex-selection abortion;
- Sex-selection abortions are not expressly prohibited by United States law and the laws of states. Sex-selection abortions are performed in the United States. In a March 2008 report published in the Proceedings of the National Academy of Sciences, Columbia University economists Douglas Almond and Lena Edlund examined the sex ratio of United States-born children and found "evidence of sex selection, most likely at the prenatal stage." The data revealed obvious "son preference" in the form of unnatural sex-ratio imbalances within certain segments of the United States population, primarily those segments tracing their ethnic or cultural origins to countries where sex-selection abortion is prevalent. The evidence strongly suggests that some Americans are exercising sex-selection abortion practices within the United States consistent with discriminatory practices common to their country of origin or the country to which they trace their ancestry. While sex-selection abortions are more common outside the United States, the evidence reveals that female infanticide is also occurring in the United States;
- The American public supports a prohibition of sex-selection abortion. In a March 2006 Zogby International poll, 86 percent of Americans agreed that sex-selection abortion should be illegal, yet only two states have proscribed sex-selection abortion;
- Despite the failure of the United States to proscribe sex-selection abortion, the United States Congress has expressed repeatedly, through Congressional resolution, strong condemnation of policies promoting sex-selection abortion in the "Communist Government of China." Likewise, at the 2007 United Nations' Annual Meeting of the Commission on the Status of Women, 51st Session, the United States delegation spearheaded a resolution calling on countries to eliminate sex-selective abortion, a policy directly contradictory to the permissiveness of current United

States law, which places no restriction on the practice of sex-selection abortion. The United Nations Commission on the Status of Women has urged governments of all nations "to take necessary measures to prevent . . . prenatal 118 sex selection;"

- A 1990 report by Harvard University economist Amartya Sen estimated that more than 100 million women were "demographically missing" from the world as early as 1990 due to sexist practices, including sex-selection abortion. Many experts believe sex-selection abortion is the primary cause. As of 2008, estimates of women missing from the world range in the hundreds of millions;
- Countries with longstanding experience with sex-selection abortion, such as the Republic of India, the United Kingdom, and the People's Republic of China, have enacted complete bans on sex-selection abortion and have steadily continued to strengthen prohibitions and penalties. The United States, by contrast, has no law in place to restrict sex-selection abortion, establishing the United States as affording less protection from sex-based infanticide than the Republic of India or the People's Republic of China, whose recent practices of sex-selection abortion were vehemently and repeatedly condemned by United States congressional resolutions and by the United States Ambassador to the Commission on the Status of Women. Public statements from within the medical community reveal that citizens of other countries come to the United States for sex-selection procedures that would be criminal in their countries of origin. Because the United States permits abortion on the basis of sex, the United States may effectively function as a "safe haven" for those who seek to have American physicians do what would otherwise be criminal in their home countries: a sex-selection abortion, most likely late-term;
- The American medical community opposes sex-selection abortion. The American College of Obstetricians and Gynecologists, commonly known as "ACOG," stated in its February 2007 Ethics Committee Opinion, Number, that sex selection is inappropriate for family planning purposes because sex selection "ultimately supports sexist practices." Likewise, the American Society for Reproductive Medicine has opined that sex selection for family planning purposes is ethically problematic, is inappropriate, and should be discouraged;
- The American medical community opposes sex-selection abortion. The American College of Obstetricians and Gynecologists, commonly known as "ACOG," stated in its February 2007 Ethics Committee Opinion, Number, that sex selection is inappropriate for family planning purposes because sex selection "ultimately supports sexist practices." Likewise, the American Society for Reproductive Medicine has opined that sex selection for family planning purposes is ethically problematic, is inappropriate, and should be discouraged;
- Sex-selection abortions have the effect of diminishing the representation of women in the American population and, therefore, the American electorate;
- Sex-selection abortion reinforces sex discrimination and has no place in a civilized society;
- Minorities are a vital part of American society and culture and possess the same fundamental human rights and civil rights as the majority;
- United States law prohibits the dissimilar treatment of persons of different races who are similarly situated. United States law prohibits discrimination on the basis of race in various contexts, including the provision of employment, education, housing, health insurance coverage, and athletics;
- A "race-selection abortion" is an abortion performed for purposes of eliminating an unborn child because the child or a parent of the child is of an undesired race. Race-selection abortion is barbaric and described by civil rights advocates as an act of race-based violence, predicated on race discrimination. By definition, race-selection abortions do not implicate the health of mother of the unborn but instead are elective procedures motivated by race bias;
- No state has enacted law to proscribe the performance of race-selection abortions;
- Race-selection abortions have the effect of diminishing the number of minorities in the American population and, therefore, the American electorate;
- Race-selection abortion reinforces racial discrimination and has no place in a civilized society;
- The history of the United States includes examples of both sex discrimination and race discrimination. The people of the United States ultimately responded in the strongest possible legal terms by enacting constitutional amendments correcting elements of such discrimination.



Women, once subjected to sex discrimination that denied them the right to vote, now have suffrage guaranteed by the Nineteenth Amendment to the United States Constitution. African Americans, once subjected to race discrimination through slavery that denied them equal protection under the law, now have that right guaranteed by the Fourteenth Amendment to the United States Constitution. The elimination of discriminatory practices has been and is among the highest priorities and greatest achievements of American history;

- Implicitly approving the discriminatory practices of sex-selection abortion and race-selection abortion by choosing not to prohibit them will reinforce these inherently discriminatory practices and evidence a failure to protect a segment of certain unborn Americans because those unborn are of a sex or racial makeup that is disfavored. Sex-selection and race-selection abortions trivialize the value of the unborn on the basis of sex or race, reinforcing sex and race discrimination and coarsening society to the humanity of all vulnerable and innocent human life, making it increasingly difficult to protect such life. Thus, this state has a compelling interest in acting—indeed it must act—to prohibit sex-selection abortion and race-selection abortion; and
- The Legislature declares that there is no place for discrimination and inequality in human society in the form of abortion due to a child's sex or race. Sex-selection and race-selection abortions are elective procedures that do not in any way implicate a woman's health. The purpose of this act is to protect unborn children from prenatal discrimination in the form of being subjected to an abortion based on the child's sex or race by prohibiting sex-selection or race-selection abortions. The intent of this act is not to establish or recognize a right to an abortion or to make lawful an abortion that is currently unlawful.

The bill amends s. 390.0111, F.S., to prohibit a person from knowingly performing an abortion before signing an affidavit that he or she is not performing the abortion due to the child's sex or race, and has no knowledge that the abortion is being performed due to the child's sex or race.

The bill also creates a new subsection (6) within s. 390.0111, F.S., which prohibits:

- Performing, inducing, or actively participating in an abortion knowing that it is sought based on the sex or race of the child or based on the race of the child's parent;
- Using force or the threat of force to intentionally injure or intimidate any person for the purpose of coercing an abortion based on sex or race of the child; and
- Soliciting or accepting money to finance an abortion based on the sex or race of the child.

As noted above, s. 390.0111(10), F.S., currently makes it a third degree felony for any person to willfully perform, or actively participate in, a termination of pregnancy procedure in violation of the requirements of s. 390.0111, F.S. The newly created prohibitions will be subject to this penalty provision to the extent they involve a person willfully performing, or actively participating in, an abortion.

The bill authorizes the Attorney General or the state attorney to bring an action in circuit court to enjoin any of the acts prohibited by subsection (6).

The bill also authorizes the following individuals to bring a civil suit on behalf of the unborn child to obtain "appropriate relief" with respect to a violation of an act prohibited by subsection (6):

- The father of the unborn child if he is married to the mother at the time she receives an abortion based on the sex or race of the child; or
- The maternal grandparents of the unborn child if the mother is not yet 18 years of age at the time of the abortion.

"Appropriate relief" includes monetary damages for all injuries, whether psychological, physical, or financial, including loss of companionship and support, resulting from the violation. The court may also award reasonable attorneys fees.

The bill establishes an exception for criminal prosecution or civil liability for the mother of an unborn child who receives an abortion based on the child's sex or race who is not 18 years of age at the time of the abortion.

The bill establishes a civil fine of not more than \$10,000 against any physician, physician's assistant, nurse, counselor, or other medical or mental health professional who knowingly does not report known occurrences of any of the acts prohibited by subsection (6) to law enforcement.

**B. SECTION DIRECTORY:**

Section 1. Designates this bill as the "Prenatal Nondiscrimination Act."

Section 2. Provides declarations of the Legislature.

Section 3. Amends 390.0111, F.S., relating to termination of pregnancies.

Section 4. 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 a fiscal impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not determined the prison bed impact of the bill. However, because the bill broadens the application of a felony offense, it may have a negative prison bed impact on the Department of Corrections.

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

1. Revenues:

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

2. Expenditures:

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

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

The bill establishes a civil fine of not more than \$10,000 against any physician, physician's assistant, nurse, counselor, or other medical or mental health professional who knowingly does not report known occurrences of any of the acts prohibited by s. 390.0111(6), F.S., to law enforcement.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

*Roe v. Wade* established the fundamental right to abortion.<sup>31</sup> After the Court's decision in *Planned Parenthood v. Casey*, this fundamental right is evaluated under the undue burden test.<sup>32</sup> A law governing abortion is struck down as an undue burden "if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability."<sup>33</sup>

The Court's decisions regarding abortion are based on a constitutional due process analysis. This bill implicates equal protection rights and the constitutional right to abortion. The issue of restricting abortions that are conducted based on the sex or race of the fetus has not been before the Florida Supreme Court or the United States Supreme Court. If challenged, it is unknown whether this bill will withstand constitutional scrutiny.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>31</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>32</sup> *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

<sup>33</sup> *Planned Parenthood*, 505 U.S. at 836.

1 A bill to be entitled  
 2 An act relating to termination of pregnancy based on  
 3 sex or race of the unborn child; providing a short  
 4 title; providing findings and intent; amending s.  
 5 390.0111, F.S.; requiring a person performing a  
 6 termination of pregnancy to first sign an affidavit  
 7 stating that he or she is not performing the  
 8 termination of pregnancy because of the child's sex or  
 9 race and has no knowledge that the pregnancy is being  
 10 terminated because of the child's sex or race;  
 11 providing criminal penalties; prohibiting performing,  
 12 inducing, or actively participating in a termination  
 13 of pregnancy knowing that it is sought based on the  
 14 sex or race of the child or the race of a parent of  
 15 that child, using force or the threat of force to  
 16 intentionally injure or intimidate any person for the  
 17 purpose of coercing a sex-selection or race-selection  
 18 termination of pregnancy, and soliciting or accepting  
 19 moneys to finance a sex-selection or race-selection  
 20 termination of pregnancy; providing criminal  
 21 penalties; providing for injunctions against specified  
 22 violations; providing for civil actions by certain  
 23 persons with respect to certain violations; specifying  
 24 appropriate relief in such actions; authorizing civil  
 25 fines of up to a specified amount against physicians  
 26 and other medical or mental health professionals who  
 27 knowingly fail to report known violations; providing  
 28 that a mother who has not attained a specified age on

29           whom a sex-selection or race-selection termination of  
 30           pregnancy is performed is not subject to criminal  
 31           prosecution or civil liability for any violation or  
 32           for a conspiracy to commit a violation; conforming a  
 33           cross-reference; providing an effective date.

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35           WHEREAS, women are a vital part of American society and  
 36           culture and possess the same fundamental human rights and civil  
 37           rights as men, and

38           WHEREAS, United States law prohibits the dissimilar  
 39           treatment of males and females who are similarly situated and  
 40           prohibits sex discrimination in various contexts, including the  
 41           provision of employment, education, housing, health insurance  
 42           coverage, and athletics, and

43           WHEREAS, sex is an immutable characteristic and is  
 44           ascertainable at the earliest stages of human development  
 45           through existing medical technology and procedures commonly in  
 46           use, including maternal-fetal bloodstream DNA sampling,  
 47           amniocentesis, chorionic villus sampling or "CVS," and medical  
 48           sonography. In addition to medically assisted sex-determinations  
 49           carried out by medical professionals, a growing sex-  
 50           determination niche industry has developed and is marketing low-  
 51           cost commercial products, widely advertised and available, that  
 52           aid in the sex determination of an unborn child without the aid  
 53           of medical professionals. Experts have demonstrated that the  
 54           sex-selection industry is on the rise and predict that it will  
 55           continue to be a growing trend in the United States. Sex

56 determination is always a necessary step to the procurement of a  
 57 sex-selection abortion, and

58 WHEREAS, a "sex-selection abortion" is an abortion  
 59 undertaken for purposes of eliminating an unborn child of an  
 60 undesired sex. Sex-selection abortion is barbaric and described  
 61 by scholars and civil rights advocates as an act of sex-based or  
 62 gender-based violence predicated on sex discrimination. By  
 63 definition, sex-selection abortions do not implicate the health  
 64 of the mother of the unborn but instead are elective procedures  
 65 motivated by sex or gender bias, and

66 WHEREAS, the targeted victims of sex-selection abortions  
 67 performed in the United States and worldwide are overwhelmingly  
 68 female. The selective abortion of females is female infanticide,  
 69 the intentional killing of unborn females, due to the preference  
 70 for male offspring or "son preference." Son preference is  
 71 reinforced by the low value associated, by some segments of the  
 72 world community, with female offspring. Those segments tend to  
 73 regard female offspring as financial burdens to a family over  
 74 their lifetimes due to their perceived inability to earn or  
 75 provide financially for the family unit as can a male. In  
 76 addition, due to social and legal convention, female offspring  
 77 are less likely to carry on the family name. Son preference is  
 78 one of the most evident manifestations of sex or gender  
 79 discrimination in any society, undermining female equality and  
 80 fueling the elimination of a female's right to exist in  
 81 instances of sex-selection abortion, and

82 WHEREAS, sex-selection abortions are not expressly  
 83 prohibited by United States law and the laws of 48 states. Sex-

84 selection abortions are performed in the United States. In a  
 85 March 2008 report published in the Proceedings of the National  
 86 Academy of Sciences, Columbia University economists Douglas  
 87 Almond and Lena Edlund examined the sex ratio of United States-  
 88 born children and found "evidence of sex selection, most likely  
 89 at the prenatal stage." The data revealed obvious "son  
 90 preference" in the form of unnatural sex-ratio imbalances within  
 91 certain segments of the United States population, primarily  
 92 those segments tracing their ethnic or cultural origins to  
 93 countries where sex-selection abortion is prevalent. The  
 94 evidence strongly suggests that some Americans are exercising  
 95 sex-selection abortion practices within the United States  
 96 consistent with discriminatory practices common to their country  
 97 of origin or the country to which they trace their ancestry.  
 98 While sex-selection abortions are more common outside the United  
 99 States, the evidence reveals that female infanticide is also  
 100 occurring in the United States, and

101 WHEREAS, the American public supports a prohibition of sex-  
 102 selection abortion. In a March 2006 Zogby International poll, 86  
 103 percent of Americans agreed that sex-selection abortion should  
 104 be illegal, yet only two states have proscribed sex-selection  
 105 abortion, and

106 WHEREAS, despite the failure of the United States to  
 107 proscribe sex-selection abortion, the United States Congress has  
 108 expressed repeatedly, through Congressional resolution, strong  
 109 condemnation of policies promoting sex-selection abortion in the  
 110 "Communist Government of China." Likewise, at the 2007 United  
 111 Nations' Annual Meeting of the Commission on the Status of

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2013

112 Women, 51st Session, the United States delegation spearheaded a  
 113 resolution calling on countries to eliminate sex-selective  
 114 abortion, a policy directly contradictory to the permissiveness  
 115 of current United States law, which places no restriction on the  
 116 practice of sex-selection abortion. The United Nations  
 117 Commission on the Status of Women has urged governments of all  
 118 nations "to take necessary measures to prevent . . . prenatal  
 119 sex selection," and

120 WHEREAS, a 1990 report by Harvard University economist  
 121 Amartya Sen estimated that more than 100 million women were  
 122 "demographically missing" from the world as early as 1990 due to  
 123 sexist practices, including sex-selection abortion. Many experts  
 124 believe sex-selection abortion is the primary cause. As of 2008,  
 125 estimates of women missing from the world range in the hundreds  
 126 of millions, and

127 WHEREAS, countries with longstanding experience with sex-  
 128 selection abortion, such as the Republic of India, the United  
 129 Kingdom, and the People's Republic of China, have enacted  
 130 complete bans on sex-selection abortion and have steadily  
 131 continued to strengthen prohibitions and penalties. The United  
 132 States, by contrast, has no law in place to restrict sex-  
 133 selection abortion, establishing the United States as affording  
 134 less protection from sex-based infanticide than the Republic of  
 135 India or the People's Republic of China, whose recent practices  
 136 of sex-selection abortion were vehemently and repeatedly  
 137 condemned by United States congressional resolutions and by the  
 138 United States Ambassador to the Commission on the Status of  
 139 Women. Public statements from within the medical community



140 reveal that citizens of other countries come to the United  
 141 States for sex-selection procedures that would be criminal in  
 142 their countries of origin. Because the United States permits  
 143 abortion on the basis of sex, the United States may effectively  
 144 function as a "safe haven" for those who seek to have American  
 145 physicians do what would otherwise be criminal in their home  
 146 countries: a sex-selection abortion, most likely late-term, and

147 WHEREAS, the American medical community opposes sex-  
 148 selection abortion. The American College of Obstetricians and  
 149 Gynecologists, commonly known as "ACOG," stated in its February  
 150 2007 Ethics Committee Opinion, Number 360, that sex selection is  
 151 inappropriate for family planning purposes because sex selection  
 152 "ultimately supports sexist practices." Likewise, the American  
 153 Society for Reproductive Medicine has opined that sex selection  
 154 for family planning purposes is ethically problematic, is  
 155 inappropriate, and should be discouraged, and

156 WHEREAS, sex-selection abortion results in an unnatural  
 157 sex-ratio imbalance. An unnatural sex-ratio imbalance is  
 158 undesirable due to the inability of the numerically predominant  
 159 sex to find mates. Experts worldwide document that a significant  
 160 sex-ratio imbalance in which males numerically predominate can  
 161 be a cause of increased violence and militancy within a society.  
 162 Likewise, an unnatural sex-ratio imbalance gives rise to the  
 163 commoditization of humans in the form of human trafficking and a  
 164 consequent increase in kidnapping and other violent crime, and

165 WHEREAS, sex-selection abortions have the effect of  
 166 diminishing the representation of women in the American  
 167 population and, therefore, the American electorate, and

168           WHEREAS, sex-selection abortion reinforces sex  
 169 discrimination and has no place in a civilized society, and  
 170           WHEREAS, minorities are a vital part of American society  
 171 and culture and possess the same fundamental human rights and  
 172 civil rights as the majority, and  
 173           WHEREAS, United States law prohibits the dissimilar  
 174 treatment of persons of different races who are similarly  
 175 situated. United States law prohibits discrimination on the  
 176 basis of race in various contexts, including the provision of  
 177 employment, education, housing, health insurance coverage, and  
 178 athletics, and  
 179           WHEREAS, a "race-selection abortion" is an abortion  
 180 performed for purposes of eliminating an unborn child because  
 181 the child or a parent of the child is of an undesired race.  
 182 Race-selection abortion is barbaric and described by civil  
 183 rights advocates as an act of race-based violence, predicated on  
 184 race discrimination. By definition, race-selection abortions do  
 185 not implicate the health of mother of the unborn but instead are  
 186 elective procedures motivated by race bias, and  
 187           WHEREAS, no state has enacted law to proscribe the  
 188 performance of race-selection abortions, and  
 189           WHEREAS, race-selection abortions have the effect of  
 190 diminishing the number of minorities in the American population  
 191 and, therefore, the American electorate, and  
 192           WHEREAS, race-selection abortion reinforces racial  
 193 discrimination and has no place in a civilized society, and  
 194           WHEREAS, the history of the United States includes examples  
 195 of both sex discrimination and race discrimination. The people

196 of the United States ultimately responded in the strongest  
 197 possible legal terms by enacting constitutional amendments  
 198 correcting elements of such discrimination. Women, once  
 199 subjected to sex discrimination that denied them the right to  
 200 vote, now have suffrage guaranteed by the Nineteenth Amendment  
 201 to the United States Constitution. African Americans, once  
 202 subjected to race discrimination through slavery that denied  
 203 them equal protection under the law, now have that right  
 204 guaranteed by the Fourteenth Amendment to the United States  
 205 Constitution. The elimination of discriminatory practices has  
 206 been and is among the highest priorities and greatest  
 207 achievements of American history, and

208       WHEREAS, implicitly approving the discriminatory practices  
 209 of sex-selection abortion and race-selection abortion by  
 210 choosing not to prohibit them will reinforce these inherently  
 211 discriminatory practices and evidence a failure to protect a  
 212 segment of certain unborn Americans because those unborn are of  
 213 a sex or racial makeup that is disfavored. Sex-selection and  
 214 race-selection abortions trivialize the value of the unborn on  
 215 the basis of sex or race, reinforcing sex and race  
 216 discrimination and coarsening society to the humanity of all  
 217 vulnerable and innocent human life, making it increasingly  
 218 difficult to protect such life. Thus, this state has a  
 219 compelling interest in acting—indeed it must act—to prohibit  
 220 sex-selection abortion and race-selection abortion, NOW,  
 221 THEREFORE,

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

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Section 1. This act may be cited as the "Prenatal Nondiscrimination Act."

Section 2. The Legislature declares that there is no place for discrimination and inequality in human society in the form of abortion due to a child's sex or race. Sex-selection and race-selection abortions are elective procedures that do not in any way implicate a woman's health. The purpose of this act is to protect unborn children from prenatal discrimination in the form of being subjected to an abortion based on the child's sex or race by prohibiting sex-selection or race-selection abortions. The intent of this act is not to establish or recognize a right to an abortion or to make lawful an abortion that is currently unlawful.

Section 3. Subsections (6) through (13) of section 390.0111, Florida Statutes, are renumbered as subsections (7) through (14), respectively, a new subsection (6) is added to that section, and present subsections (2) and (10) of that section are amended, to read:

390.0111 Termination of pregnancies.—

(2) PERFORMANCE BY PHYSICIAN; REQUIRED AFFIDAVIT.—

(a) A ~~No~~ termination of pregnancy may not ~~shall~~ be performed at any time except by a physician as defined in s. 390.011.

(b) A person may not knowingly perform a termination of pregnancy before that person completes and signs an affidavit stating that he or she is not performing the termination of pregnancy because of the child's sex or race and has no

252 knowledge that the pregnancy is being terminated because of the  
 253 child's sex or race.

254 (6) SEX AND RACE SELECTION.—

255 (a) A person may not knowingly do any of the following:

256 1. Perform, induce, or actively participate in a  
 257 termination of pregnancy knowing that it is sought based on the  
 258 sex or race of the child or the race of a parent of that child.

259 2. Use force or the threat of force to intentionally  
 260 injure or intimidate any person for the purpose of coercing a  
 261 sex-selection or race-selection termination of pregnancy.

262 3. Solicit or accept moneys to finance a sex-selection or  
 263 race-selection termination of pregnancy.

264 (b) The Attorney General or the state attorney may bring  
 265 an action in circuit court to enjoin an activity described in  
 266 paragraph (a).

267 (c) The father of the unborn child who is married to the  
 268 mother at the time she receives a sex-selection or race-  
 269 selection termination of pregnancy, or, if the mother has not  
 270 attained 18 years of age at the time of the termination of  
 271 pregnancy, the maternal grandparents of the unborn child, may  
 272 bring a civil action on behalf of the unborn child to obtain  
 273 appropriate relief with respect to a violation of paragraph (a).  
 274 The court may award reasonable attorney fees as part of the  
 275 costs in an action brought pursuant to this subsection. For the  
 276 purposes of this subsection, "appropriate relief" includes  
 277 monetary damages for all injuries, whether psychological,  
 278 physical, or financial, including loss of companionship and  
 279 support, resulting from the violation.

280        (d) A physician, physician's assistant, nurse, counselor,  
 281 or other medical or mental health professional who knowingly  
 282 does not report known violations of this subsection to  
 283 appropriate law enforcement authorities shall be subject to a  
 284 civil fine of not more than \$10,000.

285        (e) A mother of an unborn child on whom a sex-selection or  
 286 race-selection termination of pregnancy is performed who has not  
 287 attained 18 years of age at the time of the termination of  
 288 pregnancy is not subject to criminal prosecution or civil  
 289 liability for any violation of this subsection or for a  
 290 conspiracy to violate this subsection.

291        (11)~~(10)~~ PENALTIES FOR VIOLATION.—Except as provided in  
 292 subsections (3) and (8) ~~(7)~~:

293        (a) Any person who willfully performs, or actively  
 294 participates in, a termination of pregnancy procedure in  
 295 violation of the requirements of this section commits a felony  
 296 of the third degree, punishable as provided in s. 775.082, s.  
 297 775.083, or s. 775.084.

298        (b) Any person who performs, or actively participates in,  
 299 a termination of pregnancy procedure in violation of the  
 300 provisions of this section which results in the death of the  
 301 woman commits a felony of the second degree, punishable as  
 302 provided in s. 775.082, s. 775.083, or s. 775.084.

303        Section 4. This act shall take effect October 1, 2013.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1041 Controlled Substances  
**SPONSOR(S):** Berman  
**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/SB 1448

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

**SUMMARY ANALYSIS**

Section 893.03(3)(d)1., F.S., defines an anabolic steroid as any drug or hormonal substance, chemically, and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Anabolic steroids have both legitimate medical uses, such as treating delayed puberty and certain hormonal genetic disorders, and illegitimate uses, such as increasing muscle mass among athletes and bodybuilders. Anabolic steroids are currently listed in schedule III of Florida's controlled substances schedules.

The bill amends s. 893.03(3)(d)1., F.S., to add the following anabolic steroids to schedule III of Florida's controlled substance schedules:

- hCG;
- CJC-1295;
- GHRF;
- GHRH;
- GHRP-6;
- HGH;
- Sermorelin; and
- Somatropin.

As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances will apply to these anabolic steroid substances.

The bill will likely have a negative fiscal impact on FDLE and the Department of Corrections. See fiscal section.

The bill is effective on October 1, 2013.



## 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 III substances have a potential for abuse less than the substances contained in schedules I and II, and have an accepted medical use in treatment in the United States.<sup>2</sup> The abuse of a schedule III substance may lead to moderate or low physical dependence, or high psychological dependence. Anabolic steroids are currently listed in schedule III of Florida's controlled substances schedules.<sup>3</sup>

##### Anabolic Steroids

Section 893.03(3)(d)1., F.S., defines an anabolic steroid as any drug or hormonal substance, chemically, and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Anabolic steroids have both legitimate medical uses, such as treating delayed puberty and certain hormonal genetic disorders, and numerous illegitimate uses, such as building muscle bulk among athletes or bodybuilders.<sup>4</sup> There are many long-term adverse physical side effects of anabolic steroid abuse, such as:

- High blood cholesterol levels, which can lead to cardiovascular problems;
- Severe acne;
- Thinning of hair and baldness;
- Fluid retention;
- High blood pressure;
- Liver disorders (liver damage and jaundice);
- Fetal development during pregnancy;
- Risk of contracting HIV and other blood-borne diseases from sharing infected needles; and
- Sexual and reproductive disorders.<sup>5</sup>

Anabolic steroid abuse also has possible psychological effects, such as:

- Mood swings (including manic-like symptoms leading to violence);
- Impaired judgment (stemming from feelings of invincibility);
- Depression;
- Nervousness;
- Extreme irritability;
- Delusions;
- Hostility; and
- Aggression.<sup>6</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(3), F.S.

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

<sup>4</sup> See *Human Growth Hormone*, U.S. Department of Justice, Drug Enforcement Administration, [http://www.deadiversion.usdoj.gov/drugs\\_concern/hgh.pdf](http://www.deadiversion.usdoj.gov/drugs_concern/hgh.pdf) (last visited on March 19, 2013).

<sup>5</sup> *Steroid Abuse in Today's Society*, U.S. Department of Justice, Drug Enforcement Administration, <http://www.deadiversion.usdoj.gov/...onals/professionals.pdf> (last visited on March 19, 2013).

<sup>6</sup> *Id.*

### Human Chorionic Gonadotropin (hCG)

Human Chorionic Gonadotropin (hCG), is a hormone produced during pregnancy which is found in the blood and urine of pregnant women.<sup>7</sup> The U.S. Food and Drug Administration (FDA) has approved the use hCG to treat infertility and other medical conditions.<sup>8</sup> However, the hCG is not approved for over-the-counter sale and the FDA has prohibited the sale of hCG products for weight loss.<sup>9</sup>

### Human Growth Hormone (HGH) and Derivatives

Human Growth Hormone (HGH) is a polypeptide hormone that is secreted by the pituitary gland and is essential for body growth.<sup>10</sup> The daily secretion of HGH increases throughout ones childhood and starts to decline after adolescence.<sup>11</sup> In 1985, synthetic HGH was developed.<sup>12</sup> Some examples of synthetic HGH are somatropin, somatrem, tesamorelin.<sup>13</sup>

The FDA has approved synthetic HGH use in children to treat growth issues due to Turner's syndrome, Prader-Willi syndrome, chronic renal insufficiency, HGH deficiency, children born small for gestational age, and idiopathic short stature.<sup>14</sup> Synthetic HGH has also been approved by the FDA for use in adults for the wasting syndrome of AIDS, lipodystrophy associated with HIV, and HGH deficiency.<sup>15</sup> However, synthetic HGH is commonly abused by athletes, body builders, and aging adults to increase muscle mass and decrease body fat.<sup>16</sup>

Growth-hormone-releasing factor (GHRH) stimulates the body to produce more HGH.<sup>17</sup> GHRH is also known as growth hormone releasing factor (GHRF) or sermorelin.<sup>18</sup> Growth hormone-releasing hexapeptide (GHRP-6) and CJC-1295 are artificially-made hormones, which also increase HGH levels.<sup>19</sup>

### Criminal Penalties

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.

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<sup>7</sup> U.S. Food and Drug Administration, <http://www.fda.gov/Drugs/DrugSafety/DrugSafetyPodcasts/ucm282161.htm> (last visited on March 19, 2013).

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

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

<sup>10</sup> *Supra* note 4.

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

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

<sup>13</sup> *Supra* note 4; *Tesamorelin: A growth hormone-releasing factor analogue for HIV-associated lipodystrophy*, *Annals of Pharmacotherapy*, Linda Spooner, <http://www.theannals.com/content/early/2012/01/31/aph.1Q629> (last visited on March 19, 2013).

<sup>14</sup> *Supra* note 4.

<sup>15</sup> *Supra* note 4; *Tesamorelin: A growth hormone-releasing factor analogue for HIV-associated lipodystrophy*, *Annals of Pharmacotherapy*, Linda Spooner, <http://www.theannals.com/content/early/2012/01/31/aph.1Q629> (last visited on March 19, 2013).

<sup>16</sup> *Supra* note 4.

<sup>17</sup> *GHRH Growth Hormone Releasing Hormone*, [http://www.ncbi.nlm.nih.gov/gene?cmd=Retrieve&dopt=full\\_report&list\\_uids=2691](http://www.ncbi.nlm.nih.gov/gene?cmd=Retrieve&dopt=full_report&list_uids=2691) (last visited on March 19, 2013).

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

<sup>19</sup> *Growth hormone-releasing hexapeptide is a potent stimulator of growth hormone gene expression and release in the growth hormone-releasing hormone-deprived infant rat*, Locatelli V, et al., <http://www.ncbi.nlm.nih.gov/pubmed/7970930> (last visited March 19, 2013).

The offenses and penalties associated with controlled substances listed in schedule III are set forth in s. 893.13, F.S., as follows:

- Actual or constructive possession is a third degree felony;<sup>20</sup>
- Selling, manufacturing, delivering, or possessing with the intent to sell, manufacture, or deliver is a third degree felony;<sup>21</sup>
- Selling, manufacturing, delivering, or possessing with the intent to sell, manufacture, or deliver when such act occurs within 1,000 feet of specified locations<sup>22</sup> is a second degree felony;<sup>23</sup>
- Purchasing, or possessing with the intent to purchase, is a third degree felony;
- Delivering to a person under 18, hiring a person under 18 as an agent or employee to use in the sale or delivery, and using a person under 18 to assist in detection or apprehension is a second degree felony;<sup>24</sup> and
- Bringing into the state is a third degree felony.<sup>25</sup>

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

The bill amends s. 893.03(3)(d)1., F.S., to add the following anabolic steroids to schedule III of Florida controlled substance schedules:

- hCG;
- CJC-1295;
- GHRF;
- GHRH;
- GHRP-6;
- HGH;
- Sermorelin; and
- Somatropin.

As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of schedule III controlled substances will apply to these anabolic steroids substances.

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

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

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

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

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

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

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<sup>20</sup> Unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this ch. 893, F.S.

<sup>21</sup> Chapters 893 and 499, F.S., allow specified persons to possess scheduled drugs for medical or research purposes.

<sup>22</sup> Subsections 893.13(1)(c) – (f) and (h), F.S., include the following locations: a child care facility; an elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight; a state, county or municipal park, community center, or a publicly owned recreational facility; a public or private college, university, or other postsecondary educational institution; a physical place of worship at which a church or religious organization regularly conducts religious services; a convenience business; a public housing facility; or an assisted living facility.

<sup>23</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>24</sup> When such act is committed by a person 18 years of age or older.

<sup>25</sup> Unless authorized by ch. 893, F.S., or the person is licensed by a federal agency.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

The bill adds additional chemical substances to schedule III of Florida's controlled substance schedules. According to FDLE, this could have a major fiscal impact.<sup>26</sup> The addition of these substances will require FDLE to purchase all of the required standards necessary to test the proposed chemical substances.<sup>27</sup> Furthermore, because of the large molar mass (molecular size) of some of the substances being added to the list, FDLE laboratories would be unable to test for them using current instrumentation.<sup>28</sup> The required instruments would cost approximately \$400,000 for each per instrument.<sup>29</sup> FDLE currently offers drug analysis in six regional crime laboratories, making the potential fiscal impact of this bill between \$400,000 up to \$2.4 million.<sup>30</sup>

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill. However, the bill may have a negative prison bed impact on the Department of Corrections because the felony criminal penalties described above will apply to the newly scheduled substances.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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

#### 2. Other:

None.

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<sup>26</sup> FDLE Analysis HB 1041 Relating to Controlled Substances (on file with the Criminal Justice Subcommittee).

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

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

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

**B. RULE-MAKING AUTHORITY:**

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

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

Section 893.03(3)(d)1., F.S., defines anabolic steroids as “any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth.” All of the substances which the bill adds to this section have very different chemical structures than testosterone and thus may not fit the definition of “anabolic steroid.”

**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 III  
 4           controlled substances certain specified materials,  
 5           compounds, mixtures, or preparations that promote  
 6           muscle growth or otherwise enhance athletic  
 7           performance; reenacting s. 893.13(1)-(6), F.S.,  
 8           relating to prohibited acts involving controlled  
 9           substances, to incorporate the amendments made to s.  
 10          893.03, F.S., in references thereto; reenacting s.  
 11          921.0022(3)(b)-(e), F.S., relating to the Criminal  
 12          Punishment Code offense severity ranking chart, to  
 13          incorporate the amendments made to s. 893.03, F.S., in  
 14          references thereto; providing an effective date.

15  
 16   Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Paragraph (d) of subsection (3) of section  
 19           893.03, Florida Statutes, is amended to read:

20           893.03 Standards and schedules.—The substances enumerated  
 21           in this section are controlled by this chapter. The controlled  
 22           substances listed or to be listed in Schedules I, II, III, IV,  
 23           and V are included by whatever official, common, usual,  
 24           chemical, or trade name designated. The provisions of this  
 25           section shall not be construed to include within any of the  
 26           schedules contained in this section any excluded drugs listed  
 27           within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
 28           Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical

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

32 (3) SCHEDULE III.—A substance in Schedule III has a  
33 potential for abuse less than the substances contained in  
34 Schedules I and II and has a currently accepted medical use in  
35 treatment in the United States, and abuse of the substance may  
36 lead to moderate or low physical dependence or high  
37 psychological dependence or, in the case of anabolic steroids,  
38 may lead to physical damage. The following substances are  
39 controlled in Schedule III:

40 (d) Anabolic steroids.

41 1. The term "anabolic steroid" means any drug or hormonal  
42 substance, chemically and pharmacologically related to  
43 testosterone, other than estrogens, progestins, and  
44 corticosteroids, that promotes muscle growth and includes:

- 45 a. Androsterone.
- 46 b. Androsterone acetate.
- 47 c. Boldenone.
- 48 d. Boldenone acetate.
- 49 e. Boldenone benzoate.
- 50 f. Boldenone undecylenate.
- 51 g. Chlorotestosterone (4-chlortestosterone).
- 52 h. Chorionic Gonadotropin, Human (hCG).
- 53 i. h. Clostebol.
- 54 j. CJC-1295.
- 55 k. i. Dehydrochlormethyltestosterone.
- 56 l. j. Dihydrotestosterone (4-dihydrotestosterone).

- 57 | ~~m.k.~~ Drostanolone.
- 58 | ~~n.l.~~ Ethylestrenol.
- 59 | ~~o.m.~~ Fluoxymesterone.
- 60 | ~~p.n.~~ Formebolone (formebolone).
- 61 | q. Growth-hormone-releasing factor (GRF, GHRF).
- 62 | r. Growth-hormone-releasing hormone (GHRH).
- 63 | s. Growth Hormone Releasing Peptide-6 (GHRP-6).
- 64 | t. Human Growth Hormone (HGH).
- 65 | ~~u.o.~~ Mesterolone.
- 66 | ~~v.p.~~ Methandienone.
- 67 | ~~w.q.~~ Methandranone.
- 68 | ~~x.r.~~ Methandriol.
- 69 | ~~y.s.~~ Methandrostenolone.
- 70 | ~~z.t.~~ Methenolone.
- 71 | aa.u. Methyltestosterone.
- 72 | bb.v. Mibolerone.
- 73 | cc.w. Nandrolone.
- 74 | dd.x. Norethandrolone.
- 75 | ee.y. Nortestosterone.
- 76 | ff.z. Nortestosterone decanoate.
- 77 | gg.aa. Nortestosterone phenylpropionate.
- 78 | hh.bb. Nortestosterone propionate.
- 79 | ii.aa. Oxandrolone.
- 80 | jj.dd. Oxymesterone.
- 81 | kk.aa. Oxymetholone.
- 82 | ll. Sermorelin.
- 83 | mm. Somatropin.
- 84 | ~~nn.aa.~~ Stanolone.



85        ~~oo. gg.~~ Stanozolol.  
 86        pp. Tesamorelin.  
 87        ~~qq. hh.~~ Testolactone.  
 88        rr. ii. Testosterone.  
 89        ~~ss. jj.~~ Testosterone acetate.  
 90        ~~tt. kk.~~ Testosterone benzoate.  
 91        uu. ll. Testosterone cypionate.  
 92        ~~vv. mm.~~ Testosterone decanoate.  
 93        ww. nn. Testosterone enanthate.  
 94        ~~xx. oo.~~ Testosterone isocaproate.  
 95        ~~yy. pp.~~ Testosterone oleate.  
 96        ~~zz. qq.~~ Testosterone phenylpropionate.  
 97        aaa. rr. Testosterone propionate.  
 98        bbb. ss. Testosterone undecanoate.  
 99        ccc. tt. Trenbolone.  
 100       ddd. uu. Trenbolone acetate.  
 101       eee. vv. Any salt, ester, or isomer of a drug or substance  
 102 described or listed in this subparagraph if that salt, ester, or  
 103 isomer promotes muscle growth.  
 104       2. The term does not include an anabolic steroid that is  
 105 expressly intended for administration through implants to cattle  
 106 or other nonhuman species and that has been approved by the  
 107 United States Secretary of Health and Human Services for such  
 108 administration. However, any person who prescribes, dispenses,  
 109 or distributes such a steroid for human use is considered to  
 110 have prescribed, dispensed, or distributed an anabolic steroid  
 111 within the meaning of this paragraph.  
 112       Section 2. For the purpose of incorporating the amendment

113 made by this act to section 893.03, Florida Statutes, in a  
 114 reference thereto, subsections (1) through (6) of section  
 115 893.13, Florida Statutes, are reenacted to read:

116 893.13 Prohibited acts; penalties.—

117 (1)(a) Except as authorized by this chapter and chapter  
 118 499, it is unlawful for any person to sell, manufacture, or  
 119 deliver, or possess with intent to sell, manufacture, or  
 120 deliver, a controlled substance. Any person who violates this  
 121 provision with respect to:

122 1. A controlled substance named or described in s.  
 123 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 124 commits a felony of the second degree, punishable as provided in  
 125 s. 775.082, s. 775.083, or s. 775.084.

126 2. A controlled substance named or described in s.  
 127 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 128 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 129 the third degree, punishable as provided in s. 775.082, s.  
 130 775.083, or s. 775.084.

131 3. A controlled substance named or described in s.  
 132 893.03(5) commits a misdemeanor of the first degree, punishable  
 133 as provided in s. 775.082 or s. 775.083.

134 (b) Except as provided in this chapter, it is unlawful to  
 135 sell or deliver in excess of 10 grams of any substance named or  
 136 described in s. 893.03(1)(a) or (1)(b), or any combination  
 137 thereof, or any mixture containing any such substance. Any  
 138 person who violates this paragraph commits a felony of the first  
 139 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 140 775.084.

141 (c) Except as authorized by this chapter, it is unlawful  
 142 for any person to sell, manufacture, or deliver, or possess with  
 143 intent to sell, manufacture, or deliver, a controlled substance  
 144 in, on, or within 1,000 feet of the real property comprising a  
 145 child care facility as defined in s. 402.302 or a public or  
 146 private elementary, middle, or secondary school between the  
 147 hours of 6 a.m. and 12 midnight, or at any time in, on, or  
 148 within 1,000 feet of real property comprising a state, county,  
 149 or municipal park, a community center, or a publicly owned  
 150 recreational facility. For the purposes of this paragraph, the  
 151 term "community center" means a facility operated by a nonprofit  
 152 community-based organization for the provision of recreational,  
 153 social, or educational services to the public. Any person who  
 154 violates this paragraph with respect to:

155 1. A controlled substance named or described in s.  
 156 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 157 commits a felony of the first degree, punishable as provided in  
 158 s. 775.082, s. 775.083, or s. 775.084. The defendant must be  
 159 sentenced to a minimum term of imprisonment of 3 calendar years  
 160 unless the offense was committed within 1,000 feet of the real  
 161 property comprising a child care facility as defined in s.  
 162 402.302.

163 2. A controlled substance named or described in s.  
 164 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 165 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 166 the second degree, punishable as provided in s. 775.082, s.  
 167 775.083, or s. 775.084.

168 3. Any other controlled substance, except as lawfully

169 sold, manufactured, or delivered, must be sentenced to pay a  
 170 \$500 fine and to serve 100 hours of public service in addition  
 171 to any other penalty prescribed by law.

172  
 173 This paragraph does not apply to a child care facility unless  
 174 the owner or operator of the facility posts a sign that is not  
 175 less than 2 square feet in size with a word legend identifying  
 176 the facility as a licensed child care facility and that is  
 177 posted on the property of the child care facility in a  
 178 conspicuous place where the sign is reasonably visible to the  
 179 public.

180 (d) Except as authorized by this chapter, it is unlawful  
 181 for any person to sell, manufacture, or deliver, or possess with  
 182 intent to sell, manufacture, or deliver, a controlled substance  
 183 in, on, or within 1,000 feet of the real property comprising a  
 184 public or private college, university, or other postsecondary  
 185 educational institution. Any person who violates this paragraph  
 186 with respect to:

187 1. A controlled substance named or described in s.  
 188 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 189 commits a felony of the first degree, punishable as provided in  
 190 s. 775.082, s. 775.083, or s. 775.084.

191 2. A controlled substance named or described in s.  
 192 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 193 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 194 the second degree, punishable as provided in s. 775.082, s.  
 195 775.083, or s. 775.084.

196 3. Any other controlled substance, except as lawfully

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197 sold, manufactured, or delivered, must be sentenced to pay a  
 198 \$500 fine and to serve 100 hours of public service in addition  
 199 to any other penalty prescribed by law.

200 (e) Except as authorized by this chapter, it is unlawful  
 201 for any person to sell, manufacture, or deliver, or possess with  
 202 intent to sell, manufacture, or deliver, a controlled substance  
 203 not authorized by law in, on, or within 1,000 feet of a physical  
 204 place for worship at which a church or religious organization  
 205 regularly conducts religious services or within 1,000 feet of a  
 206 convenience business as defined in s. 812.171. Any person who  
 207 violates this paragraph with respect to:

208 1. A controlled substance named or described in s.  
 209 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 210 commits a felony of the first degree, punishable as provided in  
 211 s. 775.082, s. 775.083, or s. 775.084.

212 2. A controlled substance named or described in s.  
 213 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 214 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 215 the second degree, punishable as provided in s. 775.082, s.  
 216 775.083, or s. 775.084.

217 3. Any other controlled substance, except as lawfully  
 218 sold, manufactured, or delivered, must be sentenced to pay a  
 219 \$500 fine and to serve 100 hours of public service in addition  
 220 to any other penalty prescribed by law.

221 (f) Except as authorized by this chapter, it is unlawful  
 222 for any person to sell, manufacture, or deliver, or possess with  
 223 intent to sell, manufacture, or deliver, a controlled substance  
 224 in, on, or within 1,000 feet of the real property comprising a

225 public housing facility at any time. For purposes of this  
 226 section, the term "real property comprising a public housing  
 227 facility" means real property, as defined in s. 421.03(12), of a  
 228 public corporation created as a housing authority pursuant to  
 229 part I of chapter 421. Any person who violates this paragraph  
 230 with respect to:

231 1. A controlled substance named or described in s.  
 232 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 233 commits a felony of the first degree, punishable as provided in  
 234 s. 775.082, s. 775.083, or s. 775.084.

235 2. A controlled substance named or described in s.  
 236 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 237 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 238 the second degree, punishable as provided in s. 775.082, s.  
 239 775.083, or s. 775.084.

240 3. Any other controlled substance, except as lawfully  
 241 sold, manufactured, or delivered, must be sentenced to pay a  
 242 \$500 fine and to serve 100 hours of public service in addition  
 243 to any other penalty prescribed by law.

244 (g) Except as authorized by this chapter, it is unlawful  
 245 for any person to manufacture methamphetamine or phencyclidine,  
 246 or possess any listed chemical as defined in s. 893.033 in  
 247 violation of s. 893.149 and with intent to manufacture  
 248 methamphetamine or phencyclidine. If any person violates this  
 249 paragraph and:

250 1. The commission or attempted commission of the crime  
 251 occurs in a structure or conveyance where any child under 16  
 252 years of age is present, the person commits a felony of the

253 first degree, punishable as provided in s. 775.082, s. 775.083,  
 254 or s. 775.084. In addition, the defendant must be sentenced to a  
 255 minimum term of imprisonment of 5 calendar years.

256 2. The commission of the crime causes any child under 16  
 257 years of age to suffer great bodily harm, the person commits a  
 258 felony of the first degree, punishable as provided in s.  
 259 775.082, s. 775.083, or s. 775.084. In addition, the defendant  
 260 must be sentenced to a minimum term of imprisonment of 10  
 261 calendar years.

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

268 1. A controlled substance named or described in s.  
 269 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.  
 270 commits a felony of the first degree, punishable as provided in  
 271 s. 775.082, s. 775.083, or s. 775.084.

272 2. A controlled substance named or described in s.  
 273 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 274 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 275 the second degree, punishable as provided in s. 775.082, s.  
 276 775.083, or s. 775.084.

277 (2)(a) Except as authorized by this chapter and chapter  
 278 499, it is unlawful for any person to purchase, or possess with  
 279 intent to purchase, a controlled substance. Any person who  
 280 violates this provision with respect to:

281 1. A controlled substance named or described in s.  
 282 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 283 commits a felony of the second degree, punishable as provided in  
 284 s. 775.082, s. 775.083, or s. 775.084.

285 2. A controlled substance named or described in s.  
 286 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 287 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 288 the third degree, punishable as provided in s. 775.082, s.  
 289 775.083, or s. 775.084.

290 3. A controlled substance named or described in s.  
 291 893.03(5) commits a misdemeanor of the first degree, punishable  
 292 as provided in s. 775.082 or s. 775.083.

293 (b) Except as provided in this chapter, it is unlawful to  
 294 purchase in excess of 10 grams of any substance named or  
 295 described in s. 893.03(1)(a) or (1)(b), or any combination  
 296 thereof, or any mixture containing any such substance. Any  
 297 person who violates this paragraph commits a felony of the first  
 298 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 299 775.084.

300 (3) Any person who delivers, without consideration, not  
 301 more than 20 grams of cannabis, as defined in this chapter,  
 302 commits a misdemeanor of the first degree, punishable as  
 303 provided in s. 775.082 or s. 775.083. For the purposes of this  
 304 paragraph, "cannabis" does not include the resin extracted from  
 305 the plants of the genus Cannabis or any compound manufacture,  
 306 salt, derivative, mixture, or preparation of such resin.

307 (4) Except as authorized by this chapter, it is unlawful  
 308 for any person 18 years of age or older to deliver any



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309 controlled substance to a person under the age of 18 years, or  
 310 to use or hire a person under the age of 18 years as an agent or  
 311 employee in the sale or delivery of such a substance, or to use  
 312 such person to assist in avoiding detection or apprehension for  
 313 a violation of this chapter. Any person who violates this  
 314 provision with respect to:

315 (a) A controlled substance named or described in s.  
 316 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 317 commits a felony of the first degree, punishable as provided in  
 318 s. 775.082, s. 775.083, or s. 775.084.

319 (b) A controlled substance named or described in s.  
 320 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 321 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 322 the second degree, punishable as provided in s. 775.082, s.  
 323 775.083, or s. 775.084.

324  
 325 Imposition of sentence may not be suspended or deferred, nor  
 326 shall the person so convicted be placed on probation.

327 (5) It is unlawful for any person to bring into this state  
 328 any controlled substance unless the possession of such  
 329 controlled substance is authorized by this chapter or unless  
 330 such person is licensed to do so by the appropriate federal  
 331 agency. Any person who violates this provision with respect to:

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

336 (b) A controlled substance named or described in s.

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

341 (c) A controlled substance named or described in s.  
 342 893.03(5) commits a misdemeanor of the first degree, punishable  
 343 as provided in s. 775.082 or s. 775.083.

344 (6)(a) It is unlawful for any person to be in actual or  
 345 constructive possession of a controlled substance unless such  
 346 controlled substance was lawfully obtained from a practitioner  
 347 or pursuant to a valid prescription or order of a practitioner  
 348 while acting in the course of his or her professional practice  
 349 or to be in actual or constructive possession of a controlled  
 350 substance except as otherwise authorized by this chapter. Any  
 351 person who violates this provision commits a felony of the third  
 352 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 353 775.084.

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

365 (c) Except as provided in this chapter, it is unlawful to  
 366 possess in excess of 10 grams of any substance named or  
 367 described in s. 893.03(1)(a) or (1)(b), or any combination  
 368 thereof, or any mixture containing any such substance. Any  
 369 person who violates this paragraph commits a felony of the first  
 370 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 371 775.084.

372 (d) Notwithstanding any provision to the contrary of the  
 373 laws of this state relating to arrest, a law enforcement officer  
 374 may arrest without warrant any person who the officer has  
 375 probable cause to believe is violating the provisions of this  
 376 chapter relating to possession of cannabis.

377 Section 3. For the purpose of incorporating the amendment  
 378 made by this act to section 893.03, Florida Statutes, in a  
 379 reference thereto, paragraphs (b) through (e) of subsection (3)  
 380 of section 921.0022, Florida Statutes, are reenacted to read:

381 921.0022 Criminal Punishment Code; offense severity  
 382 ranking chart.—

383 (3) OFFENSE SEVERITY RANKING CHART

384 (b) LEVEL 2

385

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.

386

387	379.2431 (1) (e) 4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
388	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.
389	517.07 (2)	3rd	Failure to furnish a prospectus meeting requirements.
390	590.28 (1)	3rd	Intentional burning of lands.
391	784.05 (3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
392	787.04 (1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
393	806.13 (1) (b) 3.	3rd	Criminal mischief; damage \$1,000 or more to public





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			communication or any other public service.
394	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
395	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
396	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
397	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
398	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
399	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
400			

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401	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
402	817.52(3)	3rd	Failure to redeliver hired vehicle.
403	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
404	817.60(5)	3rd	Dealing in credit cards of another.
405	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
406	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
407	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
408	831.01	3rd	Forgery.



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409	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
410	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
411	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
412	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
413	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
414	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
415	843.08	3rd	Falsely impersonating an officer.
	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.,

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(2)(c)6., (2)(c)7., (2)(c)8.,  
(2)(c)9., (3), or (4) drugs  
other than cannabis.

416

893.147(2)                      3rd      Manufacture or delivery of drug  
paraphernalia.

417

418                      (c)      LEVEL 3

419

Florida Statute	Felony Degree	Description
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420

119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
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421

316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
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422

316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
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423

316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
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424

319.30(4)	3rd	Possession by junkyard of motor vehicle with identification
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			number plate removed.
425	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
426	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
427	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
428	327.35(2)(b)	3rd	Felony BUI.
429	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
430	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
431	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.

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432	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.
433	379.2431 (1) (e) 6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
434	400.9935 (4)	3rd	Operating a clinic without a license or filing false license application or other required information.
435	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
436	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using

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			materially false/misleading information.
437	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
438	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
439	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
440	697.08	3rd	Equity skimming.
441	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
442	796.05(1)	3rd	Live on earnings of a prostitute.
443	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
444	806.10(2)	3rd	Interferes with or assaults

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			firefighter in performance of duty.
445	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
446	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
447	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
448	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
449	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
450	817.233	3rd	Burning to defraud insurer.
451	817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.

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452

817.234(11)(a) 3rd Insurance fraud; property value less than \$20,000.

453

817.236 3rd Filing a false motor vehicle insurance application.

454

817.2361 3rd Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.

455

817.413(2) 3rd Sale of used goods as new.

456

817.505(4) 3rd Patient brokering.

457

828.12(2) 3rd Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

458

831.28(2)(a) 3rd Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.

459

831.29 2nd Possession of instruments for counterfeiting drivers'

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			licenses or identification cards.
460	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
461	843.19	3rd	Injure, disable, or kill police dog or horse.
462	860.15(3)	3rd	Overcharging for repairs and parts.
463	870.01(2)	3rd	Riot; inciting or encouraging.
464	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).
465	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.



466	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
467	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
468	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
469	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
470	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
471	893.13(7)(a)11.	3rd	Furnish false or fraudulent

			material information on any document or record required by chapter 893.
472	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
473	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.
474	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
475	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

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writing the prescription is a monetary benefit for the practitioner.

476

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

477

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

478

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

479

985.721 3rd Escapes from a juvenile facility (secure detention or residential commitment facility).

480

481 (d) LEVEL 4

482

Florida	Felony	
Statute	Degree	Description

483

316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer
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			who is in a patrol vehicle with siren and lights activated.
484	499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
485	499.0051(2)	3rd	Failure to authenticate pedigree papers.
486	499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
487	517.07(1)	3rd	Failure to register securities.
488	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
489	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
490	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
491	784.075	3rd	Battery on detention or commitment facility staff.
492			

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493	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
494	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
495	784.081 (3)	3rd	Battery on specified official or employee.
496	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
497	784.083 (3)	3rd	Battery on code inspector.
498	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
499	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.

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500

787.04 (3) 3rd Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.

501

787.07 3rd Human smuggling.

502

790.115 (1) 3rd Exhibiting firearm or weapon within 1,000 feet of a school.

503

790.115 (2) (b) 3rd Possessing electric weapon or device, destructive device, or other weapon on school property.

504

790.115 (2) (c) 3rd Possessing firearm on school property.

505

800.04 (7) (c) 3rd Lewd or lascivious exhibition; offender less than 18 years.

506

810.02 (4) (a) 3rd Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.

507

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508	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
509	810.06	3rd	Burglary; possession of tools.
510	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
511	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
512	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
513	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
514	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

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			identification information.
515	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
516	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
517	837.02(1)	3rd	Perjury in official proceedings.
518	837.021(1)	3rd	Make contradictory statements in official proceedings.
519	838.022	3rd	Official misconduct.
520	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
521	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.
522	843.021	3rd	Possession of a concealed handcuff key by a person in



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			custody.
523	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
524	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
525	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
526	874.05(1)	3rd	Encouraging or recruiting another to join a criminal gang.
527	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).
528	914.14(2)	3rd	Witnesses accepting bribes.
529	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.

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530	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
531	918.12	3rd	Tampering with jurors.
532	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
533			
534	(e) LEVEL 5		
535			
	Florida Statute	Felony Degree	Description
536	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
537	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
538	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
539	327.30(5)	3rd	Vessel accidents involving

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540			personal injury; leaving scene.
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
541			
	379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
542			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
543			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
544			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
545			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
546			

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547	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
548	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
549	790.01(2)	3rd	Carrying a concealed firearm.
550	790.162	2nd	Threat to throw or discharge destructive device.
551	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
552	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
553	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
554	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
	800.04(7)(b)	2nd	Lewd or lascivious exhibition;

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			offender 18 years or older.
555	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
556	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
557	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
558	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
559	812.131(2)(b)	3rd	Robbery by sudden snatching.
560	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
561	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
562	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than

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\$100,000.

563

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.

564

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.

565

817.625 (2) (b)

2nd

Second or subsequent fraudulent use of scanning device or reencoder.

566

825.1025 (4)

3rd

Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

567

827.071 (4)

2nd

Possess with intent to promote

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568	827.071(5)	3rd	any photographic material, motion picture, etc., which includes sexual conduct by a child.
569	839.13(2)(b)	2nd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
570	843.01	3rd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
571	847.0135(5)(b)	2nd	Resist officer with violence to person; resist arrest with violence.
572	847.0137 (2) & (3)	3rd	Lewd or lascivious exhibition using computer; offender 18 years or older.
573			Transmission of pornography by electronic device or equipment.

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574	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
575	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
576	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).
577	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.



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578	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.
579	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
580	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.
	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.,

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(2) (c) 5., (2) (c) 6., (2) (c) 7.,  
(2) (c) 8., (2) (c) 9., (3), or (4)  
drugs).

581

893.1351(1)

3rd

Ownership, lease, or rental for  
trafficking in or manufacturing  
of controlled substance.

582

583

Section 4. This act shall take effect October 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1041 (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: Criminal Justice

2 Subcommittee

3 Representative Berman offered the following:

4 **Amendment**

5 Remove lines 18-111 and insert:

6 Section 1. Paragraphs (h), (i), (j), (k), (l), (m), and  
7 (n) are added to subsection (3) of section 893.03, Florida  
8 Statutes, to read:

9 893.03 Standards and schedules.—The substances enumerated  
10 in this section are controlled by this chapter. The controlled  
11 substances listed or to be listed in Schedules I, II, III, IV,  
12 and V are included by whatever official, common, usual,  
13 chemical, or trade name designated. The provisions of this  
14 section shall not be construed to include within any of the  
15 schedules contained in this section any excluded drugs listed  
16 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
17 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
18 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempt  
19 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
20 Anabolic Steroid Products."

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1041 (2013)

Amendment No. 1

21 (3) SCHEDULE III.—A substance in Schedule III has a  
22 potential for abuse less than the substances contained in  
23 Schedules I and II and has a currently accepted medical use in  
24 treatment in the United States, and abuse of the substance may  
25 lead to moderate or low physical dependence or high  
26 psychological dependence or, in the case of anabolic steroids,  
27 may lead to physical damage. The following substances are  
28 controlled in Schedule III:

29 (a) Unless specifically excepted or unless listed in  
30 another schedule, any material, compound, mixture, or  
31 preparation which contains any quantity of the following  
32 substances having a depressant or stimulant effect on the  
33 nervous system:

34 1. Any substance which contains any quantity of a  
35 derivative of barbituric acid, including thiobarbituric acid, or  
36 any salt of a derivative of barbituric acid or thiobarbituric  
37 acid, including, but not limited to, butabarbital and  
38 butalbital.

39 2. Benzphetamine.

40 3. Chlorhexadol.

41 4. Chlorphentermine.

42 5. Clortermine.

43 6. Lysergic acid.

44 7. Lysergic acid amide.

45 8. Methyprylon.

46 9. Phendimetrazine.

47 10. Sulfondiethylmethane.

48 11. Sulfonethylmethane.

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- 49       12. Sulfonmethane.
- 50       13. Tiletamine and zolazepam or any salt thereof.
- 51       (b) Nalorphine.
- 52       (c) Unless specifically excepted or unless listed in
- 53 another schedule, any material, compound, mixture, or
- 54 preparation containing limited quantities of any of the
- 55 following controlled substances or any salts thereof:
- 56       1. Not more than 1.8 grams of codeine per 100 milliliters
- 57 or not more than 90 milligrams per dosage unit, with an equal or
- 58 greater quantity of an isoquinoline alkaloid of opium.
- 59       2. Not more than 1.8 grams of codeine per 100 milliliters
- 60 or not more than 90 milligrams per dosage unit, with recognized
- 61 therapeutic amounts of one or more active ingredients which are
- 62 not controlled substances.
- 63       3. Not more than 300 milligrams of hydrocodone per 100
- 64 milliliters or not more than 15 milligrams per dosage unit, with
- 65 a fourfold or greater quantity of an isoquinoline alkaloid of
- 66 opium.
- 67       4. Not more than 300 milligrams of hydrocodone per 100
- 68 milliliters or not more than 15 milligrams per dosage unit, with
- 69 recognized therapeutic amounts of one or more active ingredients
- 70 that are not controlled substances.
- 71       5. Not more than 1.8 grams of dihydrocodeine per 100
- 72 milliliters or not more than 90 milligrams per dosage unit, with
- 73 recognized therapeutic amounts of one or more active ingredients
- 74 which are not controlled substances.
- 75       6. Not more than 300 milligrams of ethylmorphine per 100
- 76 milliliters or not more than 15 milligrams per dosage unit, with

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77 | one or more active, nonnarcotic ingredients in recognized  
78 | therapeutic amounts.

79 |         7. Not more than 50 milligrams of morphine per 100  
80 | milliliters or per 100 grams, with recognized therapeutic  
81 | amounts of one or more active ingredients which are not  
82 | controlled substances.

83 | For purposes of charging a person with a violation of s. 893.135  
84 | involving any controlled substance described in subparagraph 3.  
85 | or subparagraph 4., the controlled substance is a Schedule III  
86 | controlled substance pursuant to this paragraph but the weight  
87 | of the controlled substance per milliliters or per dosage unit  
88 | is not relevant to the charging of a violation of s. 893.135.  
89 | The weight of the controlled substance shall be determined  
90 | pursuant to s. 893.135(6).

91 |         (d) Anabolic steroids.

92 |         1. The term "anabolic steroid" means any drug or hormonal  
93 | substance, chemically and pharmacologically related to  
94 | testosterone, other than estrogens, progestins, and  
95 | corticosteroids, that promotes muscle growth and includes:

- 96 |         a. Androsterone.
- 97 |         b. Androsterone acetate.
- 98 |         c. Boldenone.
- 99 |         d. Boldenone acetate.
- 100 |         e. Boldenone benzoate.
- 101 |         f. Boldenone undecylenate.
- 102 |         g. Chlorotestosterone (4-chlortestosterone).
- 103 |         h. Clostebol.
- 104 |         i. Dehydrochlormethyltestosterone.

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- 105 j. Dihydrotestosterone (4-dihydrotestosterone).
- 106 k. Drostanolone.
- 107 l. Ethylestrenol.
- 108 m. Fluoxymesterone.
- 109 n. Formebolone (formebolone).
- 110 o. Mesterolone.
- 111 p. Methandienone.
- 112 q. Methandranone.
- 113 r. Methandriol.
- 114 s. Methandrostenolone.
- 115 t. Methenolone.
- 116 u. Methyltestosterone.
- 117 v. Mibolerone.
- 118 w. Nandrolone.
- 119 x. Norethandrolone.
- 120 y. Nortestosterone.
- 121 z. Nortestosterone decanoate.
- 122 aa. Nortestosterone phenylpropionate.
- 123 bb. Nortestosterone propionate.
- 124 cc. Oxandrolone.
- 125 dd. Oxymesterone.
- 126 ee. Oxymetholone.
- 127 ff. Stanolone.
- 128 gg. Stanozolol.
- 129 hh. Testolactone.
- 130 ii. Testosterone.
- 131 jj. Testosterone acetate.
- 132 kk. Testosterone benzoate.

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- 133 ll. Testosterone cypionate.  
134 mm. Testosterone decanoate.  
135 nn. Testosterone enanthate.  
136 oo. Testosterone isocaproate.  
137 pp. Testosterone oleate.  
138 qq. Testosterone phenylpropionate.  
139 rr. Testosterone propionate.  
140 ss. Testosterone undecanoate.  
141 tt. Trenbolone.  
142 uu. Trenbolone acetate.  
143 vv. Any salt, ester, or isomer of a drug or substance  
144 described or listed in this subparagraph if that salt, ester, or  
145 isomer promotes muscle growth.
- 146 2. The term does not include an anabolic steroid that is  
147 expressly intended for administration through implants to cattle  
148 or other nonhuman species and that has been approved by the  
149 United States Secretary of Health and Human Services for such  
150 administration. However, any person who prescribes, dispenses,  
151 or distributes such a steroid for human use is considered to  
152 have prescribed, dispensed, or distributed an anabolic steroid  
153 within the meaning of this paragraph.
- 154 (e) Ketamine, including any isomers, esters, ethers,  
155 salts, and salts of isomers, esters, and ethers, whenever the  
156 existence of such isomers, esters, ethers, and salts is possible  
157 within the specific chemical designation.
- 158 (f) Dronabinol (synthetic THC) in sesame oil and  
159 encapsulated in a soft gelatin capsule in a drug product  
160 approved by the United States Food and Drug Administration.



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161 (g) Any drug product containing gamma-hydroxybutyric acid,  
162 including its salts, isomers, and salts of isomers, for which an  
163 application is approved under s. 505 of the Federal Food, Drug,  
164 and Cosmetic Act.

165 (h) Human chorionic gonadotropin (hCG).

166 (i) CJC-1295.

167 (j) Growth hormone releasing hormone (GHRH).

168 (k) Growth hormone releasing hexapeptide (GHRP-6).

169 (l) Human growth hormone (HGH).

170 (m) Somatropin.

171 (n) Tesamorelin.

172



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1183 Pub. Rec./Forensic Behavioral Health Evaluations  
**SPONSOR(S):** Gibbons  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 824

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	12 Y, 0 N	Entress	Schoolfield
2) Criminal Justice Subcommittee		Cox <i>pac</i>	Cunningham <i>su</i>
3) Government Operations Subcommittee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

There are currently twenty types of records contained in court files that are automatically exempt from disclosure as public records. Forensic behavioral health evaluations are not included in these exemptions. Record exemptions for forensic behavioral health evaluations are currently determined on a case by case basis.

The bill states that the Legislature finds it a public necessity that forensic behavioral health evaluations filed with the court pursuant to ch. 916, F.S., be confidential and exempt from disclosure under public records requirements.

The bill defines the term "forensic behavioral health evaluation" and creates a public records exemption for these evaluations during court proceedings. The bill authorizes the release of the evaluations if the evaluation becomes part of a clinical record.

The Office of the State Courts Administrator reports that the bill will help reduce court workload related to the case-by-case analysis which is currently required to deem these reports as confidential. However, OSCA reports the fiscal impact on the State Courts System cannot be accurately determined due to the unavailability of data needed to quantifiably establish the decrease in judicial and staff workload due to the decrease in hearings on these motions.

The bill provides an effective date of upon enactment.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Records Laws**

###### Florida Constitution

Article I, section 24(a), of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup>

The Legislature, however, may provide by general law passed by two-thirds vote of each chamber for the exemption of records from the requirements of Article I, section 24 of the Florida Constitution, provided the exemption:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.<sup>2</sup>

###### Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act<sup>3</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>4</sup> However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.<sup>5</sup>

##### **Forensic Clients**

The Department of Children and Families and the Agency for Persons with Disabilities establish, locate, and maintain separate and secure forensic facilities and programs for the treatment and training of defendants who have been charged with a felony and found to be incompetent to proceed due to their mental illness, mental retardation, or autism. These agencies also provide services for individuals who have been acquitted of a felony by reason of insanity. Except for those defendants found by the DCF or APD to be appropriate for treatment or training in a civil facility or program, forensic facilities are designed and administered so that entry and exit may be strictly controlled by staff responsible for security in order to protect the defendant, facility personnel, other clients, and citizens in adjacent communities.<sup>6</sup>

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<sup>1</sup> Article I, Sec. 24(a), FLA. CONST.

<sup>2</sup> Article I, Sec. 24(c), FLA. CONST.

<sup>3</sup> Section 119.15, F.S.

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

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

<sup>6</sup> S. 916.105, F.S.

Competency restoration training and mental health services are provided by DCF in four state forensic mental health treatment facilities with a total secure capacity of 1108 beds. There are also 435 non-secure, forensic step-down beds in civil hospitals. In fiscal year 2011-2012, DCF served a total of 2,531 individuals with a Chapter 916, F.S., commitment. Evaluators employed at state mental health treatment facilities, as well as court-appointed evaluators, are tasked with evaluating defendants to determine if they meet criteria for involuntary commitment. Those reports are received by the circuit clerks of courts, presiding judges, defense counsel and opposing counsel.<sup>7</sup>

### **Clinical Records**

Clinical records for individuals adjudicated as incompetent to proceed due to mental illness, mental retardation, or autism, or who have been acquitted of a felony by reason of insanity are confidential and exempt from public records requirements of s. 119.07(1), F.S., and s. 24(a), Art I of the State Constitution.<sup>8</sup> These records may be released to a variety of individuals, including persons authorized by order of the court and to the client's counsel when the records are need by the counsel for adequate representation.<sup>9</sup> Behavioral health records filed with the courts in chapter 916, F.S., proceedings are not automatically exempt from public records as a Type I exemption. Chapter 916, F.S., governs mentally deficient and mentally ill defendants.

Current statutes do not expressly make these records contained in court files exempt from public access. Therefore, in order for behavioral records (which includes psychological or psychiatric evaluations and treatment records) to qualify for the exemption, the Legislature would have to expressly make such records filed with the court exempt from public access.

The Florida Supreme Court found that a motion to make the records confidential must be filed in every case involving court-ordered psychiatric and psychological evaluations and attached records contained in court files. The Court indicated that legislative action was needed in order to make court-ordered pretrial psychiatric and psychological evaluations automatic exemptions.<sup>10</sup> The Florida Public Defenders Association filed a comment with the Supreme Court advocating that "psychological or psychiatric evaluations and treatment records filed in a criminal case" should be automatically exempt from public records. The Rules of Judicial Administration Committee (RJAC) responded to the FPDA's comment and agreed that there is no statutory basis for a rule as requested by the FPDA and that such a change would require legislation.<sup>11</sup>

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

The bill states that the Legislature finds it a public necessity that forensic behavioral health evaluations filed with the court pursuant to ch. 916, F.S., be confidential and exempt from disclosure under public records requirements. The bill states that the personal health of an individual and the treatment received is an intensely private matter and should not be made public merely because it is filed with the court. The bill states that protecting forensic behavioral health evaluations is necessary to consistently protect the health care privacy rights of all people.

The bill provides confidentiality to forensic mental health records and exempts these records from the public records requirements of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This applies during all judicial proceedings unless such records are released as provided by law.

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<sup>7</sup> Department of Children and Families Analysis of HB 1183, February 18, 2013.

<sup>8</sup> S. 916.107(8), F.S.

<sup>9</sup> S. 916.107(8)(a)(2), F.S.

<sup>10</sup> The Supreme Court in re Amendments to Florida Rule of Judicial Administration 2.420, 68 So. 3d 228 (Fla. 2011), declined to amend the rule to include court-ordered psychiatric and psychological records contained in court files as an automatic Type I exemption, stating that any records not expressly exempt from public access by laws in effect on July 1, 1993, or court rules in effect on September 1992 are not appropriate for inclusion as an automatic Type I exemption under the rule.

<sup>11</sup> Supreme Court rules case SC11-2466.

The bill defines the term "forensic behavioral health evaluation" as any record, including supporting documentation, which was derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or any other mental health evaluation.

The bill clarifies that if the evaluation becomes part of a clinical record, it can be released, as required by law, under s. 916.107(8), F.S.

The bill clarifies that the exemption is limited and no broader than necessary to accomplish the stated purpose.

The bill contains a sunset clause and will be repealed on October 2, 2018, unless reenacted by the legislature.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 916.1065, F.S., related to confidentiality of forensic behavioral health evaluations.

**Section 2:** Provides for an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

1. Revenues:

None.

2. Expenditures:

The bill creates a statutory public records exemption which will enable Rule 2.420, of the Florida Rules of Judicial Administration to be amended to include "forensic behavioral health evaluations." The Office of State Courts Administrator reports that without this exemption there is a potential for a tremendous increase in court workload as a result of attorneys filing motions to protect these evaluations in every case where a psychological evaluation was ordered.<sup>12</sup> OSCA reports that the bill will help reduce court workload related to ruling on these motions on a case-by-case basis.<sup>13</sup> However, OSCA reports the fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantifiably establish the decrease in judicial and staff workload due to the decrease in hearings on these motions.<sup>14</sup>

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

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<sup>12</sup> Office of the State Courts Administrator, 2013 Judicial Impact Statement for HB 1185.

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

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

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to public records; creating s.  
 3           916.1065, F.S.; creating an exemption from public  
 4           records requirements for a forensic behavioral health  
 5           evaluation filed with a court; providing a definition  
 6           for the term "forensic behavioral health evaluation";  
 7           authorizing the release of such evaluations under  
 8           certain circumstances; providing for future  
 9           legislative review and repeal of the exemption under  
 10          the Open Government Sunset Review Act; providing a  
 11          statement of public necessity, applicability, and  
 12          construction; providing an effective date.

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

15  
 16           Section 1. Section 916.1065, Florida Statutes, is created  
 17 to read:

18           916.1065 Confidentiality of forensic behavioral health  
 19 evaluations:

20           (1) A forensic behavioral health evaluation filed with the  
 21 court under this chapter is confidential and exempt from the  
 22 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 23 Constitution.

24           (2) As used in this section, the term "forensic behavioral  
 25 health evaluation" means any record, including supporting  
 26 documentation, derived from a competency, substance abuse,  
 27 psychosexual, psychological, psychiatric, psychosocial,  
 28 cognitive impairment, sanity, or other mental health evaluation



29 | of an individual.

30 |       (3) As provided by law, if the evaluation becomes part of  
 31 | a clinical record, the evaluation may be released as provided in  
 32 | s. 916.107(8).

33 |       (4) This section is subject to the Open Government Sunset  
 34 | Review Act in accordance with s. 119.15 and shall stand repealed  
 35 | on October 2, 2018, unless reviewed and saved from repeal  
 36 | through reenactment by the Legislature.

37 |       Section 2. The Legislature finds that it is a public  
 38 | necessity that forensic behavioral health evaluations filed with  
 39 | the court pursuant to chapter 916, Florida Statutes, be  
 40 | confidential and exempt from disclosure under public records  
 41 | requirements. The personal health of an individual and the  
 42 | treatment he or she receives is an intensely private matter. An  
 43 | individual's forensic behavioral health evaluation should not be  
 44 | made public merely because it is filed with the court.  
 45 | Protecting forensic behavioral health evaluations is necessary  
 46 | to consistently protect the health care privacy rights of all  
 47 | persons. This exemption applies during all judicial proceedings  
 48 | unless such records are released as provided by law. This  
 49 | exemption is limited and no broader than necessary to accomplish  
 50 | the stated purpose.

51 |       Section 3. This act shall take effect upon becoming a law.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1185 Pub. Rec./Participants in Treatment-Based Drug Court Programs
SPONSOR(S): Gibbons
TIED BILLS: IDEN./SIM. BILLS: SB 1014

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

SUMMARY ANALYSIS

Rule 2.420, of the Florida Rules of Judicial Administration (Rule 2.420), currently identifies 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information). Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing.

Drug court records contained in court files are not currently listed as Type I information. In order to make these records confidential, a motion must be filed and the trial court must hold a hearing.

In 2011, it was suggested that Rule 2.420 be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include drug court records) as Type I information. However, the Florida Supreme Court held that "the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list."

The bill amends s. 397.334, F.S., to make the following drug court program records confidential and exempt from the public records requirements of ch.119, F.S., and Article 1, section 24(a), of the Florida Constitution:

- Initial screenings for participation in a treatment-based drug court program;
Substance abuse screenings;
Behavioral health evaluations; and
Subsequent treatment status reports.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill eliminates the need to file motions and conduct hearings to make drug court records confidential. The Office of the State Courts Administrator reports that this would result in a reduction in judicial and court system workload, but that the precise impact would depend on the number of motions and hearings that would actually be eliminated.

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

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Records Laws**

###### Florida Constitution

Article I, section 24(a), of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup>

The Legislature, however, may provide by general law passed by two-thirds vote of each chamber for the exemption of records from the requirements of Article I, section 24 of the Florida Constitution, provided the exemption:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.<sup>2</sup>

###### Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act<sup>3</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>4</sup> However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.<sup>5</sup>

The Open Government Sunset Review Act requires the automatic repeal of such exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup> The Act also requires specified questions to be considered during the review process.<sup>7</sup>

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<sup>1</sup> Article 1, Sec. 24(a), FLA. CONST.

<sup>2</sup> Article 1, Sec. 24(c), FLA. CONST.

<sup>3</sup> Section 119.15, F.S.

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

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

<sup>6</sup> Section 119.15(3), F.S.

<sup>7</sup> Section 119.15(6)(a), F.S., states that the specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

## Records from Treatment-Based Drug Courts

Section 397.334, F.S., establishes pretrial and postadjudicatory treatment-based drug court programs. These programs are designed to divert drug addicted offenders from the criminal justice system and provide supervised community treatment services in lieu of incarceration. Participants in drug court programs receive substance abuse treatment, screenings, and continual monitoring and evaluations.<sup>8</sup> Records of the screenings and evaluations can be reviewed by court officials as part of the process of determining whether the individual is complying with the drug court program.<sup>9</sup>

## Public Access to Judicial Records

Rule 2.420, of the Florida Rules of Judicial Administration (Rule 2.420), states that the public must have access to the records of the judicial branch.<sup>10,11</sup> However, the rule currently identifies 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information).<sup>12</sup> Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing.<sup>13</sup>

Drug court records contained in court files are not currently listed as Type I information.<sup>14</sup> In order to make these records confidential, a motion must be filed and the trial court must hold a hearing.

In 2011, it was suggested that Rule 2.420 be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include drug court records) as Type I information. However, the Florida Supreme Court held that because such information was not expressly exempt from public access by the laws in effect on July 1, 1993, or court rules in effect on September 1992, such information was not appropriate for inclusion as Type I information.<sup>15</sup> The opinion further stated that “the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list.”<sup>16</sup>

## Effect of the Bill

The bill amends s. 397.334, F.S., to make the following treatment-based drug court program records confidential and exempt from the public records requirements of ch.119, F.S., and Article 1, section 24(a), of the Florida Constitution:

- Initial screenings for participation in a treatment-based drug court program;
- Substance abuse screenings;
- Behavioral health evaluations; and
- Subsequent treatment status reports.

---

<sup>8</sup> Section 397.334(4), F.S.

<sup>9</sup> Section 397.334(5), F.S.

<sup>10</sup> Fla. R. Jud. Admin 2.420(b)(1) defines “records of the judicial branch” as all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

- “Court records,” which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and
- “Administrative records,” which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

<sup>11</sup> Fla. R. Jud. Admin 2.420(b)(2) defines “judicial branch” as the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all entities established by or operating under the authority of the supreme court or the chief justice.

<sup>12</sup> *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228 (Fla. 2011); Fla. R. Jud Admin 2.420(d)(3).

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

<sup>14</sup> 2013 Judicial Impact Statement for HB 1185, Office of the State Courts Administrator (OSCA)(on file with the Criminal Justice Subcommittee); Rule 2.420, Fla. R. Jud. Admin.

<sup>15</sup> *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228 (Fla. 2011);

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

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 397.334, F.S., relating to treatment-based drug court programs.

Section 2. Provides a public necessity statement.

Section 3. The bill is effective upon becoming a law.

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

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

1. Revenues:

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

2. Expenditures:

The bill eliminates the need to file motions and conduct hearings to make treatment-based drug court records confidential. The Office of the State Courts Administrator reports that this would result in a reduction in judicial and court system workload but that the precise impact would depend on the number of motions and hearings that would actually be eliminated.

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

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

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           397.334, F.S.; exempting from public records  
 4           requirements the initial screenings for a treatment-  
 5           based drug court program, substance abuse screenings,  
 6           behavioral health evaluations, and subsequent  
 7           treatment status reports regarding a participant in a  
 8           treatment-based drug court program; providing for  
 9           future repeal and legislative review of the exemption  
 10          under the Open Government Sunset Review Act; providing  
 11          a statement of public necessity; providing an  
 12          effective date.

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

15  
 16           Section 1. Subsection (10) is added to section 397.334,  
 17   Florida Statutes, to read:  
 18           397.334 Treatment-based drug court programs.—  
 19           (10) Initial screenings for participation in a treatment-  
 20           based drug court program, substance abuse screenings, behavioral  
 21           health evaluations, and subsequent treatment status reports  
 22           relating to a participant in a treatment-based drug court  
 23           program under this section are confidential and exempt from s.  
 24           119.07(1) and s. 24(a), Art. I of the State Constitution. This  
 25           subsection is subject to the Open Government Sunset Review Act  
 26           in accordance with s. 119.15 and shall stand repealed on October  
 27           2, 2018, unless reviewed and saved from repeal through  
 28           reenactment by the Legislature.



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29           Section 2. The Legislature finds that it is a public  
30 necessity that initial screenings for participation in a  
31 treatment-based drug court program, substance abuse screenings,  
32 behavioral health evaluations, and subsequent treatment status  
33 reports relating to a participant in a treatment-based drug  
34 court program under s. 397.334, Florida Statutes, be made exempt  
35 from public records requirements. This exemption is necessary to  
36 protect the privacy rights of participants in treatment-based  
37 drug court programs. These records are federally recognized as  
38 confidential in 42 C.F.R. part 2, regarding the confidentiality  
39 of records of patients who suffer from alcohol or drug abuse.  
40 Accordingly, the Legislature finds that the chilling effect to a  
41 participant who is seeking treatment for his or her substance  
42 abuse which would result from the release of his or her  
43 evaluations, screenings, and reports substantially outweighs any  
44 public benefit derived from disclosure to the public.

45           Section 3. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1393 Agricultural Storage and Shipping Containers  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee; Beshears  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Kaiser	Blalock
2) Criminal Justice Subcommittee		Jones <i>LTS</i>	Cunningham <i>SK</i>
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

Reports across the country indicate that, due to the increased cost of plastic, the theft of plastic pallets and merchandise containers has escalated. Current law provides certain protections for owners of marked or branded field boxes, pallets, crates, containers, or receptacles used in the production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts by establishing penalties for violations of specific provisions relating to the containers. However, these statutory protections do not currently apply to similar items used for transportation or storage of agricultural products.

The bill expands the current statutory protections for owners of certain containers to include those used for storage and transportation of agricultural or other commodities. The bill also creates similar protections for owners of plastic bulk merchandise containers by requiring a person who purchases five or more plastic bulk merchandise containers from one seller to:

- Obtain from the seller proof of ownership of the containers.
- Maintain a record that contains the date of the transaction; the seller's or consignee's name, address, and telephone number; and, a description of the containers, including the number of containers being sold, each container's serial number, and other identifying marks.
- Verify the seller's identity with a valid driver's license or other government-issued photo identification card and maintain a copy of the identification card in the record of the sale.
- Make a non-cash payment for five or more plastic bulk merchandise containers and record the method of payment used in each transaction.

In addition, the bill requires a purchaser to maintain required records for at least two years after the date of purchase or delivery, whichever is later. State attorneys may inspect these records at any time upon notice.

A person who violates these provisions in a transaction valued at \$10,000 or less commits a first degree misdemeanor. A violation relating to a transaction valued at more than \$10,000 is a third degree felony.

A person who violates these provisions is liable to the owner of a stolen plastic bulk merchandise container for three times the replacement value of the stolen container. The owner of the stolen container may bring an action in a court of competent jurisdiction to recover monetary damages, attorney fees, and costs incurred in maintaining the action.

The bill has a negligible positive fiscal impact on state government and may have a negative fiscal impact on state and local governments. See fiscal section.

The bill has an effective date of October 1, 2013.

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

STORAGE NAME: h1393b.CRJS

DATE: 3/25/2013

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Section 506.19, F.S., provides that a person who owns containers<sup>1</sup> used in the general production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts in the state may adopt for his/her exclusive use and ownership a particular mark or brand to designate and distinguish his/her ownership of the containers. An owner may identify his/her containers with such mark or brand in the form of such combinations, initials, symbols, designs, or names as he/she may desire, by plainly and distinctly stamping, stenciling, painting, cutting, etching, or burning the mark or brand into or upon both ends or sides of such containers. The presence of the identifying mark or brand must be filed and recorded with the Department of Agriculture and Consumer Services (department) and serves as prima facie evidence in any court in the state of ownership of such container by the person who recorded the mark or brand with the department and bears the registered number.

Chapter 506, F.S.,<sup>2</sup> provides protection for owners of marked or branded field boxes, pallets, crates, containers, or receptacles used in the production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts by establishing penalties for:

- Unauthorized possession of protected containers;
- Alteration or obliteration of marks or brands on protected containers;
- Purchase of protected containers from persons other than the registered owner;
- Refusal to deliver protected containers to the registered owner upon demand; and
- Sending protected containers out of state.

Other sections of ch. 506, F.S. provide protection for owners of shopping carts, laundry carts, dairy cases, egg baskets, poultry boxes, and bakery containers.<sup>3</sup> However, the above statutory protections do not currently apply to similar items used for transportation or storage of agricultural products.

Recently, there have been numerous reports regarding the theft of plastic pallets and other reusable containers. An article in the Los Angeles Times reported that this is becoming a nationwide problem due to the rise in the price of oil, which has driven up the cost of plastic. Arizona enacted legislation in 2012 to track down persons stealing the plastic pallets and turning them in for cash value at recycling centers. California has also enacted legislation to protect plastic pallets from theft. In Florida, a man was recently arrested for allegedly stealing pallets from a Home Depot parking lot. Though he claimed that he thought the pallets were trash and could be taken, he was charged with grand theft. He eventually pled guilty to disorderly conduct.

##### Effect of Proposed Changes

The bill amends s. 506.19, F.S., to provide that persons who own containers used for the storage or transport of agricultural or other commercial goods may adopt a mark or brand for his/her exclusive use and ownership, which is similar to what is currently allowed for containers used in the general production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts. The bill also specifies that, for purposes of any court of administrative proceeding, if a copy of the mark or brand is filed and recorded with the department, the presence of the identifying mark or brand and the required registration number on any container is prima facie evidence of ownership.

<sup>1</sup> For ease of reading, "container" is used in this analysis to refer to field boxes, pallets, crates, containers, or receptacles.

<sup>2</sup> Sections 506.19-506.28, F.S.

<sup>3</sup> Sections 506.501-506.519, F.S.

The bill creates s. 506.265, F.S., which provides the following definitions:

- “Bona fide purchaser” means a person who in good faith makes a purchase without knowledge of another person’s outstanding rights.
- “Noncash payment” means payment by a method other than the use of coins or currency.
- “Plastic bulk merchandise container” means a plastic crate or shell used by a product manufacturer, distributor, or retailer for the bulk transportation or storage of goods, and includes a plastic pallet used as a portable platform upon which containers, products, or materials may be placed to facilitate handling.
- “Proof of ownership” means a bill of sale or other evidence showing that a person who claims to be the owner of an item is the bona fide purchaser who purchased the item for fair market value.

The bill also provides that a person who purchases five or more plastic bulk merchandise containers from one seller must:

- Obtain from the seller proof of ownership of the containers.
- Maintain a record that contains the date of the transaction; the seller’s or consignee’s name, address, and telephone number; and a description of the containers, including the number of containers being sold, each container’s serial number, and other identifying marks.
- Verify the seller’s identity with a valid driver’s license or other government-issued photo identification card and maintain a copy of the identification card in the record of the sale.
- Make a noncash payment for five or more plastic bulk merchandise containers and record the method of payment used in each transaction.

In addition, the bill provides that a purchaser must maintain required records for at least two years after the date of purchase or delivery, whichever is later. State attorneys of the judicial circuits may inspect these records at any time upon reasonable notice.

A person who violates these provisions in a transaction valued at \$10,000 or less commits a misdemeanor of the first degree, punishable by a definite term of imprisonment not exceeding one year or a fine not exceeding \$1,000.<sup>4</sup> A person who violates these provisions in a transaction valued at more than \$10,000 commits a felony of the third degree, punishable by a term of imprisonment not exceeding five years or a fine not exceeding \$5,000.<sup>5</sup> In the case of habitual offenders, the term of imprisonment cannot exceed 10 years.

A person who violates these provisions is liable to the owner of a stolen plastic bulk merchandise container for three times the replacement value of the stolen container. The owner of the stolen container may bring an action in a court of competent jurisdiction to recover monetary damages, attorney fees, and costs incurred in maintaining the action.

These provisions do not apply to the collection, receipt, or recycling of plastic bulk merchandise containers by the operator of a waste management facility or an entity exempt from federal income tax under s. 503(c)(3) of the Internal Revenue Code.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 506.19, F.S., authorizing the use of certain brands and marks on containers used for the storage and transport of agricultural and other commercial products to designate and distinguish ownership of containers.

<sup>4</sup> Sections 775.082 and 775.083, F.S.

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

**Section 2:** Creates s. 506.265, F.S., providing definitions; providing requirements for the sale and purchase of a specified number of plastic bulk merchandise containers; providing that prosecuting attorneys may inspect records of purchase at any time upon reasonable notice; providing criminal and civil penalties; and providing an exception for the operator of a waste management facility and certain tax-exempt entities.

**Section 3:** Provides an effective date of October 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill. However, the bill may have a negative prison bed impact on the Department of Corrections because it creates a new third degree felony for a person who violates s. 506.265, F.S., in a transaction valued at more than \$10,000.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative jail bed impact on the local governments because it creates a new first degree misdemeanor for a person who violates s. 506.265, F.S., in a transaction valued at \$10,000 or less.

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

Owners of plastic bulk merchandise containers that wish to be protected by the provisions of this legislation will incur charges of an indeterminate amount in order to comply with the registration and record-keeping requirements.

### D. FISCAL COMMENTS:

The Department of Agriculture and Consumer Services anticipates an insignificant increase in revenues from an increase in registrations for containers used for the storage and transportation of agricultural or other commodities.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

None

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On Wednesday, March 20, 2013, the Agriculture and Natural Resources Subcommittee adopted one amendment to HB 1393. The amendment:

- Provides a definition for “noncash payment;”
- Changes the penalty from a first degree felony to a third degree felony for unlawful possession of containers valued at more than \$10,000;
- Provides an exemption from the provisions of the bill for entities exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code; and
- Corrected one scrivener’s error in the bill where the word “money” should have been “monetary.”

1                                A bill to be entitled  
 2            An act relating to agricultural storage and shipping  
 3            containers; amending s. 506.19, F.S.; authorizing the  
 4            use of certain brands and marks on containers used for  
 5            the storage and transport of agricultural and other  
 6            commercial products to designate and distinguish  
 7            ownership of the containers; creating s. 506.265,  
 8            F.S.; providing definitions; providing requirements  
 9            for the sale and purchase of a specified number of  
 10          plastic bulk merchandise containers; providing that  
 11          prosecuting attorneys may inspect records of purchase  
 12          at any time upon reasonable notice; providing criminal  
 13          and civil penalties; providing an exception for the  
 14          operator of a waste management facility and certain  
 15          tax-exempt entities; providing an effective date.

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

18  
 19          Section 1.    Section 506.19, Florida Statutes, is amended to  
 20          read:

21                506.19    Protection of owners of marked or branded field  
 22          boxes or other specified containers; recordation.—Any person who  
 23          owns ~~being the owner of~~ field boxes, pallets, crates,  
 24          containers, or receptacles used in the general production,  
 25          harvesting, packing, transportation, or marketing of fruits or  
 26          vegetables or their byproducts or used for the storage or  
 27          transport of agricultural or other commercial goods in this ~~the~~  
 28          state may adopt for his or her exclusive use and ownership a



29 ~~particular~~ mark or brand that designates or distinguishes ~~to~~  
 30 ~~designate and distinguish~~ his or her ownership thereof and may  
 31 identify his or her field boxes, pallets, crates, containers, or  
 32 receptacles ~~so used~~ with a such mark or brand using in the form  
 33 ~~of such combinations,~~ initials, symbols, designs, ~~or~~ names, or  
 34 any combination thereof ~~as he or she may desire,~~ by plainly and  
 35 distinctly stamping, stenciling, painting, cutting, etching, or  
 36 burning the mark or brand ~~same~~ into or upon both ends or sides  
 37 of the such field boxes, pallets, crates, receptacles, or  
 38 containers. For purposes of any court or administrative  
 39 proceeding, if a copy of the mark or brand is filed and recorded  
 40 with the Department of Agriculture and Consumer Services  
 41 pursuant to this chapter, ~~and~~ the presence of this such  
 42 identifying mark or brand and the required registration number  
 43 on any field box, pallet, crate, container, or receptacle is  
 44 ~~whenever a copy or description thereof shall have been filed and~~  
 45 ~~recorded in the office of the Department of Agriculture and~~  
 46 ~~Consumer Services as herein provided for,~~ shall, in any court  
 47 and in any proceedings in this state, be prima facie evidence of  
 48 the ownership of ~~such boxes, pallets, crates, containers, or~~  
 49 ~~receptacles by the person in whose name such mark or brand may~~  
 50 ~~have been recorded, provided such mark or brand shall have been~~  
 51 ~~recorded with the Department of Agriculture and Consumer~~  
 52 ~~Services as herein provided and shall bear the registered number~~  
 53 ~~herein provided for.~~

54 Section 2. Section 506.265, Florida Statutes, is created  
 55 to read:

56 506.265 Purchase of plastic bulk merchandise containers.—

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

58 (a) "Bona fide purchaser" means a person who in good faith  
 59 makes a purchase without knowledge of another person's  
 60 outstanding rights.

61 (b) "Noncash payment" means payment by a method other than  
 62 coins or currency.

63 (c) "Plastic bulk merchandise container" means a plastic  
 64 crate or shell used by a product manufacturer, distributor, or  
 65 retailer for the bulk transportation or storage of goods, and  
 66 includes a plastic pallet used as a portable platform upon which  
 67 containers, products, or materials may be placed to facilitate  
 68 handling.

69 (d) "Proof of ownership" means a bill of sale or other  
 70 evidence showing that a person who claims to be the owner of an  
 71 item is the bona fide purchaser who purchased the item for fair  
 72 market value.

73 (2) A person who purchases five or more plastic bulk  
 74 merchandise containers from one seller shall:

75 (a) Obtain from the seller proof of ownership of the  
 76 containers.

77 (b) Maintain a record that contains the date of the  
 78 transaction; the seller's or consignee's name, address, and  
 79 telephone number; and a description of the containers, including  
 80 the number of containers being sold, each container's serial  
 81 number, and other identifying marks.

82 (c) Verify the seller's identity with a valid driver  
 83 license or other government-issued photo identification card and  
 84 maintain a copy thereof in the record of sale.

85 (d) Make a noncash payment for five or more plastic bulk  
 86 merchandise containers and record the method of payment used in  
 87 each transaction.

88 (3) The purchaser shall maintain required records for at  
 89 least 2 years after the date of purchase or delivery, whichever  
 90 is later. State attorneys of the judicial circuits in this state  
 91 may inspect these records at any time upon reasonable notice.

92 (4) (a) A person who violates this section in a transaction  
 93 valued at \$10,000 or less commits a misdemeanor of the first  
 94 degree, punishable as provided in s. 775.082 or s. 775.083.

95 (b) A person who violates this section in a transaction  
 96 valued at more than \$10,000 commits a felony of the third  
 97 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 98 775.084.

99 (c) A person who violates this section is liable to the  
 100 owner of a stolen plastic bulk merchandise container for three  
 101 times the replacement value of the stolen plastic bulk  
 102 merchandise container. The owner of the plastic bulk merchandise  
 103 container may bring an action in a court of competent  
 104 jurisdiction to recover monetary damages and attorney fees and  
 105 costs incurred in maintaining the action.

106 (5) This section does not apply to the collection,  
 107 receipt, or recycling of plastic bulk merchandise containers by  
 108 the operator of a waste management facility or an entity exempt  
 109 from federal income tax under s. 501(c)(3) of the Internal  
 110 Revenue Code.

111 Section 3. This act shall take effect October 1, 2013.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 691 Personal Identification Theft
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 1126

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Criminal Justice Subcommittee, Jones, L T J, Cunningham

SUMMARY ANALYSIS

Florida law currently makes it a crime to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent.

The bill creates a similar statute, but one that does not require a person to possess personal identification information with fraudulent intent. Specifically, the bill creates s. 817.5685, F.S., to make it unlawful to intentionally or knowingly possess, without authorization, the personal identification information of another person in any form, including but not limited to mail, physical documents, identification cards or information stored in the digital form. A violation of the statute is punishable as:

- A first degree misdemeanor if the person possesses the personal identification information of 4 or fewer individuals; and
• A third degree felony if the person possesses the personal identification information of more than 5 individuals.

The bill defines "personal identification information" as a person's social security number, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, and medical records.

The bill provides exemptions for:

- A person who is the parent or legal guardian of a child and who possesses the personal identification information of that child;
• A person who is the guardian of another person under ch. 744 and who is authorized to possess the personal identification information of that other person and make decisions regarding access to that personal identification information;
• An employee of a governmental agency who possesses the personal identification information of another person in the ordinary course of business;
• A person who is engaged in a lawful business and possesses the personal identification information of another person in the ordinary course of business; and
• A person who finds a card or document issued by a governmental agency which contains the personal identification information of another person and who takes reasonably prompt action to return that card or document to its owner, to the governmental agency that issued the card or document, or to a law enforcement agency.

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

The bill is effective on October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Section 817.568, F.S., relates to the criminal use of personal identification information. The statute makes it a third degree felony for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent. A person who fraudulently uses personal identification information as proscribed above:

- Commits a second degree felony,<sup>1</sup> punishable by a 3-year minimum mandatory sentence,<sup>2</sup> if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$5,000 or more or if the person fraudulently uses the personal identification information of 10 or more individuals, but fewer than 20 individuals, without their consent;
- Commits a first degree felony,<sup>3</sup> punishable by a 5-year minimum mandatory sentence,<sup>4</sup> if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$50,000 or more, or if the person fraudulently used the personal identification information of 20 or more but fewer than 30 individuals; or
- Commits a first degree felony, punishable by a 10-year minimum mandatory sentence,<sup>5</sup> if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$100,000 or more, or if the person fraudulently used the personal identification information of 30 or more individuals.<sup>6</sup>

"Personal identification information" is defined as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.<sup>7</sup>

##### Effect of the Bill

The bill creates s. 817.5685, F.S., which makes it unlawful to intentionally or knowingly possess, without authorization, the personal identification information of another person in any form, including but not limited to mail, physical documents, identification cards or information stored in the digital form. This statute is similar to s. 817.568, F.S., but does not require a person to possess personal identification information *with fraudulent intent*. The bill also provides a more limited definition of "personal identification information" than s. 817.568, F.S., by defining the term as a person's social

<sup>1</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> Section 817.568(3), F.S., provides that nothing prevents the court from imposing a greater sentence as authorized by law.

<sup>3</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>4</sup> Section 817.568(3), F.S., provides that nothing prevents the court from imposing a greater sentence as authorized by law.

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

<sup>6</sup> Section 817.568(2), F.S.

<sup>7</sup> Section 817.568(1)(f), F.S.

security number, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, and medical records.

A violation is a first degree misdemeanor<sup>8</sup> if the person possesses the personal identification information of 4 or fewer individuals, and is a third degree felony<sup>9</sup> if the person possesses the personal identification information more than 5 individuals.

The bill provides exemptions for:

- A person who is the parent or legal guardian of a child and who possesses the personal identification information of that child;
- A person who is the guardian of another person under ch. 744, F.S., and who is authorized to possess the personal identification information of that other person and make decisions regarding access to that personal identification information;
- An employee of a governmental agency who possesses the personal identification information of another person in the ordinary course of business;
- A person who is engaged in a lawful business and possesses the personal identification information of another person in the ordinary course of business; and
- A person who finds a card or document issued by a governmental agency which contains the personal identification information of another person and who takes reasonably prompt action to return that card or document to its owner, to the governmental agency that issued the card or document, or to a law enforcement agency.

The bill specifies that the newly created statute, s. 817.5685, F.S., does not preclude prosecution for the unlawful possession of personal identification information pursuant to s. 817.568, F.S., or any other law.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 817.5685, F.S., relating to unlawful possession of the personal identification information of another person.

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 appear to have any impact on state revenues.

##### 2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the proposed committee substitute by the Criminal Justice Subcommittee. However, the bill creates a new offense, which is punishable as third degree felony. As such, it may have a negative prison bed impact on the Department of Corrections.

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<sup>8</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>9</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

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

1. Revenues:

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

2. Expenditures:

The bill may have a negative jail bed impact on local governments because it creates a new first degree misdemeanor offense.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

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

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



1 A bill to be entitled  
 2 An act relating to personal identification theft;  
 3 creating s. 817.5685, F.S.; defining the term  
 4 "personal identification information"; providing that  
 5 it is unlawful for a person to intentionally or  
 6 knowingly possess, without authorization, any personal  
 7 identification information of another person; creating  
 8 criminal penalties; providing that certain specified  
 9 persons are exempt from provisions regarding the  
 10 unlawful possession of personal identification  
 11 information of another person; providing that the act  
 12 does not preclude the prosecution for the unlawful  
 13 possession of personal identification information of  
 14 another person under any other law; providing an  
 15 effective date.

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

18  
 19 Section 1. Section 817.5685, Florida Statutes, is created  
 20 to read:

21 817.5685 Unlawful possession of the personal  
 22 identification information of another person.--  
 23 (1) As used in this section, the term "personal  
 24 identification information" means a person's social security  
 25 number, official state-issued or United States-issued driver  
 26 license or identification number, alien registration number,  
 27 government passport number, employer or taxpayer identification  
 28 number, Medicaid or food assistance account number, bank account

29 number, credit or debit card number, and medical records.

30 (2) It is unlawful for a person to intentionally or  
31 knowingly possess, without authorization, the personal  
32 identification information of another person in any form,  
33 including, but not limited to, mail, physical documents,  
34 identification cards, or information stored in digital form.

35 (3)(a) A person who violates subsection (2) and in doing  
36 so possesses the personal identification information of four or  
37 fewer persons commits a misdemeanor of the first degree,  
38 punishable as provided in s. 775.082 or s. 775.083.

39 (b) A person who violates subsection (2) and in doing so  
40 possesses the personal identification information of five or  
41 more persons commits a felony of third degree, punishable as  
42 provided in s. 775.082, s. 775.083, or s. 775.084.

43 (4) Subsection (2) does not apply to:

44 (a) A person who is the parent or legal guardian of a  
45 child and who possesses the personal identification information  
46 of that child.

47 (b) A person who is the guardian of another person under  
48 chapter 744 and who is authorized to possess the personal  
49 identification information of that other person and make  
50 decisions regarding access to that personal identification  
51 information.

52 (c) An employee of a governmental agency who possesses the  
53 personal identification information of another person in the  
54 ordinary course of business.

55 (d) A person who is engaged in a lawful business and  
56 possesses the personal identification information of another

57 person in the ordinary course of business.

58 (e) A person who finds a card or document issued by a  
 59 governmental agency which contains the personal identification  
 60 information of another person and who takes reasonably prompt  
 61 action to return that card or document to its owner, to the  
 62 governmental agency that issued the card or document, or to a  
 63 law enforcement agency.

64 (5) This section does not preclude prosecution for the  
 65 unlawful possession of personal identification information  
 66 pursuant to s. 817.568 or any other law.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJS 13-06 Juvenile Sentencing  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cox <i>NA</i>	Cunningham <i>all</i>

### SUMMARY ANALYSIS

In 2010, the United States Supreme Court held in *Graham v. Florida* that the 8th Amendment of the U.S. Constitution prohibits states from sentencing juvenile nonhomicide offenders to life without providing a meaningful opportunity to obtain release. In 2012, the United States Supreme Court held in *Miller v. Alabama* that the 8th Amendment of the U.S. Constitution prohibits a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders convicted of a homicide offense. The Court held that children are constitutionally different from adults and as a result, the sentencer must take into consideration these differences before sentencing these offenders to one of the most severe punishments available in the criminal justice system.

To address the *Graham* decision, the bill amends s. 775.082, F.S., to prohibit a court from imposing a life sentence on juveniles convicted of a nonhomicide life felony or a nonhomicide offense punishable by a term of years not exceeding life imprisonment, that was committed on or after July 1, 2013. Instead, the court must sentence such offenders to a term of imprisonment that cannot exceed 50 years.

The bill addresses the *Miller* decision by making a variety of changes to s. 775.082, F.S. The bill *requires* juveniles convicted of a capital felony to be sentenced to life imprisonment, but only if the judge, after considering specified factors at a mandatory sentencing hearing, concludes that life imprisonment is an appropriate sentence. If the judge determines that life imprisonment is not appropriate, the court must sentence the juvenile to no less than 50 years imprisonment.

The bill *permits* a court to sentence a juvenile offender convicted of a life felony or first degree felony homicide offense to life imprisonment, but only if the judge, after considering specified factors at a mandatory sentencing hearing, concludes that life imprisonment is an appropriate sentence. In these instances, the bill does not prescribe a minimum sentence if the judge determines that life imprisonment is not appropriate.

On March 21, 2013, the Criminal Justice Impact Conference determined that SB 1350, which is substantially similar to this bill, would have no fiscal impact.

The bill provides and effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### ***Graham v. Florida***

In 2010, the United States Supreme Court held in *Graham v. Florida*<sup>1</sup> that the 8th Amendment of the U.S. Constitution<sup>2</sup> prohibits states from sentencing juvenile nonhomicide offenders to a life sentence without providing a meaningful opportunity to obtain release. The Court's opinion stated:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.<sup>3</sup>

*Graham* was held to apply retroactively, even to criminal cases which were considered final at the time *Graham* was rendered.<sup>4</sup>

##### **Post-Graham Decisions**

Subsequent to the *Graham* decision, inmates who were convicted of nonhomicide offenses and sentenced to life imprisonment before *Graham* was decided began petitioning for and receiving resentencing hearings. There appears to be no consolidated source for obtaining the results of these resentencing hearings. However, the results of some resentencing hearings are known from news reports. These include:

- An inmate sentenced to life for the 2005 rape of a young girl when he was seventeen years old was resentenced to a split sentence of 7 years in prison followed by 20 years of probation.<sup>5</sup>
- An inmate sentenced to four life sentences for armed robberies committed in 2004 and 2005 when he was 14 and 15 years old was resentenced to a term of 30 years.<sup>6</sup>
- An inmate sentenced to life for sexual battery with a weapon or force committed in 2008 when he was 14 was resentenced to a term of 65 years.<sup>7</sup>

Juvenile offenders convicted and sentenced after the issuance of *Graham* have received lengthy prison sentences. For example:

- An inmate was sentenced to concurrent 50 years in prison with a 25-year mandatory minimum for armed robbery and aggravated battery;<sup>8</sup>

<sup>1</sup> *Graham v. Florida*, 130 S.Ct. 2011 (2010).

<sup>2</sup> The 8<sup>th</sup> Amendment of the U.S. Constitution forbids the government from imposing cruel and unusual punishment.

<sup>3</sup> *Graham*, at 2016.

<sup>4</sup> See *Witt v. State*, 387 So. 2d 922, 925 (Fla. 1980) (Court held that the "doctrine of finality should be abridged only when a more compelling objective appears, such as ensuring fairness and uniformity in individual adjudications.... a sweeping change of law can so drastically alter the substantive or procedural underpinnings of a final conviction and sentence that .... post-conviction relief is necessary to avoid individual instances of obvious injustice."). In addition, Florida courts have held that *Graham* applies retroactively even without applying the *Witt* standard. *Kleppinger v. State*, 81 So. 3d 547, 549 (Fla. 2nd DCA 2012).

<sup>5</sup> "Rapist who was serving life sentence will get second chance," August 30, 2011, <http://www2.tbo.com/news/breaking-news/2011/aug/30/3/rapist-who-was-serving-life-resentenced-to-seven-y-ar-254096/> (last visited on March 14, 2013).

<sup>6</sup> "Man who served 11 years fails to persuade Hillsborough judge to set him free," October 6, 2011, <http://www.tampabay.com/news/courts/criminal/man-who-served-11-years-fails-to-persuade-hillsborough-judge-to-set-him/1195464> (last visited on March 14, 2013).

<sup>7</sup> "Teenage rapist Jose Walle resentenced to 65 years in prison," November 17, 2010, <http://www.tampabay.com/news/courts/criminal/teenage-rapist-jose-walle-resentenced-to-65-years-in-prison/1134862> (last visited on March 14, 2013).

<sup>8</sup> *Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011). The Court held that the defendant's sentence of a term-of-years totaling 50 years is not the functional equivalent of a life sentence for purposes of the Eighth Amendment prohibition on life was not constitutionally excessive.

- An inmate was sentenced to 70 years in prison for attempted first degree murder, including a 25 year mandatory minimum for the use of a firearm;<sup>9</sup>
- An inmate was sentenced to 60 years in prison with an aggregate minimum mandatory term of 50 years for attempted first degree murder, armed burglary ad armed robbery.<sup>10</sup>

Juveniles who have been sentenced or resentenced subsequent to *Graham* have challenged their sentences on grounds that they effectively constitute a life sentence. To date, Florida's District Courts of Appeal have provided a wide range of rulings. Some courts have applied a strict reading of *Graham* holding that *Graham* only applies when a defendant is sentenced to a term of life imprisonment, not a lengthy term of years.<sup>11</sup> Other courts have held that a term of years sentence is not in violation of *Graham* if the sentence is for multiple nonhomicide offenses, thus limiting the application of *Graham* to a singular nonhomicide offense where a juvenile is sentenced to life.<sup>12</sup> Yet still other courts have held that *any* sentence which will result in the juvenile being incarcerated past that juvenile's life expectancy is violative of the *Graham* decision.<sup>13</sup> Courts also disagree on the number of years that is the functional equivalent of a life sentence for the purposes of *Graham*.<sup>14</sup>

Several of these conflicting rulings have been certified to the Florida Supreme Court, and have been granted review.

#### Effect of the Bill

The bill amends s. 775.082, F.S., to prohibit a court from imposing a life sentence on juveniles convicted of a nonhomicide life felony or a nonhomicide offense punishable by a term of years not exceeding life imprisonment (or an offense reclassified as such), that was committed on or after July 1, 2013. Instead, the court must sentence such offenders to a term of imprisonment that cannot exceed 50 years.

To date, none of the Florida District Courts of Appeal have held a sentence of 50 years unconstitutional based on *Graham*. This provision complies with *Graham* in that it prohibits a juvenile convicted of a nonhomicide offense from being sentenced to life.

#### **Miller v. Alabama**

In 2012, the United States Supreme Court held in *Miller v. Alabama* that the 8th Amendment of the U.S. Constitution<sup>15</sup> prohibits a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders.<sup>16</sup> *Miller* does not prohibit a court from sentencing a juvenile offender convicted of a homicide offense to life without parole, but requires the sentencer to take into

<sup>9</sup> *Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011). The Court held that a term-of-years sentence of 70 years including a 25 year mandatory minimum was not constitutionally excessive. The Florida Supreme Court granted review on October 11, 2012.

<sup>10</sup> *Adams v. State*, 2012 WL 3193932. The Court held that a term-of-years sentence which would require the juvenile to serve a minimum of 58.5 years was unconstitutional for purposes of the 8<sup>th</sup> Amendment. Then Court held that at the earliest the juvenile would not be released until he was 76 years of age, which was past the life expectancy, thus the sentence was a de facto life sentence. The Court certified conflict with the case *Henry v. State*, 82 So.3d 1084 (Fla. 5th D.C.A. 2012).

<sup>11</sup> See *Walle v. State*, 99 So.3d 967, 971 (Fla. 1st DCA 2012)(Court held that the expressed holdings of *Graham* and *Miller* were not violated and held that extending the rulings would be left for the Supreme Court.); *Henry v. State*, 82 So.3d 1084, 1089 (Fla. 5th DCA 2012)(Court held that a defendant's aggregate term-of-years sentence totaling 90 years in prison was not unconstitutionally excessive. Review granted by the Florida Supreme Court on November 6, 2012.)

<sup>12</sup> *Walle*, at 972.

<sup>13</sup> See *Floyd v. State*, 87 So.3d 45, 47 (Fla. 1st DCA 2012); *Adams*, at 2.

<sup>14</sup> See *Walle v. State*, 99 So.3d 967 (Fla. 1st DCA 2012)(Court held a sentence of 65 years consecutive to a 27 year sentence was not violative of the 8th Amendment); *Henry v. State*, 82 So.3d 1084 (Court held that 90 years, of which he would be required to serve at least 76.5 years was not violative of the 8<sup>th</sup> Amendment); *Floyd v. State*, 87 So.3d 45, 47 (Fla. 1st DCA 2012)(Court held that consecutive sentences of 40 years, totaling 80 years, was unconstitutional under the 8<sup>th</sup> Amendment.); *Adams v. State*, 2012 WL 3193932 (Court held that a 60 year sentence which would require the juvenile to serve a minimum of 58.5 years was unconstitutional under the 8<sup>th</sup> Amendment.).

<sup>15</sup> *Supra* note 1.

<sup>16</sup> *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

consideration “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” before doing so.<sup>17</sup> The Court’s opinion stated:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him.<sup>18,19</sup>

Unlike *Graham*, the ruling in *Miller* does not apply retroactively to juveniles who were sentenced to life for homicide offenses before *Miller* was rendered.<sup>20</sup> Therefore, juveniles convicted of a homicide offense whose judgments were final at the time *Miller* was rendered are not entitled to be resentenced.

#### Effect of the Bill

The bill amends s. 775.082, F.S., to *require* a court to sentence a person convicted of a capital felony or an offense that was reclassified as a capital felony, that was committed before the person was 18, to life imprisonment if the judge, at a mandatory sentencing hearing, concludes that life imprisonment is an appropriate sentence. In determining whether life imprisonment is an appropriate sentence, the judge must consider factors relevant to the offense and to the juvenile offender’s youth and attendant circumstances, including, but not limited to the:

- Nature and circumstances of offense committed by the juvenile offender;
- Effect of crime on the victim’s family and on the community;
- Juvenile offender’s age, maturity, intellectual capacity, and mental and emotional health at time of offense;
- Juvenile offender’s background, including his or her family, home, and community environment;
- Effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the juvenile offender’s participation in the offense;
- Extent of the juvenile offender’s participation in the offense;
- Effect, if any, of familial pressure or peer pressure on the juvenile offender’s actions;
- Nature and extent of the juvenile offender’s prior criminal history;
- Effect, if any, of characteristics attributable to the juvenile offender’s youth on the juvenile offender’s judgment; and
- Possibility of rehabilitating the juvenile offender.

If the judge concludes that life imprisonment is not an appropriate sentence, the juvenile offender must be sentenced to a term of imprisonment of not less than 50 years. This sentencing scheme applies retroactively only to the extent necessary to meet constitutional requirements for imposing a life sentence on a defendant who is convicted of committing a murder while a juvenile as set forth in *Miller*.

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<sup>17</sup> *Id.* at 2469.

<sup>18</sup> *Id.* at 2468.

<sup>19</sup> The Court further held that “*Graham, Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.” *See also Roper v. Simmons*, 543 S.Ct. 551(2005)(Court barred capital punishment for children and first held that children are constitutionally different from adults for purposes of sentencing.); *Woodson v. North Carolina*, 96 S.Ct. 2978 (1976)(Court held that imposition of mandatory death sentence without consideration of the character and record of the individual offender or the circumstances of the particular offense was inconsistent with the fundamental respect for humanity which underlies the 8th Amendment.)

<sup>20</sup> *See Geter v. State*, 3D12-1736, 2012 WL 4448860 (Fla. 3rd DCA Sept. 27, 2012)(Court held that the ruling in *Miller* was not a development of “fundamental significance;” because “*Miller* mandates only that a sentencer follow a certain process before imposing life sentence. . . . this was a procedural change providing for new process in juvenile homicide sentencing and was merely an evolutionary refinement in criminal law that did not compel abridgement of the finality of judgments.”); *Gonzalez v. State*, 101 So. 3d 886, 887 (Fla. 1st DCA 2012).



The bill *permits* a court to sentence a juvenile offender convicted of a homicide offense<sup>21</sup> that is a life felony or first degree felony (or an offense that was reclassified as such), that was committed before the person was 18, to life imprisonment, but only if the judge, after considering the above-described factors at a mandatory sentencing hearing, concludes that life imprisonment is an appropriate sentence. In these instances, the bill does not prescribe a minimum sentence if the judge determines that life imprisonment is not appropriate. This sentencing scheme applies retroactively only to the extent necessary to meet constitutional requirements for imposing a life sentence on a defendant who is convicted of committing a murder while a juvenile as set forth in *Miller*.

The bill complies with *Miller* in that it prohibits a juvenile convicted of a homicide offense from being sentenced to life or a term of years equal to life without the judge having considered "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" before doing so.<sup>22</sup>

**B. SECTION DIRECTORY:**

Section 1. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 2. Provides an effective date of July 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:

On March 21, 2013, the Criminal Justice Impact Conference determined that the SB 1350, which is substantially similar to this bill, would have no fiscal impact.

**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.

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<sup>21</sup> Section 782.04, F.S.

<sup>22</sup> *Miller*, at 2469.

### **III. COMMENTS**

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

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

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

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

None.

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

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

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

None.

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

1                                   A bill to be entitled  
 2           An act relating to juvenile sentencing; amending s.  
 3           775.082, F.S.; providing criminal sentences applicable  
 4           to a person who was under the age of 18 years at the  
 5           time the offense was committed; requiring that a judge  
 6           consider certain factors before determining if life  
 7           imprisonment is an appropriate sentence; providing  
 8           retroactive application; providing an effective date.

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

11  
 12           Section 1. Subsections (1) and (3) of section 775.082,  
 13   Florida Statutes, are amended to read:

14           775.082 Penalties; applicability of sentencing structures;  
 15   mandatory minimum sentences for certain reoffenders previously  
 16   released from prison.-

17           (1) (a) Except as provided in paragraph (b), A person who  
 18   has been convicted of a capital felony shall be punished by  
 19   death if the proceeding held to determine sentence according to  
 20   the procedure set forth in s. 921.141 results in findings by the  
 21   court that such person shall be punished by death, otherwise  
 22   such person shall be punished by life imprisonment and shall be  
 23   ineligible for parole.

24           (b) A person who is convicted of a capital felony or an  
 25   offense that was reclassified as a capital felony, that was  
 26   committed before the person was 18 years of age shall be  
 27   punished by life imprisonment and is ineligible for parole if  
 28   the judge at a mandatory sentencing hearing concludes that life

29 imprisonment is an appropriate sentence. In determining whether  
 30 life imprisonment is an appropriate sentence, the judge shall  
 31 consider factors relevant to the offense and to the defendant's  
 32 youth and attendant circumstances, including, but not limited  
 33 to, the following:

34 1. The nature and circumstances of the offense committed  
 35 by the defendant.

36 2. The effect of the crime on the victim's family and on  
 37 the community.

38 3. The defendant's age, maturity, intellectual capacity,  
 39 and mental and emotional health at the time of the offense.

40 4. The defendant's background, including his or her  
 41 family, home, and community environment.

42 5. The effect, if any, of immaturity, impetuosity, or  
 43 failure to appreciate risks and consequences on the defendant's  
 44 participation in the offense.

45 6. The extent of the defendant's participation in the  
 46 offense.

47 7. The effect, if any, of familial pressure or peer  
 48 pressure on the defendant's actions.

49 8. The nature and extent of the defendant's prior criminal  
 50 history.

51 9. The effect, if any, of characteristics attributable to  
 52 the defendant's youth on the defendant's judgment.

53 10. The possibility of rehabilitating the defendant.

54  
 55 If the judge concludes that life imprisonment is not an  
 56 appropriate sentence, the defendant shall be punished by

57 imprisonment for a term of not less than 50 years. This  
 58 paragraph shall apply retroactively only to the extent necessary  
 59 to meet constitutional requirements for imposing a life sentence  
 60 on a defendant who is convicted of committing a murder that was  
 61 committed before the person was 18 years of age as set forth by  
 62 the United States Supreme Court in Miller v. Alabama, 132 S.Ct.  
 63 2455 (2012).

64 (3) A person who has been convicted of any other  
 65 designated felony may be punished as follows:

66 (a)1. For a life felony committed before ~~prior to~~ October  
 67 1, 1983, by a term of imprisonment for life or for a term of  
 68 years not less than 30.

69 2. For a life felony committed on or after October 1,  
 70 1983, by a term of imprisonment for life or by a term of  
 71 imprisonment not exceeding 40 years.

72 3. Except as provided in subparagraph 4., for a life  
 73 felony committed on or after July 1, 1995, by a term of  
 74 imprisonment for life or by imprisonment for a term of years not  
 75 exceeding life imprisonment.

76 4.a. Except as provided in sub-subparagraph b., for a life  
 77 felony committed on or after September 1, 2005, which is a  
 78 violation of s. 800.04(5)(b), by:

79 (I) A term of imprisonment for life; or

80 (II) A split sentence that is a term of not less than 25  
 81 years' imprisonment and not exceeding life imprisonment,  
 82 followed by probation or community control for the remainder of  
 83 the person's natural life, as provided in s. 948.012(4).

84 b. For a life felony committed on or after July 1, 2008,

85 which is a person's second or subsequent violation of s.  
 86 800.04(5)(b), by a term of imprisonment for life.

87 5. Notwithstanding subparagraphs (a)1.-4., a person  
 88 convicted under s. 782.04 for an offense that was reclassified  
 89 as a life felony, that was committed before the person was 18  
 90 years of age is eligible to be punished by a term of  
 91 imprisonment for life or by a term of years equal to life  
 92 imprisonment if the judge at a mandatory sentencing hearing  
 93 considers factors relevant to the offense and to the defendant's  
 94 youth and attendant circumstances, including, but not limited  
 95 to, the factors listed in paragraph (1)(b) and concludes that  
 96 imprisonment for life or a term of years equal to life  
 97 imprisonment is an appropriate sentence. This paragraph shall  
 98 apply retroactively only to the extent necessary to meet  
 99 constitutional requirements for imposing a life sentence on a  
 100 defendant who is convicted of committing a murder that was  
 101 committed before the person was 18 years of age as set forth by  
 102 the United States Supreme Court in Miller v. Alabama, 132 S.Ct.  
 103 2455 (2012).

104 (b)1. For a felony of the first degree, by a term of  
 105 imprisonment not exceeding 30 years or, when specifically  
 106 provided by statute, by imprisonment for a term of years not  
 107 exceeding life imprisonment.

108 2. Notwithstanding subparagraph (b)1., a person convicted  
 109 under s. 782.04 of a first degree felony punishable by a term of  
 110 years not exceeding life imprisonment, or an offense that was  
 111 reclassified as a first degree felony punishable by a term of  
 112 years not exceeding life, that was committed before the person

113 was 18 years of age is eligible for a term of years equal to  
 114 life imprisonment if the judge at a mandatory sentencing hearing  
 115 considers factors relevant to the offense and to the defendant's  
 116 youth and attendant circumstances, including, but not limited  
 117 to, the factors listed in paragraph (1)(b) and concludes that a  
 118 term of years equal to life imprisonment is an appropriate  
 119 sentence. This paragraph shall apply retroactively only to the  
 120 extent necessary to meet constitutional requirements for  
 121 imposing a life sentence on a defendant who is convicted of  
 122 committing a murder that was committed before the person was 18  
 123 years of age as set forth by the United States Supreme Court in  
 124 Miller v. Alabama, 132 S.Ct. 2455 (2012).

125 (c) For a felony of the second degree, by a term of  
 126 imprisonment not exceeding 15 years.

127 (d) For a felony of the third degree, by a term of  
 128 imprisonment not exceeding 5 years.

129 (e) Notwithstanding paragraphs (3)(a)-(d), for offenses  
 130 committed on or after July 1, 2013, a person convicted of a life  
 131 felony or an offense punishable by a term of years not exceeding  
 132 life imprisonment, other than an offense listed in s. 782.04, or  
 133 an offense, other than an offense listed in s. 782.04, that was  
 134 reclassified as a life felony or an offense punishable by a term  
 135 of years not exceeding life, that was committed before the  
 136 person was 18 years of age shall be punished by a term of  
 137 imprisonment not to exceed 50 years.

138 Section 2. This act shall take effect July 1, 2013.