



Criminal Justice Subcommittee

**Tuesday, February 3, 2015
4:00 PM - 6:00 PM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Carlos Trujillo
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, February 03, 2015 04:00 pm
End Date and Time: Tuesday, February 03, 2015 06:00 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 69 Missing Persons with Special Needs by Porter
HB 115 Sentencing by Gaetz
HB 117 False Personation by Watson, B.
HB 157 Fraud by Passidomo
HB 193 Crime Stoppers Trust Fund by Broxson
HB 197 Tracking Devices or Applications by Metz

Consideration of the following proposed committee bill(s):

PCB CRJS 15-01 -- Recording Oral Communications

Discussion on reforms to the Offense Severity Ranking Chart

NOTICE FINALIZED on 01/27/2015 16:05 by Denson.Karan

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 69 Missing Persons with Special Needs
SPONSOR(S): Porter and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox <i>WCA</i>	Cunningham <i>gc</i>
2) Children, Families & Seniors Subcommittee			
3) Appropriations Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 937, F.S., establishes a variety of requirements relating to how state and local law enforcement agencies respond to and investigate reports of missing endangered persons. Currently, s. 937.0201, F.S., defines "missing endangered person" as:

- A missing child;
- A missing adult younger than 26 years of age;
- A missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; or
- A missing adult who meets the criteria for activation of the Silver Alert Plan of the Florida Department of Law Enforcement (FDLE). This generally includes:
 - A person that is 60 years and older, or a person that is 18-59 and law enforcement has determined the missing person lacks the capacity to consent and that a Local Silver Alert may be the only possible way to rescue the missing person; and
 - The person has an irreversible deterioration of intellectual faculties (e.g. Alzheimer's disease or dementia) that has been verified by law enforcement.

The bill expands the definition of the term "missing endangered person" to include "a missing person with special needs who is at risk of becoming lost or is prone to wander due to autism spectrum disorder, a developmental disability, or any other disease or condition." The bill also:

- Authorizes any person to submit a missing endangered person report concerning a missing person with special needs to the Missing Endangered Persons Information Clearinghouse (so long as they have reported the person with special needs missing to a local law enforcement agency and the agency has entered the report into FCIC/NCIC); and
- Grants civil immunity to specified entities responding to a law enforcement agency's request to broadcast information relating to a missing person with special needs.

The bill requires FDLE to provide electronic monitoring devices (subject to federal funding) to persons identified by the Agency for Persons with Disabilities who have the potential to go missing due to autism spectrum disorder. The Department of Children and Families (DCF) is required to provide electronic monitoring devices to persons who have the potential to go missing due to diagnosed Alzheimer's disease or any other form of dementia (this requirement is subject to legislative appropriation).

The bill also requires FDLE to incorporate training on retrieving missing persons with special needs into the curriculum for continuous employment or appointment as a law enforcement officer.

The bill will likely have a significant negative fiscal impact on FDLE and DCF. See fiscal section.

The bill is effective on July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Missing Endangered Persons

Generally

Chapter 937, F.S., establishes a variety of requirements relating to how state and local law enforcement agencies respond to and investigate reports of missing endangered persons. For example, the chapter:

- Requires law enforcement agencies to submit information about “missing endangered persons” to the Missing Endangered Persons Information Clearinghouse (MEPIC), housed within the Florida Department of Law Enforcement (FDLE);¹
- Authorizes non-law enforcement entities to submit a missing endangered person report to MEPIC in certain instances;²
- Requires MEPIC to establish a system of intrastate communication of information relating to missing endangered persons;³
- Requires MEPIC to collect, process, maintain, and disseminate information on missing endangered persons;⁴ and
- Requires law enforcement agencies that locate a person previously reported as a missing endangered person” to purge information about the case from FCIC/NCIC and notify MEPIC.⁵

Definitions

Currently, s. 937.0201, F.S., defines “missing endangered person” as:

- A missing child;⁶
- A missing adult⁷ younger than 26 years of age;
- A missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; or
- A missing adult who meets the criteria for activation of the Silver Alert Plan⁸ of the Florida Department of Law Enforcement (FDLE). This generally includes:
 - A person that is 60 years and older, or a person that is 18-59 and law enforcement has determined the missing person lacks the capacity to consent and that a Local Silver Alert may be the only possible way to rescue the missing person; and
 - The person has an irreversible deterioration of intellectual faculties (e.g. Alzheimer's disease or dementia) that has been verified by law enforcement.⁹

¹ Section 937.022, F.S.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Section 937.0201(3), F.S., defines the term “missing child” as a person younger than 18 years of age whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

⁷ Section 937.0201(2), F.S., defines the term “missing adult” as a person 18 years of age or older whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

⁸ The Florida Silver Alert, made effective by an Executive Order signed by Governor Charlie Crist on October 8, 2008, is used to locate missing persons suffering from an irreversible deterioration of intellectual faculties. Local and State Silver Alerts engage the public in the search for the missing person and provide a standardized and coordinated community response.

<http://www.fdle.state.fl.us/Content/Silver-Alert-Plan/Menu/Activation-Steps.aspx> (last visited on January 29, 2015).

⁹ Note that the Florida Silver Alert Plan outlines two levels of Silver Alert activation - local and state. Local agencies may have their own criteria for activation of a Local Silver Alert, but the Florida Silver Alert Support Committee recommends that agencies use the above-listed criteria as a guideline when issuing a Local Silver Alert. State Silver Alerts use the above-listed criteria, but also require that the person be traveling by motor vehicle with an identified license plate number or other vehicle information that has been

Effect of the Bill

The bill expands the definition of the term "missing endangered person" found in s. 937.0201, F.S., to include "a missing person with special needs who is at risk of becoming lost or is prone to wander due to autism spectrum disorder, a developmental disability, or any other disease or condition."

As a result:

- Law enforcement agencies will be required to submit information about missing persons with special needs to MEPIC;
- Non-law enforcement entities will be authorized to submit information about missing persons with special needs to MEPIC in certain instances; and
- MEPIC will be required to collect, process, maintain, and disseminate information about missing persons with special needs.

Civil Immunity

Law enforcement agencies that receive a report of a missing child, missing adult, or missing endangered person must submit information about the report to other local law enforcement agencies and to FDLE.¹⁰ In an effort to locate the missing person, the law enforcement agency that originally received the report may request other specified entities (e.g., FDLE, local law enforcement entities, radio and television networks, etc.) to broadcast information about the missing person to the public.¹¹

Currently, s. 937.021(5), F.S., grants entities responding to such requests immunity from civil liability if the broadcasted information relates to a missing adult, missing child, or a missing adult who meets the criteria for activation of the Silver Alert Plan.¹² The statute does not specifically provide such immunity to entities responding to a request to broadcast information relating to a missing person with special needs.

Effect of the Bill

The bill amends s. 937.021(5), F.S., to grant immunity from civil liability to specified entities responding to a request to broadcast information relating to a missing person with special needs (as defined above). The bill mirrors the existing immunity provisions by:

- Affording such entities a legal presumption that they acted in good faith in broadcasting the missing person with special needs information;
- Specifying that such presumption is not overcome if a technical or clerical error is made by the entity, or if the information that was broadcasted is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect; and
- Specifying that the entity is not obligated to broadcast information regarding a missing person with special needs.

Missing Endangered Persons Information Clearinghouse

As noted above, the Missing Endangered Persons Information Clearinghouse is housed within FDLE and serves as a central repository for all information regarding missing endangered persons.¹³ MEPIC collects, processes, maintains, and disseminates information on missing endangered persons using an intrastate communication system.¹⁴

verified by law enforcement. <http://www.fdle.state.fl.us/Content/Silver-Alert-Plan/Menu/Activation-Steps.aspx> (last visited on January 29, 2015).

¹⁰ Sections 937.021 and 937.022, F.S.

¹¹ Note that other entities are not obligated to broadcast the missing child, missing adult, or Silver Alert information. The decision to release information is discretionary with the agency, employee, individual, or entity receiving the information. Section 937.021(5)(e), F.S.

¹² These entities are afforded a legal presumption that they acted in good faith in broadcasting the missing person information. This presumption is not overcome if a technical or clerical error is made by any the entity acting at the request of the local law enforcement agency, or if the missing child missing adult, or Silver Alert information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect. Section 937.021(5), F.S.

¹³ <http://www.fdle.state.fl.us/MCICSearch/Index.asp> (last visited January 29, 2015).

¹⁴ Section 937.022(3)(a) and (c), F.S.

Section 937.022, F.S., creates parameters on who can submit a missing endangered person report to MEPIC. For example, any person having knowledge may submit a report to MEPIC regarding a child or adult younger than 26 years old whose whereabouts is unknown, so long as the person has reported the child/adult missing to a local law enforcement agency and the agency has entered the report into FCIC/NCIC.¹⁵ In contrast, only the law enforcement agency having jurisdiction over the case may submit a missing endangered person report for an adult 26 years old or older.¹⁶

Effect of the Bill

The bill amends s. 937.022, F.S., to authorize any person to submit a missing endangered person report concerning a missing person with special needs to MEPIC. Before doing so, the person must have reported the person with special needs missing to a local law enforcement agency and the agency must have entered the report into FCIC/NCIC.

Electronic Monitoring – Persons with Special Needs

Elopement, which is defined as leaving an area without supervision or caregiver permission, is prevalent among persons with developmental disabilities, and may expose a person to dangerous situations (e.g. open bodies of water, traffic).¹⁷ In an early study, it was estimated that the prevalence of elopement in a population of 30,000 individuals receiving developmental disabilities services was 4.9%.¹⁸ More recently, a 2014 study indicated that about half of children with autism have a tendency to wander or elope.¹⁹ This behavior is most apparent in the age range between 4 and 10 years, and often persists into adulthood.²⁰ Of children who attempt to wander, about half of parents reported that their child succeeded and went missing long enough to cause serious concern, and 32 percent said they called in police for help.²¹ In about one in three cases, parents reported that their child who wanders is “never” or “rarely” able to express their name, address or other contact information.²² Missing children experienced close calls with traffic injuries in 65 percent of cases, and found themselves at risk of drowning in 24 percent of cases.²³

In 2014, the Justice Department announced that it will immediately make funding available to provide free electronic tracking devices for children with autism who are at risk of wandering.²⁴ Police departments nationwide will be able to make the tracking devices available to children in their communities who are at risk of wandering using money available through the Justice Department’s Byrne grant program.²⁵ Police departments that receive money through the federal grant will be responsible for designing and administering their local program and determining how tracking devices are distributed.²⁶

¹⁵ This report may be made subsequent to submitting a report to the appropriate law enforcement agency, and subsequent to entry by the law enforcement agency of the child or person into FCIC and NCIC databases. Section 937.022(3)(b)2., F.S.

¹⁶ Section 937.022(3)(b)4., F.S.

¹⁷ *Treatment of elopement in individuals with developmental disabilities: A systematic review*, Research in Developmental Disabilities 30 (2009) 670–681,

http://scholar.google.com/scholar_url?url=http://www.researchgate.net/profile/Christina_Fragale/publication/23716164_Treatment_of_elopement_in_individuals_with_developmental_disabilities_a_systematic_review/links/53e3f99e0cf21cc29fc75814.pdf&hl=en&sa=X&scisig=AAGBfm33xL1MHakTS87tq_NEGw_oFixP4w&noss=1&oi=scholar (last visited in January 29, 2015).

¹⁸ Agency for Persons with Disabilities, 2015 Agency Bill Analysis for HB 69 (on file with the Criminal Justice Subcommittee)(APD Analysis).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*, and *Feds To Fund Tracking Devices For Kids With Autism*, <http://www.disabilitycoop.com/2014/01/30/feds-fund-tracking-devices/19061/> (last visited on January 28, 2015).

²⁵ APD Analysis.

²⁶ *Feds Clarify How To Apply For Autism Tracking Devices*, February 6, 2014, <http://www.disabilitycoop.com/2014/02/06/feds-clarify-tracking-devices/19085/> (last visited on January 29, 2015).

Similarly, the Justice Department provides funds to pay for electronic tracking devices for individuals with Alzheimer's disease who are at risk for wandering.²⁷

Currently, Florida law only addresses electronic monitoring (EM) in the context of criminal law (e.g., courts are required to order EM as a condition of probation for persons convicted of certain offenses). There are no provisions requiring agencies to provide EM devices to persons who have the potential to go missing due to autism spectrum disorder or other cognitive disability disorder.

Effect of the Bill

The bill creates s. 937.035, F.S., to require the Agency for Persons with Disabilities (APD) to provide FDLE a list of persons in each county who have the potential to go missing due to autism spectrum disorder. The bill requires FDLE to provide EM devices to such persons, subject to federal funding.

The bill also requires the Department of Children and Families (DCF) to provide EM devices to persons who have the potential to go missing due to diagnosed Alzheimer's disease or any other form of dementia. This requirement is subject to legislative appropriation.

Training in Retrieval of Persons with Special Needs

The Criminal Justice Standards and Training Commission (CJSTC), housed within FDLE, establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers (LEOs).²⁸ Currently, every prospective LEO must meet the minimum qualifications outlined in s. 943.13, F.S., successfully complete a CJSTC-developed Basic Recruit Training Program, and pass a statewide certification examination in order to receive their certification.

Sections 943.171-17296, F.S., require CJSTC to include training on specialized subject areas in the Basic Recruit Training curriculum. For example, LEOs must receive training on handling domestic violence cases, the use of dart-firing stun guns, and conducting juvenile sexual offender investigations.²⁹

Effect of the Bill

The bill creates s. 943.17297, F.S., requiring CJSTC to incorporate detailed training on retrieving missing persons with special needs into the curriculum for continuous employment or appointment as an LEO.

B. SECTION DIRECTORY:

Section 1. Amends s. 937.0201, F.S., relating to definitions.

Section 2. Amends s. 937.021, F.S., relating to missing child and missing adult reports.

Section 3. Amends s. 937.022, F.S., relating to Missing Endangered Persons Information Clearinghouse.

Section 4. Creates s. 937.035, F.S., relating to electronic monitoring devices for certain persons.

Section 5. Creates s. 943.17297, F.S., relating to training in retrieval of persons with special needs.

Section 6. Provides an effective date of July 1, 2015.

²⁷ *Id.*

²⁸ <http://www.fdle.state.fl.us/Content/getdoc/91a75023-5a74-40ef-814d-8e7e5b622d4d/CJSTC-Home-Page.aspx> (last visited on January 29, 2015).

²⁹ See sections 943.171, 943.1717, and 943.17295, 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:

FDLE

FDLE reports that the bill will have an indeterminate negative fiscal impact because it:

- Expands the definition of the term "missing endangered person," which will require FDLE to modify its MEPIC database to collect, process, maintain, and disseminate information about missing persons with special needs;
- Requires FDLE to provide EM devices to persons who have the potential to go missing due to autism spectrum disorder (while the requirement to provide EM *devices* is subject to federal funding, FDLE could be deemed responsible for the costs of *monitoring* the devices that are issued); and
- Requires CJSTC to incorporate detailed training on retrieving missing persons with special needs into the curriculum for continuous employment or appointment as an LEO.³⁰

DCF

DCF reported that the bill will have a substantial negative fiscal impact and stated the following:

The fiscal impact of this bill is unknown, electronic monitoring devices entail the use of GPS tracking and monitoring and a typical device can range in cost from \$299 - \$699 per unit. Upon determining the number of devices the Department of Children and Families could supply, the cost required to staff and support monitoring efforts would then need to be considered as part of the overall fiscal impact. Two FTEs at \$114,991 (Salaries and Benefits, Expense and HR package) to provide monitoring, database management and maintenance, and to liaison with law enforcement would be needed.³¹

DCF also noted that if monitoring responsibility were to fall to DCF, there would be a significant impact to the agency in the area of equipment training, support, and maintenance.³²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

³⁰ Florida Department of Law Enforcement, 2015 Agency Bill Analysis for HB 69 (on file with the Criminal Justice Subcommittee)(FDLE Analysis).

³¹ Department of Children and Families, 2015 Agency Bill Analysis for HB 69 (on file with the Criminal Justice Subcommittee)(DCF Analysis).

³² *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

According to FDLE, the monitoring of endangered persons is outside the scope of the current FDLE mission and may require rule revision authority.³³ A rule revision would also be required to incorporate training in the law enforcement officer mandatory retraining.³⁴

The monitoring of endangered persons is also likely outside the scope of the current DCF mission and may require rule revision authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FDLE notes that while there are no provisions that specifically define “missing person with special needs” or identify a particular protocol regarding such individuals under any section of Chapter 937, MEPIC currently includes within its processes of reporting missing endangered persons any missing individual with any special needs (i.e. any persons with autism spectrum disorder, developmental disability, Alzheimer’s disease or other form of dementia, or any other such disease or condition), or any person missing and suspected by a law enforcement agency of being endangered due to any circumstance or status of being.³⁵ FDLE also notes that they currently issue Missing Child Alerts for all missing children with autism.³⁶

According to FLDE, existing definitions in 937.0201(4)(a), (b), (c), and (d), capture all missing persons, children and adults, that may be endangered. Additionally, FCIC defines missing categories of “Disabled” or “Endangered” to specifically identify missing disabled individuals. FDLE is concerned that specifying individual types of disabilities and circumstances to those that limit an individual’s capacity for self-care, ability to make sound choices, seeking help when needed, or protect themselves from harm in statute may result in unintended consequences of restricting certain missing person investigative services from others who do not meet the proposed, specified criteria, but who are nonetheless missing and endangered.³⁷

Neither FDLE nor DCF have the structure or technology necessary to implement a electronic monitoring program for persons who have the potential to go missing due to autism spectrum disorder or due to diagnosed Alzheimer’s disease or any other form of dementia. Both agencies report that such monitoring programs are likely outside the scope and mission of these agencies.³⁸

³³ FDLE Analysis.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ FDLE Analysis and DCF Analysis.

Both FDLE and DCF note that the bill provides no direction regarding the purpose, protocol, extent, limitations, or criteria for the creation and maintenance of the proposed electronic monitoring program.³⁹

The bill requires the Agency for Persons with Disabilities (APD) to provide FDLE a list of persons in each county who have the potential to go missing due to autism spectrum disorder. APD reports that they have the capability to send county-specific demographic data to FDLE (for APD clients diagnosed with autism spectrum disorder), but they do not have the means to determine, in an automated and statistically sound manner, which of those clients have “the potential to go missing” as described in the bill.⁴⁰ APD further reports that there is currently no valid predictor or assessment to determine a person’s risk or potential of wandering.⁴¹ In addition, APD only collects information on individuals with autism who have contacted and subsequently applied for services.⁴² Thus, APD reports it could only provide to FDLE a report of the number of APD clients with a developmental disability without regard to their “risk of becoming lost.”⁴³

The bill requires CJSTC to incorporate detailed training on retrieving missing persons with special needs into the curriculum for continuous employment or appointment as an LEO. The bill does not specify how many hours of such training should be provided. FDLE also notes that the bill needs clarification as to whether the training is to be included in both basic training and mandatory retraining.⁴⁴

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³⁹ *Id.*

⁴⁰ APD Analysis.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ FDLE Analysis.

1 A bill to be entitled
 2 An act relating to missing persons with special needs;
 3 amending s. 937.0201, F.S.; revising the definition of
 4 the term "missing endangered person" to include
 5 certain persons with special needs; amending s.
 6 937.021, F.S.; providing immunity from civil liability
 7 for certain persons who comply with a request to
 8 release information concerning missing persons with
 9 special needs to appropriate agencies; providing a
 10 presumption that a person recording, reporting,
 11 transmitting, displaying, or releasing such
 12 information acted in good faith; amending s. 937.022,
 13 F.S.; specifying who may submit a report concerning a
 14 missing person with special needs; creating s.
 15 937.035, F.S.; requiring the Department of Law
 16 Enforcement, contingent on funding, to provide
 17 electronic monitoring devices to certain persons with
 18 autism spectrum disorder; requiring the Agency for
 19 Persons with Disabilities to make an annual report
 20 concerning such individuals to the department;
 21 requiring the Department of Children and Families,
 22 contingent on funding, to provide electronic
 23 monitoring devices to certain persons with dementia;
 24 creating s. 943.17297, F.S.; requiring the Criminal
 25 Justice Standards and Training Commission to
 26 incorporate the retrieval of missing persons with

27 special needs into the curriculum required for law
 28 enforcement officers; providing an effective date.

29

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

31

32 Section 1. Paragraphs (c) and (d) of subsection (4) of
 33 section 937.0201, Florida Statutes, are amended, and paragraph
 34 (e) is added to that subsection, to read:

35 937.0201 Definitions.—As used in this chapter, the term:

36 (4) "Missing endangered person" means:

37 (c) A missing adult 26 years of age or older who is
 38 suspected by a law enforcement agency of being endangered or the
 39 victim of criminal activity; ~~or~~

40 (d) A missing adult who meets the criteria for activation
 41 of the Silver Alert Plan of the Department of Law Enforcement;
 42 or

43 (e) A missing person with special needs who is at risk of
 44 becoming lost or is prone to wander due to autism spectrum
 45 disorder, a developmental disability, or any other disease or
 46 condition.

47 Section 2. Paragraphs (d) and (e) of subsection (5) of
 48 section 937.021, Florida Statutes, are amended, and a new
 49 paragraph (d) is added to that subsection, to read:

50 937.021 Missing child and missing adult reports.—

51 (5)

52 (d) Upon receiving a request to record, report, transmit,

53 display, or release information about a missing person with
 54 special needs, as described in s. 937.0201(4)(e), from the law
 55 enforcement agency having jurisdiction over the missing person,
 56 the Department of Law Enforcement, any state or local law
 57 enforcement agency, and the personnel of these agencies; any
 58 radio or television network, broadcaster, or other media
 59 representative; any dealer of communications services as defined
 60 in s. 202.11; or any agency, employee, individual, or entity is
 61 immune from civil liability for damages for complying in good
 62 faith with the request and is presumed to have acted in good
 63 faith in recording, reporting, transmitting, displaying, or
 64 releasing information pertaining to the missing person with
 65 special needs.

66 (e)~~(d)~~ The presumption of good faith is not overcome if a
 67 technical or clerical error is made by any agency, employee,
 68 individual, or entity acting at the request of the local law
 69 enforcement agency having jurisdiction, or if the information
 70 regarding an Amber Alert, Missing Child Alert, Silver Alert,
 71 missing child information, missing adult information, or missing
 72 person with special needs Silver Alert information is incomplete
 73 or incorrect because the information received from the local law
 74 enforcement agency was incomplete or incorrect.

75 (f)~~(e)~~ Neither this subsection nor any other provision of
 76 law creates a duty of the agency, employee, individual, or
 77 entity to record, report, transmit, display, or release the
 78 information regarding an Amber Alert, Missing Child Alert,

79 Silver Alert, missing child ~~information~~, missing adult
 80 ~~information~~, or missing person with special needs Silver Alert
 81 ~~information~~ received from the local law enforcement agency
 82 having jurisdiction. The decision to record, report, transmit,
 83 display, or release information is discretionary with the
 84 agency, employee, individual, or entity receiving the
 85 information.

86 Section 3. Paragraph (b) of subsection (3) of section
 87 937.022, Florida Statutes, is amended to read:

88 937.022 Missing Endangered Persons Information
 89 Clearinghouse.—

90 (3) The clearinghouse shall:

91 (b) Provide a centralized file for the exchange of
 92 information on missing endangered persons.

93 1. Every state, county, or municipal law enforcement
 94 agency shall submit to the clearinghouse information concerning
 95 missing endangered persons.

96 2. Any person having knowledge may submit a missing
 97 endangered person report to the clearinghouse concerning a
 98 child, an ~~or~~ adult younger than 26 years of age, or a person
 99 with special needs, as described in s. 937.0201(4)(e), whose
 100 whereabouts are ~~is~~ unknown, regardless of the circumstances,
 101 subsequent to reporting such child, ~~or~~ adult, or person with
 102 special needs missing to the appropriate law enforcement agency
 103 within the county in which the child, ~~or~~ adult, or person with
 104 special needs went ~~became~~ missing, and subsequent to entry by

105 the law enforcement agency of the child or person into the
 106 Florida Crime Information Center and the National Crime
 107 Information Center databases. The missing endangered person
 108 report shall be included in the clearinghouse database.

109 3. Only the law enforcement agency having jurisdiction
 110 over the case may submit a missing endangered person report to
 111 the clearinghouse involving a missing adult age 26 years or
 112 older who is suspected by a law enforcement agency of being
 113 endangered or the victim of criminal activity.

114 4. Only the law enforcement agency having jurisdiction
 115 over the case may make a request to the clearinghouse for the
 116 activation of a state Silver Alert involving a missing adult if
 117 circumstances regarding the disappearance have met the criteria
 118 for activation of the Silver Alert Plan.

119 Section 4. Section 937.035, Florida Statutes, is created
 120 to read:

121 937.035 Electronic monitoring devices for certain
 122 persons.—

123 (1)(a) The department shall, to the extent federally
 124 funded, provide electronic monitoring devices for persons
 125 described in s. 937.0201(4)(e) who have the potential to go
 126 missing due to autism spectrum disorder.

127 (b) The Agency for Persons with Disabilities shall
 128 annually provide the department with a list of the number of
 129 persons in each county who would be eligible for an electronic
 130 monitoring device under this subsection.

131 (2) The Department of Children and Families shall, subject
 132 to legislative appropriation, provide electronic monitoring
 133 devices to persons described in s. 937.0201(4)(e) who have the
 134 potential to go missing due to diagnosed Alzheimer's disease or
 135 any other form of dementia.

136 Section 5. Section 943.17297, Florida Statutes, is created
 137 to read:

138 943.17297 Training in retrieval of persons with special
 139 needs.—The commission shall incorporate detailed training in the
 140 retrieval of missing persons with special needs as described in
 141 s. 937.0201(4)(e) into the curriculum required for continuous
 142 employment or appointment as a law enforcement officer.

143 Section 6. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 115 Sentencing
SPONSOR(S): Gaetz
TIED BILLS: None **IDEN./SIM. BILLS:** None

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

SUMMARY ANALYSIS

Section 775.089, F.S., requires a judge to order a defendant convicted of any criminal offense to make restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense, and damage or loss related to the defendant's criminal episode. The statute currently defines the term "victim," in part, as:

- Each *person* who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode.

While the definition of "victim" does not currently define the word "person," s. 1.01(3), F.S., defines the word "person" to "include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." Read in conjunction, it appears that governmental entities and political subdivisions (governmental entities) can be "victims" for purposes of restitution. However, some Florida District Courts have held that governmental entities are barred from obtaining an order of restitution because they are not considered "victims" for purposes of restitution.

The bill amends the definition of "victim" in s. 775.089(1)(c), F.S., to clarify that the term includes governmental entities and political subdivisions when such entities are a direct victim of the defendant's offense or criminal episode and not merely providing public services in response to the offense or criminal episode.

The bill also creates ss. 838.23 and 839.27, F.S., to require a judge to order a person convicted of any offense in chs. 838 (entitled "Bribery; Misuse of Public Office") and 839, F.S., (entitled "Offenses by Public Officers and Employees") to:

- Make restitution to the victim of the offense if, after conducting a hearing, the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person's offense or an actual financial loss related to the person's criminal episode; and
- Perform 250 hours of community service work.

If the bill's restitution and community service requirements result in a court placing more defendants on community supervision for the felony and misdemeanor offenses found in chs. 838 and 839, F.S., it will have a negative fiscal impact on state and local governments resulting from an increased workload on state and county probation officers.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Restitution

Section 775.089, F.S., requires a judge to order a defendant convicted of any criminal offense to make monetary or non-monetary restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode. Restitution must be ordered unless the judge finds clear and compelling reasons not to do so.¹ To enter an order of restitution, a trial court must first conduct a restitution hearing to determine by competent evidence the amount owed to the victim and the defendant's ability to pay.²

The purpose of restitution is two-fold: (1) it acts to compensate the victim; and (2) serves the rehabilitative, deterrent, and retributive goals of the criminal justice system.³ Thus, the prime rationale underlying restitution are to give the perpetrator of a crime an opportunity to make amends, and to make the victim whole again, to the extent it is possible to do so.⁴

Currently, s. 775.089(1)(c), F.S., defines "victim," in part, as:

- Each *person* who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode.⁵

The restitution section does not currently define the word "person." However, s. 1.01(3), F.S., defines the word "person" to "*include* individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." Read in conjunction, it appears that governmental entities and political subdivisions (governmental entities) can be "victims" for purposes of restitution. However, Florida's District Courts of Appeal (DCAs) are somewhat divided on the subject.

Some DCAs have held that governmental entities are always barred from obtaining an order of restitution because they are not considered "victims" for purposes of restitution.⁶ It appears that these holdings resulted from restitution being ordered in favor of these entities for conducting investigations or performing other public services that are within the normal scope of their duties as an entity, agency, or subdivision, rather than for actual damages suffered.⁷ Other DCAs have held that governmental entities are "victims" for losses other than investigative costs, such as travel expenses incurred for trial, when the losses are a direct result of the defendant's criminal episode.⁸ In *Childers v. State*, the First District Court held that because of the definition of the term "person" *included* a list of individuals and entities, the Legislature did not intend such a list to be limiting and exhaustive, but rather illustrative.⁹

¹ Section 775.089, F.S.

² *Exilorme v. State*, 857 So.2d 339 (Fla. 2d DCA 2003) and *Graham v. State*, 720 So.2d 294 (Fla. 5th DCA 1998).

³ 15B Fla. Jur 2d Criminal Law s. 2886 (citing *Kirby v. State*, 863 So.2d 238 (Fla. 2003)).

⁴ *Id.* (citing *L.O. v. State*, 718 So.2d 155 (Fla. 1998)).

⁵ The definition also includes the victim's estate if the victim is deceased, the victim's next of kin if the victim is deceased as a result of the offense, as well as the victim's trade association if the offense is a violation of s. 540.11(3)(a)3., F.S., involving the sale, or possession for purposes of sale, of physical articles and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf.

⁶ *See Sims v. State*, 746 So.2d 546 (Fla. 2d DCA 1999); *Bain v. State*, 559 So.2d 106 (Fla. 4th DCA 1990); *T.H. Taylor v. State*, 672 So.2d 605 (Fla. 4th DCA 1996); and *Rodriguez v. State*, 691 So.2d 568 (Fla. 2d DCA 1997).

⁷ *Id.*

⁸ *Smith v. State*, 801 So.2d 1043 (Fla. 5th DCA 2001); *Childers v. State*, 936 So.2d 585 (Fla. 1st DCA 2006).

⁹ *Childers*, at 597.

Effect of the Bill

The bill amends the definition of “victim” in s. 775.089(1)(c), F.S., to clarify that the term includes governmental entities and political subdivisions when such entities are a direct victim of the defendant’s offense or criminal episode and not merely providing public services in response to the offense or criminal episode.

The bill defines “governmental entities” and “political subdivisions” as these terms are defined in s. 11.45, F.S.

Offenses by Public Officials

Chapters 838 (entitled “Bribery; Misuse of Public Office”) and 839, F.S., (entitled “Offenses by Public Officers and Employees”) create a variety of offenses related to public officials or employees and the performance of their official duties. For example, ch. 838, F.S., provides felony criminal penalties for the following offenses:

- Bribery involving a public servant;¹⁰
- Unlawful compensation or reward for official behavior;¹¹
- Corruption by threat against public servant;¹²
- Official misconduct;¹³
- Bribery in athletic contests;¹⁴
- Soliciting, accepting, or agreeing to accept a commercial bribe;¹⁵
- Conferring, offering to confer, or agreeing to offer a commercial bribe;¹⁶
- Disclosure or use of confidential criminal justice information;¹⁷ and
- Bid tampering.¹⁸

Chapter 839, F.S., provides misdemeanor and felony criminal penalties for the following offenses:

- County officers buying at discount or speculating specified certificates or warrants;¹⁹
- Municipal officers buying at discount or speculating in any scrip or other evidence of indebtedness issued by such officer’s municipal corporation;²⁰
- Tax collectors purchasing or receiving in exchange a lesser than face value amount specified certificates or orders;²¹
- Extortion by officers of the state;²²
- Clerk of Court, Sheriff, or County Judge failing to keep records of costs;²³
- Public Official or Employee falsifying records;²⁴
- Officer withholding records from successor after the time officer’s appointment or election has expired;²⁵
- Judicial officer withholding records;²⁶
- Fraud of clerk in drawing a jury;²⁷

¹⁰ Section 838.015, F.S.

¹¹ Section 838.016, F.S.

¹² Section 838.021, F.S.

¹³ Section 838.022, F.S.

¹⁴ Section 838.12, F.S.

¹⁵ Section 838.15, F.S.

¹⁶ Section 838.16, F.S.

¹⁷ Section 838.21, F.S.

¹⁸ Section 838.22, F.S.

¹⁹ Section 839.04, F.S.

²⁰ Section 839.05, F.S.

²¹ Section 839.06, F.S.

²² Section 839.11, F.S.

²³ Section 839.12, F.S.

²⁴ Section 839.13, F.S.

²⁵ Section 839.14, F.S.

²⁶ Section 839.15, F.S.

²⁷ Section 839.16, F.S.

- Misappropriation of moneys by commissioners to make sales;²⁸
- Officer assuming to perform duties of office prior to qualification;²⁹
- Sheriff or officer wilfully or corruptly refusing or neglecting to execute process;³⁰
- Officer refusing to execute criminal process;³¹
- Jailer or officer refusing to receive prisoner;³²
- Officer taking insufficient bail;³³
- Willful failure of officer to perform any duty required under criminal procedure law;³⁴ and
- Misuse of confidential information.³⁵

As noted above, courts generally order restitution pursuant to the provisions in s. 775.089, F.S. However, some criminal statutes include specific restitution and community service provisions that are tailored to that particular offense.³⁶ These provisions may provide a more tailored definition of restitution or may require a certain amount of community service hours.³⁷

Chapters 838 and 839, F.S., do not currently include specific provisions related to restitution or community service.

Effect of the Bill:

The bill creates ss. 838.23 and 839.27, F.S., to require a judge to order a person convicted of any offense in chs. 838 or 839, F.S., to:

- Make restitution to the victim of the offense if, after conducting a hearing, the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person's offense or an actual financial loss related to the person's criminal episode; and
- Perform 250 hours of community service work.

These conditions of restitution and community service work are in addition to any fine or sentence that may be imposed and are not in lieu thereof.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.089, F.S., relating to restitution.

Section 2. Creates s. 838.23, F.S., relating to restitution and community service.

Section 3. Creates s. 839.27, F.S., relating to restitution and community service.

Section 4. Provides an effective date of October 1, 2015.

²⁸ Section 839.17, F.S.

²⁹ Section 839.18, F.S.

³⁰ Section 839.19, F.S.

³¹ Section 839.20, F.S.

³² Section 839.21, F.S.

³³ Section 839.23, F.S.

³⁴ Section 839.24, F.S.

³⁵ Section 839.26, F.S.

³⁶ Some examples of the statutes which include specified restitution provisions include: s. 267.13, F.S., relating to prohibition on unauthorized archeological excavation (provides a specified definition of restitution); s. 784.08, F.S., relating to assault or battery of a person 65 years or older (defendant shall be fined not more than \$10,000, ordered to pay restitution, and perform up to 500 hours of community service); s. 812.0145, F.S., relating to theft from a person 65 years or older (defendant shall be ordered to pay restitution and perform up to 500 hours of community service); s. 817.568, F.S., relating to criminal use of personal identification (provides a specified definition of restitution).

³⁷ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

State governmental entities which have been previously barred from recovering restitution will now be able to.

2. Expenditures:

Generally, persons who are ordered to pay restitution or perform community service hours are often placed on community supervision (e.g., probation) by the court so that compliance with such provisions can be monitored. If the bill's restitution and community service requirements result in a court placing more defendants on community supervision for the felony offenses found in chs. 838 or 839, F.S., this will have a negative fiscal impact on Department of Corrections resulting from an increased workload on probation officers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governmental entities which have been previously barred from recovering restitution will now be able to.

2. Expenditures:

Generally, persons who are ordered to pay restitution or perform community service hours are often placed on community supervision (e.g., probation) by the court so that compliance with such provisions can be monitored. If the bill's restitution and community service requirements result in a court placing more defendants on community supervision for the misdemeanor offenses found in ch. 839, F.S., this will have a negative fiscal impact on local governments resulting from an increased workload on county probation officers.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to sentencing; amending s. 775.089,
 3 F.S.; revising the definition of the term "victim" to
 4 include governmental entities and political
 5 subdivisions in certain instances; creating ss. 838.23
 6 and 839.27, F.S.; requiring the sentencing judge to
 7 order restitution and a specified number of community
 8 service work hours for violations of chapter 838,
 9 F.S., relating to bribery and misuse of public office,
 10 or chapter 839, F.S., relating to offenses by public
 11 officers and employees; providing an effective date.
 12

13 Be It Enacted by the Legislature of the State of Florida:
 14

15 Section 1. Paragraph (c) of subsection (1) of section
 16 775.089, Florida Statutes, is amended to read:

17 775.089 Restitution.—

18 (1)

19 (c) The term "victim" as used in this section and in any
 20 provision of law relating to restitution means:

21 1. Each person who suffers property damage or loss,
 22 monetary expense, or physical injury or death as a direct or
 23 indirect result of the defendant's offense or criminal episode,
 24 and also includes the victim's estate if the victim is deceased,
 25 and the victim's next of kin if the victim is deceased as a
 26 result of the offense. The term includes governmental entities

27 and political subdivisions, as those terms are defined in s.
 28 11.45, when such entities are a direct victim of the defendant's
 29 offense or criminal episode and not merely providing public
 30 services in response to the offense or criminal episode.

31 2. The term also includes ~~and~~ the victim's trade
 32 association if the offense is a violation of s. 540.11(3)(a)3.
 33 involving the sale, or possession for purposes of sale, of
 34 physical articles and the victim has granted the trade
 35 association written authorization to represent the victim's
 36 interests in criminal legal proceedings and to collect
 37 restitution on the victim's behalf. The restitution obligation
 38 in this subparagraph ~~paragraph~~ relating to violations of s.
 39 540.11(3)(a)3. applies only to physical articles and does not
 40 apply to electronic articles or digital files that are
 41 distributed or made available online. As used in this
 42 subparagraph ~~paragraph~~ , the term "trade association" means an
 43 organization founded and funded by businesses that operate in a
 44 specific industry to protect their collective interests.

45 Section 2. Section 838.23, Florida Statutes, is created to
 46 read:

47 838.23 Restitution and community service.—A person who is
 48 convicted of any offense in this chapter shall be ordered by the
 49 sentencing judge to make restitution to the victim of the
 50 offense if, after conducting a hearing, the judge finds that the
 51 victim suffered an actual financial loss caused directly or
 52 indirectly by the person's offense or an actual financial loss

53 related to the person's criminal episode. A person who is
 54 convicted of any offense in this chapter shall also be ordered
 55 to perform 250 hours of community service work. Restitution and
 56 community service work shall be in addition to any fine or
 57 sentence that may be imposed and may not be in lieu thereof.


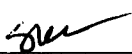
58 Section 3. Section 839.27, Florida Statutes, is created to
 59 read:

60 839.27 Restitution and community service.—A person who is
 61 convicted of any offense in this chapter shall be ordered by the
 62 sentencing judge to make restitution to the victim of the
 63 offense if, after conducting a hearing, the judge finds that the
 64 victim suffered an actual financial loss caused directly or
 65 indirectly by the person's offense or an actual financial loss
 66 related to the person's criminal episode. A person who is
 67 convicted of any offense in this chapter shall also be ordered
 68 to perform 250 hours of community service work. Restitution and
 69 community service work shall be in addition to any fine or
 70 sentence that may be imposed and may not be in lieu thereof.

71 Section 4. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 117 False Personation
SPONSOR(S): Watson, B.
TIED BILLS: IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

Section 843.08, F.S., makes it a third degree felony for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer. The offense is reclassified to a second degree felony or a first degree felony in specified instances.

Section 843.085, F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner by words or insignia that could deceive a reasonable person into believing the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle. The prohibited words and insignia include words such as "police," "patrolman," "sheriff," and "deputy."

The bill amends s. 843.08, F.S., to add "firefighter" and "investigator with the Bureau of Fire and Arson Investigations within the office of the Chief Financial Officer" to the list of officers that may not be falsely personated. The bill expands the application of s. 843.085, F.S., to prohibit a person from:

- Wearing or displaying the word "fire department" on any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof;
- Marking or identifying a vehicle by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof; and
- Selling, transferring, or giving away the authorized badge, or colorable imitation thereof, including miniatures which bear the word "fire department."

The bill addresses a 2005 Florida Supreme Court decision by requiring proof that the offender had the intent to mislead or cause another person to believe (rather than requiring proof that a reasonable person could be deceived) that the:

- Person is a member of that agency or is authorized to wear or display such item; or
- Vehicle is an official vehicle of that agency and is authorized to be used by that agency.

The Criminal Justice Impact Conference met March 25, 2014, and determined HB 1215 (2014), which is identical to this bill, would have an insignificant prison bed impact. The bill may also have a negative jail bed impact on local governments because it expands the application of a misdemeanor offense.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

False Personation of an Officer or Others

Section 843.08, F.S., makes it a third degree felony¹ for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer.² This section applies to the false personation of the following:

- A sheriff or deputy sheriff;
- Officers of the Florida Highway Patrol;
- Officers of the Fish and Wildlife Conservation Commission;
- Officers of the Department of Transportation;
- Officers of the Department of Financial Services;
- Officers of the Department of Corrections;
- Correctional probation officers;
- State Attorneys, assistant state attorneys, and state attorney investigators;
- The Statewide Prosecutor and assistant statewide prosecutors;
- Coroners;
- Police officers;
- Lottery special agents and lottery investigators;
- Beverage enforcement agents;
- Watchman;
- Members of the Parole Commission and any administrative aid or supervisor employed by the Parole Commission;
- Any personnel or representative of the Florida Department of Law Enforcement (FDLE); and
- Federal law enforcement officers as defined in s. 901.1505, F.S.

If a person falsely personates any of the above listed officers during the commission of a felony, the offense is reclassified to a second degree felony.³ If the commission of a felony results in the death or injury of another person, the offense is reclassified to a first degree felony.⁴

Currently, the term "watchman" is not defined.

Effect of the Bill

The bill amends s. 843.08, F.S., to add "firefighter" and "investigator with the Bureau of Fire and Arson Investigations within the office of the Chief Financial Officer" to the list of officers described above, and defines the term "watchman" as a security officer licensed under ch. 493, F.S.⁵ The bill also removes the reference to "officer of the Department of Transportation" since these officers were consolidated with the Florida Highway Patrol.

The bill amends the title of this offense to "false personation" and makes conforming changes in s. 921.0022, F.S., to reflect this title change.

¹ 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.

² Section 843.08, F.S.

³ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁴ 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.

⁵ Section 493.6101(19), F.S., defines a "security officer" as any individual who, for consideration:

- Advertises as providing or performs bodyguard services or otherwise guards persons or property;
- Attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or
- Attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof.

Unlawful Use of Police Badges or Other Indicia of Authority

Unlawful use of Police Badges

Section 843.085(1), F.S., makes it a first degree misdemeanor,⁶ for a person, unless authorized by the appropriate agency, to wear or display any authorized indicia of authority including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof of a law enforcement agency which could deceive a reasonable person into believing that such item is authorized by the agency for use by the person displaying or wearing it.

The subsection also prohibits a person from wearing or displaying any item which displays the word "police," "patrolman," "agent," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer," "state attorney," "public defender," "marshal," "constable," or "bailiff" and which could deceive a reasonable person into believing that such item is authorized by the law enforcement agency for use by the person displaying or wearing it.

Operating a Vehicle Marked as a Law Enforcement Vehicle

Section 843.085(2), F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner or combination (marked vehicle) by words or insignia which could deceive a reasonable person into believing that the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle.⁷ The prohibited words and insignia include:

- The word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff;" or
- Any lettering, marking, or insignia or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the marked vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency.⁸

Section 843.085(2), F.S., does not apply if:

- The marked vehicle is owned or operated by the appropriate agency and its use is authorized by such agency;
- The local law enforcement agency authorizes the use of the marked vehicle; or
- The person is appointed by the Governor pursuant to ch. 354, F.S.⁹

An exception is also provided to allow fraternal, benevolent, or labor organizations or associations (fraternal association), to use any of the following words in the official name of the organization or association:

- "Police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff."¹⁰

Selling Badges

Currently, s. 843.085(3), F.S., makes it a first degree misdemeanor to sell, transfer, or give away the authorized badge, or colorable imitation thereof of any criminal justice agency or bearing words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol

⁶ 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.

⁷ Section 843.085(2), F.S.

⁸ Section 943.045, F.S., defines the term "criminal justice agency" as a court, FDLE, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Family Services, which investigates the crimes of abuse and neglect, and any other governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice.

⁹ Chapter 354, F.S., requires the Governor to appoint one or more persons who have met specified law enforcement qualifications and training requirements as special officers for the protection and safety of railroads and common carriers; their passengers and employees; and the property of such carriers, passengers, and employees.

¹⁰ Section 843.085(4), F.S.

Officer,” “marshal,” “constable,” “agent,” “state attorney,” “public defender,” or “bailiff,” which could deceive a reasonable person into believing that such item is authorized by the agency.¹¹

Sult v. State¹²

In *Sult v. State*,¹³ the Florida Supreme Court held that s. 843.085, F.S., was unconstitutionally overbroad and vague. The court found the statute unconstitutional because it did not require that the offender had a specific intent to deceive and it made no distinction between innocent wearing of law enforcement items and wearing of these items in order to deceive the public into believing the wearer was a member of the law enforcement agency. The court found:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The could deceive a reasonable person element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of words listed in the statute, results in a virtually boundless and uncertain restriction on expression. Thus...[the section] is overbroad because it reaches a substantial amount of constitutionally protected conduct.¹⁴

Effect of the Bill

The bill expands the application of s. 843.085, F.S., to prohibit a person from:

- Wearing or displaying the word “fire department” on any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof;
- Marking or identifying a vehicle by the word “fire department,” or any lettering, marking, insignia, or colorable imitation thereof; and
- Selling, transferring, or giving away the authorized badge, or colorable imitation thereof, including miniatures which bear the word “fire department.”

The bill addresses the *Sult v. State* decision by requiring proof that the offender had the intent to mislead or cause another person to believe (rather than requiring proof that a reasonable person could be deceived) that the:

- Person is a member of that agency or is authorized to wear or display such item; or
- Vehicle is an official vehicle of that agency and is authorized to be used by that agency.

B. SECTION DIRECTORY:

Section 1. Amends s. 843.08, F.S., relating to falsely personating officer, etc.

Section 2. Amends s. 843.085, F.S., relating to unlawful use of police badges or other indicia of authority.

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

Section 4. Provides an effective date of October 1, 2015.

¹¹ The bill provides an exception for “agency purchases or upon the presentation and recordation of both a driver's license and other identification showing any transferee to actually be a member of such criminal justice agency or unless the person is appointed by the Governor pursuant to chapter 354.” A transferor of an item covered by this subsection is required to maintain for 2 years a written record of the transaction, including records showing compliance with this subsection, and if such transferor is a business, it must make such records available during normal business hours for inspection by any law enforcement agency having jurisdiction in the area where the business is located. Violation of this provision is a first degree misdemeanor. The bill does not change this provision.

¹² 906 So.2d 1013 (Fla. 2005).

¹³ *Id.*

¹⁴ *Id.* at 1021.

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 (CJIC) met March 25, 2014, and determined HB 1215 (2014), which is identical to this bill, would have an insignificant prison bed 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 may also have a negative jail bed impact on local governments because it expands the application of s. 843.085, F.S., a first degree misdemeanor, to include vehicles marked or identified by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to false personation; amending s. 843.08, F.S.; revising the list of officials who are prohibited from being falsely personated; revising terminology; amending s. 843.085, F.S.; prohibiting the sale or transfer of specified badges bearing in any manner or combination the words "fire department" and the ownership or operation of vehicles marked or identified by the words "fire department"; requiring specified intent for certain offenses; providing an exception; amending s. 921.0022, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation ~~Falsely personating officer, etc.~~—A person who falsely assumes or pretends to be a firefighter, sheriff, officer of the Florida Highway Patrol, officer of the Fish and Wildlife Conservation Commission, a fire or arson investigator of the Department of Financial Services, ~~officer of the Department of Transportation,~~ officer of the Department of Financial Services, officer of the Department of Corrections, correctional probation officer, deputy sheriff,

27 | state attorney or assistant state attorney, statewide prosecutor
 28 | or assistant statewide prosecutor, state attorney investigator,
 29 | coroner, police officer, lottery special agent or lottery
 30 | investigator, beverage enforcement agent, or watchman, or any
 31 | member of the Florida Commission on Offender Review and any
 32 | administrative aide or supervisor employed by the commission, or
 33 | any personnel or representative of the Department of Law
 34 | Enforcement, or a federal law enforcement officer as defined in
 35 | s. 901.1505, and takes upon himself or herself to act as such,
 36 | or to require any other person to aid or assist him or her in a
 37 | matter pertaining to the duty of any such officer, commits a
 38 | felony of the third degree, punishable as provided in s.
 39 | 775.082, s. 775.083, or s. 775.084. However, a person who
 40 | falsely personates any such officer during the course of the
 41 | commission of a felony commits a felony of the second degree,
 42 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 43 | If the commission of the felony results in the death or personal
 44 | injury of another human being, the person commits a felony of
 45 | the first degree, punishable as provided in s. 775.082, s.
 46 | 775.083, or s. 775.084. The term "watchman" means a security
 47 | officer licensed under chapter 493.

48 | Section 2. Section 843.085, Florida Statutes, is amended
 49 | to read:

50 | 843.085 Unlawful use of ~~police~~ badges or other indicia of
 51 | authority. ~~It is unlawful for any person:~~

52 | (1) It is unlawful for any person, unless appointed by the

53 Governor pursuant to chapter 354, authorized by the appropriate
 54 agency, or displayed in a closed or mounted case as a collection
 55 or exhibit, to wear or display any authorized indicia of
 56 authority, including any badge, insignia, emblem, identification
 57 card, or uniform, or any colorable imitation thereof, of any
 58 federal, state, county, or municipal law enforcement agency, or
 59 other criminal justice agency as now or hereafter defined in s.
 60 943.045, with the intent to mislead or cause another person to
 61 believe that he or she is a member of that agency or is
 62 authorized to display or wear such item, or to wear or display
 63 any item that ~~which could deceive a reasonable person into~~
 64 ~~believing that such item is authorized by any of the agencies~~
 65 ~~described above for use by the person displaying or wearing it,~~
 66 ~~or which~~ displays in any manner or combination the word or words
 67 "police," "patrolman," "agent," "sheriff," "deputy," "trooper,"
 68 "highway patrol," "commission officer," "Wildlife Officer,"
 69 "Marine Patrol Officer," "state attorney," "public defender,"
 70 "marshal," "constable," ~~or~~ "bailiff," or "fire department," with
 71 the intent to mislead or cause another person to believe that he
 72 or she is a member of that agency or is authorized to wear or
 73 display such item ~~which could deceive a reasonable person into~~
 74 ~~believing that such item is authorized by any of the agencies~~
 75 ~~described above for use by the person displaying or wearing it.~~
 76 (2) It is unlawful for a person to own or operate a motor
 77 vehicle marked or identified in any manner or combination by the
 78 word or words "police," "patrolman," "sheriff," "deputy,"

79 "trooper," "highway patrol," "commission officer," "Wildlife
 80 Officer," "Marine Patrol Officer," "marshal," "constable," ~~or~~
 81 "bailiff," or "fire department," or by any lettering, marking,
 82 or insignia, or colorable imitation thereof, including, but not
 83 limited to, stars, badges, or shields, officially used to
 84 identify the vehicle as a federal, state, county, or municipal
 85 law enforcement vehicle or a vehicle used by a criminal justice
 86 agency as ~~now or hereafter~~ defined in s. 943.045, or a vehicle
 87 used by a fire department with the intent to mislead or cause
 88 another person to believe that such vehicle is an official
 89 vehicle of that agency and is authorized to be used by that
 90 agency which could deceive a reasonable person into believing
 91 that such vehicle is authorized by any of the agencies described
 92 above for use by the person operating the motor vehicle, unless
 93 such vehicle is owned or operated by the appropriate agency and
 94 its use is authorized by such agency, or the local law
 95 enforcement agency or fire department authorizes the use of such
 96 vehicle, ~~unless~~ the person is appointed by the Governor
 97 pursuant to chapter 354.

98 (3) It is unlawful for a person to sell, transfer, or give
 99 away the authorized badge, or colorable imitation thereof,
 100 including miniatures, of any criminal justice agency as ~~now or~~
 101 ~~hereafter~~ defined in s. 943.045, or bearing in any manner or
 102 combination the word or words "police," "patrolman," "sheriff,"
 103 "deputy," "trooper," "highway patrol," "commission officer,"
 104 "Wildlife Officer," "Marine Patrol Officer," "marshal,"

105 "constable," "agent," "state attorney," "public defender," ~~or~~
 106 "bailiff," or "fire department," with the intent to mislead or
 107 cause another person to believe that he or she is a member of
 108 that agency or is authorized to wear or display such item ~~which~~
 109 ~~could deceive a reasonable person into believing that such item~~
 110 ~~is authorized by any of the agencies described above,~~ except for
 111 agency purchases or upon the presentation and recordation of
 112 both a driver license and other identification showing any
 113 transferee to actually be a member of such criminal justice
 114 agency or unless the person is appointed by the Governor
 115 pursuant to chapter 354. A transferor of an item covered by this
 116 subsection is required to maintain for 2 years a written record
 117 of such transaction, including records showing compliance with
 118 this subsection, and if such transferor is a business, it shall
 119 make such records available during normal business hours for
 120 inspection by any law enforcement agency having jurisdiction in
 121 the area where the business is located.

122 (4) ~~Nothing in~~ This section does not ~~shall~~ prohibit a
 123 fraternal, benevolent, or labor organization or association, or
 124 their chapters or subsidiaries, from using the following words,
 125 in any manner or in any combination, if those words appear in
 126 the official name of the organization or association: "police,"
 127 "patrolman," "sheriff," "deputy," "trooper," "highway patrol,"
 128 "commission officer," "Wildlife Officer," "Marine Patrol
 129 Officer," "marshal," "constable," ~~or~~ "bailiff," or "fire
 130 department."

131 (5) Violation of any provision of this section is a
 132 misdemeanor of the first degree, punishable as provided in s.
 133 775.082 or s. 775.083. This section is cumulative to any law now
 134 in force in the state.

135 Section 3. Paragraph (b) of subsection (3) of section
 136 921.0022, Florida Statutes, is amended to read:

137 921.0022 Criminal Punishment Code; offense severity
 138 ranking chart.—

139 (3) OFFENSE SEVERITY RANKING CHART

140 (b) LEVEL 2

141

Florida	Felony	Description
Statute	Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding

142

143

144

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			500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
145	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
146	590.28(1)	3rd	Intentional burning of lands.
147	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
148	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
149	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
150	810.061(2)	3rd	Impairing or impeding telephone

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2015

			or power to a dwelling; facilitating or furthering burglary.
151	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
152	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
153	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
154	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
155	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
156	817.481(3)(a)	3rd	Obtain credit or purchase with

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			false, expired, counterfeit, etc., credit card, value over \$300.
157	817.52 (3)	3rd	Failure to redeliver hired vehicle.
158	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
159	817.60 (5)	3rd	Dealing in credit cards of another.
160	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
161	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
162	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
163			

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2015

164	831.01	3rd	Forgery.
165	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
166	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
167	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
168	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
169	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
170	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
	843.08	3rd	<u>False personation</u> Falsely

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 157 Fraud
SPONSOR(S): Passidomo
TIED BILLS: None **IDEN./SIM. BILLS:** SB 390

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

SUMMARY ANALYSIS

Chapter 817, F.S., contains a variety of statutes relating to fraudulent practices against individuals, corporations, and governments. The bill amends many of these statutes to afford businesses throughout Florida broader protection against fraud and business identity theft, and to enable individuals to more easily identify when identity theft has occurred and restore their identity and credit afterwards. Specifically, the bill:

- Makes it unlawful for a person to falsely personate or represent another person if, while doing so, he or she receives any property intended to be delivered to the party so personated, with intent to convert the property to his or her own use;
- Requires a business entity to release documents related to an identity theft incident to a victim after specified requirements are satisfied and provides protections to such business entities who release such information in good faith;
- Expands the application of s. 817.568, F.S., to include those who unlawfully use the PII of a business entity (rather than an individual) or a dissolved business entity.
- Defines "business entity" and replaces the terms "corporation" and "firm," with the term "business entity," thereby ensuring that all entities legally conducting business in Florida receive the protections of ch. 817, F.S.;
- Adds advertisements published electronically to the definition of misleading advertisements;
- Prohibits a person from manufacturing articles that have the name of a city, county, or political subdivision, that is not the same city, county, or other political subdivision name than the one in which said items are manufactured;
- Prohibits specified persons from fraudulently issuing, transferring, or fraudulently signing an indicia of membership interest with a limited liability company with the intent that the interest be issued or transferred by himself, herself, or another person;
- Prohibits a person from knowingly providing false information that becomes part of a public record; and
- Makes a violation of s. 817.50, F.S., a third degree felony rather than a second degree misdemeanor.

The Criminal Justice Impact Conference has not yet met to determine the fiscal impact of this bill. However, because the bill expands the application of several felony offenses in ch. 817, F.S., the bill will likely have an indeterminate negative prison bed impact on the Department of Corrections. Additionally, to the extent that more defendants will be required to pay the \$1,001 surcharge imposed by s. 817.568, F.S., the bill will likely result in an indeterminate positive fiscal impact on the Florida Department of Law Enforcement, State Attorneys, and Public Defenders.

The bill expands the application of several misdemeanor offenses found in ch. 817, F.S. To the extent that this increases the number of defendants subject to misdemeanor penalties, the bill will likely result in an indeterminate negative fiscal impact on county jails.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Identity Theft Against Individual Consumers

Identity theft is the criminal act of taking a victim's identity for the purpose of obtaining credit, credit cards, money from a victim's accounts, loans, automobiles and residences, and even obtaining employment.¹ A person needs very little information to commit identity theft, such as a victim's social security number, birth date, address, and phone number.²

The Consumer Sentinel Network (CSN) is a secure online database of millions of consumer complaints available only to law enforcement. In addition to storing complaints received by the Federal Trade Commission, CSN also includes complaints filed with state law enforcement organizations.³ During the 2013 calendar year, CSN received over one million fraud-related complaints.⁴ Florida is cited as the state with the highest per capita rate of both fraud (157,383) and identity theft (37,720) complaints.⁵

Chapter 817, F.S., contains a variety of statutes relating to fraudulent practices against individuals, corporations, and governments. The bill amends many of these statutes to afford businesses throughout Florida broader protection against fraud and business identity theft, and to enable individuals to more easily identify when identity theft has occurred and restore their identity and credit afterwards. A detailed description of these changes follows.

Obtaining Property by False Personation

Section 817.02, F.S., makes it unlawful for a person to falsely personate or represent another person if, while doing so, he or she receives any property intended to be delivered to the party so personated, with intent to convert the property to his or her own use.⁶

Effect of the Bill

The bill amends s. 817.02, F.S., to make it unlawful for a person to falsely personate or represent another person if, while doing so, he or she damages the credit history or rating of, or otherwise causes harm to, the person whose identity has been assumed through the taking of property.⁷

Additionally, the bill amends s. 817.02, F.S., to:

- Authorize the court to issue any orders necessary to correct a public record that contains false information given in violation of s. 817.02, F.S.;
- Authorize the court to order restitution for:
 - The victim's out-of-pocket expenses, including attorney fees, incurred by the victim in clearing the victim's credit history or credit rating; or
 - Costs incurred in connection with a civil or administrative proceeding to satisfy a debt, lien, or other obligation of the victim arising as a result of the actions of the defendant.⁸

¹ *About Identity Theft Crimes*, Attorney General Pam Bondi website, <http://myfloridalegal.com/pages.nsf/Main/932BC47213C29D3385256DBB0048479D?OpenDocument> (last visited January 27, 2015).

² *Id.*

³ CSN Data book for January – December 2013, <http://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2013/sentinel-cy2013.pdf> (last visited January 27, 2015).

⁴ *Id.*

⁵ *Id.*

⁶ Persons who violate s. 817.02, F.S., are punished as if they had been convicted of larceny. Prohibited acts previously referred to as larceny are currently prosecuted under the general theft statute, s. 812.014, F.S., which provides punishments primarily based upon the dollar value of the stolen property.

⁷ This provision is limited to instances that are not subject to s. 817.568, F.S., which establishes a variety of crimes related to the fraudulent use of personal identification information.

- Create a civil cause of action, as provided in s. 772.11, F.S.,⁹ for victims¹⁰ of persons who violate s. 817.02, F.S.

Information Available to Identity Theft Victims

Florida law does not currently require business entities to provide identity theft victims or law enforcement agencies with documents associated with the fraudulent use of a person's identity. The lack of such requirements can make the process of restoring one's identity more difficult for a victim.

Effect of the Bill

The bill creates s. 817.032, F.S., which establishes a process in which identity theft victims¹¹ can make a formal request to a business entity¹² for documents related to the identity theft incident when the business entity has provided credit to; provided for consideration products, goods, or services to; accepted payment from; or otherwise entered into a commercial transaction for consideration with, a person who has allegedly used the identity of the victim unlawfully.

This process starts when a victim makes a request. The request must:

- Be in writing;
- Be mailed or delivered to an address specified by the business entity, if any; and
- If asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft, including, if known by the victim or readily obtainable by the victim:
 - The date of the application or transaction; or
 - Any other identifying information such as an account number or transaction number.

Before providing any records, the business entity must verify the identity of the victim and the veracity of the identity theft claim.¹³ As proof of positive identification, the business entity may request from the victim a:

- A government-issued identification card;
- Personal identifying information of the same type as provided to the business entity by the unauthorized person; or
- Personal identifying information that the business entity typically requests from new applicants or for new transactions.

As proof of a claim of identity theft, the business entity may request from the victim a:

- Copy of a police report evidencing the claim of the victim of identity theft; or
- Properly completed affidavit of fact that is acceptable to the business entity.

Within 30 days of receiving a request (and subject to verification), the business entity must provide, free of charge, a copy of the application and business transaction records in the control of the business entity¹⁴ evidencing any transaction alleged to be a result of identity theft to:

- The victim;

⁸ This may be ordered in addition to any restitution that may be ordered pursuant to s. 775.089, F.S., which requires a judge to order a defendant to make restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode.

⁹ Section 772.11, F.S., creates a civil remedy for any person who is the victim of theft or exploitation.

¹⁰ For purposes of this provision, "victim" includes a person whose identity was falsely personated or who suffers a loss of property as a result of the false personation.

¹¹ The bill defines "victim" for purposes of s. 817.032, F.S., as "a consumer whose means of identification or financial information is used or transferred or is alleged to be used or transferred without the authority of that consumer with the intent to commit or to aid or abet an identity theft or a similar crime."

¹² The bill defines "business entity" for purposes of all of ch. 817, F.S., as "any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state."

¹³ Unless the business entity has a high degree of confidence that it knows the identity of the victim.

¹⁴ Whether maintained by the business entity or by another person on behalf of the business entity.

- A federal, state, or local government law enforcement agency or officer specified by the victim in the request; or
- A law enforcement agency investigating the identity theft and authorized by the victim to take receipt of the records.

A business entity may decline to provide information the above-listed information if, in the exercise of good faith, the business entity determines:

- Disclosure is not required under s. 817.032, F.S.;
- After reviewing the identifying information provided pursuant to subsection (3), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;
- The request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for the information; or
- The information requested is Internet navigational data or similar information about a person's visit to a website or online service.

The bill provides that a business entity cannot be held civilly liable for disclosure made in good faith pursuant to s. 817.032, F.S., and that an obligation is not created on the part of a business entity to maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

The bill creates an affirmative defense for any civil action brought to enforce s. 817.032, F.S., providing that a business entity may file an affidavit or answer stating that the business entity has made a reasonable diligent search of its available business records and the records requested under this section do not exist or are not reasonably available. The affirmative defense must be established by a preponderance of the evidence.

Identity Theft Against Businesses

Business identity theft is essentially the same as personal identity theft, except the identity stolen is that of a company or other business entity, and the damage is usually much more severe.¹⁵ All information necessary to take a business' identity, such as the company name or Federal Employee Identification Number, is readily available on the website for the Florida Department of State, Division of Corporations.¹⁶ The Florida Department of State estimates that 60% of businesses that fall victim to business identity theft will fail within one year of the incident.¹⁷ The National Association of Secretaries of State (NASS) has authored a white paper on the increasing trend of business identity theft and the role that Secretaries of States are playing in thieves obtaining the information needed to complete the fraud.¹⁸ NASS reports identity theft thieves also target businesses that are no longer in operation, often referred to as "dormant" or "dissolved entities." These entities are vulnerable because their owners are less likely to be monitoring state-held business registration information.¹⁹

Criminal Use of Personal Identification Information

Section 817.568, F.S., relates to the criminal of use of personal identification information (PII). "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

¹⁵ Kellian, Mark, *Business Identity Theft is on the Rise*, The Florida Bar News (January 15, 2013)(hereinafter cited as Florida Bar News).

¹⁶ www.sunbiz.org

¹⁷ Florida Bar News.

¹⁸ *Developing State Solutions to Business Identity Theft, Assistance, Prevention, and Detection Efforts by Secretary of State Offices*, National Association of Secretaries of State, <http://www.nass.org/nass-initiatives/business-id-theft/> (last visited January 27, 2015)(hereinafter cited as NASS Report).

¹⁹ Florida Bar News and NASS Report.

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.²⁰

Section 817.568(2), F.S., makes it a third degree felony²¹ for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, PII concerning an individual without first obtaining that individual's consent. A person who fraudulently uses PII:

- Commits a second degree felony,²² punishable by a three-year minimum mandatory sentence, 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 PII of 10 or more individuals, but fewer than 20 individuals, without their consent;²³
- Commits a first degree felony,²⁴ punishable by a five-year minimum mandatory sentence, 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 PII of 20 or more but fewer than 30 individuals;²⁵ or
- Commits a first degree felony, punishable by a 10-year minimum mandatory sentence, 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 PII of 30 or more individuals.²⁶

Section 817.568(4), F.S., makes it a first degree misdemeanor²⁷ for any person to willfully and without authorization possess, use, or attempt to use the PII of an individual without first obtaining that individual's consent, provided such use is done for the purpose of harassing such individual.

Section 817.568(9), F.S., makes it a third degree felony for any person to willfully and fraudulently create or use, or possess with intent to fraudulently use, counterfeit or fictitious PII concerning a fictitious individual, or concerning a real individual without first obtaining that real individual's consent, with intent to use such counterfeit or fictitious PII for the purpose of committing or facilitating the commission of a fraud on another person.

Section 817.568(8), F.S., makes it a second degree felony for a person to fraudulently use, or possess with the intent to fraudulently use, the PII of a deceased individual. A person who fraudulently uses PII:

- Commits a second degree felony, punishable by a three-year minimum mandatory sentence, 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 PII of 10 or more individuals, but fewer than 20 deceased individuals;²⁸
- Commits a first degree felony, punishable by a five-year minimum mandatory sentence, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the

²⁰ Section 817.568(1)(f), F.S.

²¹ 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.

²² 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.

²³ Section 817.568(2)(b), F.S.

²⁴ 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.

²⁵ Section 817.568(2)(c), F.S.

²⁶ Section 817.568(2)(c), F.S.

²⁷ 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.

²⁸ Section 817.568(8)(b), F.S.

amount of the injury or fraud perpetrated is \$50,000 or more, or if the person fraudulently used the PII of 20 or more but fewer than 30 deceased individuals;²⁹ or

- Commits a first degree felony, punishable by a 10-year minimum mandatory sentence, 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 PII of 30 or more deceased individuals.³⁰

Section 817.568(8), F.S., does not address the fraudulent use of PII of a dissolved business entity.

Effect of the Bill

As noted above, subsections (2), (4), and (9), of s. 817.568, F.S., currently use the term "individual." An "individual" is defined as "a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity."³¹ Thus, if a person uses the PII of a business entity, such person will not be subject to the criminal penalties found in any of these provisions.

The bill amends subsections (2), (4), and (9) of s. 817.568, F.S., to exchange the term "individual" with "person." Section 817.568(1)(e), F.S., defines "person" to "include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations."³² This change expands the application of these offenses to include those who unlawfully use the PII of a business entity.

The bill also amends s. 817.568(8), F.S., to include "dissolved business entities." This subjects a person to the criminal penalties of this provision if they fraudulently use, or possess with the intent to fraudulently use, the PII of both deceased individuals and dissolved business entities.

Lastly, the bill amends s. 921.0022, F.S., the Criminal Punishment Code,³³ offenses severity ranking chart, to reflect the title changes in this statute.

Fraud Protections for Corporations

Section 817.15, F.S., makes it a third degree felony for any:

- Officer, agent, clerk, or servant of a corporation to make a false entry in the corporation's books with the intent to defraud; or
- Person who has the duty to record in the corporation's books the transfer of stock, issuing and cancelling of certificates, or the amount of stock issued by the corporation to omit such entry with the intent to defraud.

Section 817.39, F.S., makes it a second degree misdemeanor³⁴ for any person, firm, or corporation to print, for the purpose of sale, distribution, or use in Florida, or to circulate, publish, use, or offer for sale, documents that:

- Simulate a form of court or legal process, such as a letter, paper, document, or notice of intent to bring suit or demand; or
- Simulate the seal of the state, or the stationary of a state agency or fictitious state agency.

²⁹ Section 817.568(8)(c), F.S.

³⁰ *Id.*

³¹ Section 817.568(1)(d), F.S.

³² Section 1.01(3), F.S.

³³ Section 921.002, F.S., provides that the Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. A defendant's sentence is calculated based on points assigned for factors (e.g., the offense for which the defendant is being sentenced and injury to the victim). The points are added in order to determine the "lowest permissible sentence" for the offense.

³⁴ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

Section 817.411, F.S., prohibits a person, firm, or corporation from knowingly publishing, disseminating, circulating, or placing (publish) before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement, or statement (advertisement) containing a statement that commodities, mortgages, promissory notes, securities, or other things of value offered for sale are covered by insurance if such insurance is nonexistent.

The above-described statutes address businesses, rather than individuals. The term currently used in these sections is "corporation," which is defined as "a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the Florida Business Corporation Act, or ch. 607, F.S."³⁵ Businesses operating in Florida often set up as entities such as limited-liability companies, partnerships, etc., which are not captured by the term "corporation." As a result, these other entities legally conducting business in Florida are not afforded the protections of ch. 817, F.S.

Effect of the Bill

The bill creates s. 817.011, F.S., defining "business entity" for purposes of ch. 817, F.S., as "any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state."

The bill amends ss. 817.15, 817.39, and 817.411, F.S., to replace the terms "corporation" and "firm" with the term "business entity." This will ensure that all business entities legally conducting business in Florida will be protected under ch. 817, F.S.

Dissemination of Misleading Information in Advertisements

Several sections within ch. 817, F.S., provide protections to consumers against the dissemination of false, deceptive, or misleading advertisements. Currently, s. 817.40(5), F.S., defines "misleading advertising" to include:

Any statements made, or disseminated, in oral, written, or printed form or otherwise, to or before the public, or any portion thereof, which are known, or through the exercise of reasonable care or investigation could or might have been ascertained, to be untrue or misleading, and which are or were so made or disseminated with the intent or purpose, either directly or indirectly, of selling or disposing of real or personal property, services of any nature whatever, professional or otherwise, or to induce the public to enter into any obligation relating to such property or services."

The definition of misleading advertising does not currently address advertisements that are published electronically.

As noted above, 817.411, F.S., prohibits a person, firm, etc., from knowingly publishing before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement containing a statement that commodities, mortgages, promissory notes, securities, or other things of value offered for sale are covered by insurance if such insurance is nonexistent.

Section 817.412, F.S., makes it a first degree misdemeanor for a seller involved in a transaction involving goods with a purchase price of more than \$100 to misrepresent orally, in writing, or by omission that the goods are new or original when the goods are:

- Used;
- Repossessed; or
- Have been used for sales demonstrations.

Effect of the Bill

The bill amends the definition of "misleading advertising" in s. 817.40, F.S., so that advertisements which are published through electronic means now meet the definition of misleading advertisements, provided all other components apply.

The bill amends s. 817.411, F.S., to prohibit a business entity from knowingly publishing a false advertisement by electronic means. Similarly, the bill amends s. 817.412, F.S., to prohibit a seller from misrepresenting the used status of goods by electronic means.

Prohibiting the Use of City Name or Markings

Section 817.17, F.S., prohibits a person engaged in manufacturing in this state from printing, stamping, marking, engraving, or branding, upon any of the articles manufactured by them, or on any of the boxes, packages, or bands containing such manufactured articles, the name of any city in the state, other than for the city in which said articles are manufactured.³⁶ Currently, there is not a criminal penalty associated with violating this provision.

Section 817.18, F.S., makes it a second degree misdemeanor for a person to knowingly sell or offer for sale, within the state, any manufactured articles which have printed, stamped, marked, engraved, or branded upon them, or upon the boxes, packages, or bands containing said manufactured articles, the name of any city in the state, other than the city in which such articles were manufactured.³⁷

Neither ss. 817.17 or 817.18, F.S., address instances in which a person knowingly prints, stamps, etc., the wrong county or political subdivision on manufactured articles.

Effect of the Bill

The bill amends ss. 817.17 and 817.18, F.S., to include the terms "county" and "other political subdivision." This expands the application of these statutes by prohibiting a person from manufacturing articles that have the name of a city, county, or political subdivision, that is not the same city, county, or other political subdivision name than the one in which said items are manufactured.

Additionally, the bill makes a violation of s. 817.17, F.S., a second degree misdemeanor.

Fraudulent Use of Certificate or Stock of Corporation

Section 817.19, F.S., makes it a third degree felony for any officer, agent, clerk or servant of a corporation, or any other person, to fraudulently:

- Issue or transfer a certificate of stock of a corporation to any person not entitled thereto; or
- Sign such certificate, in blank or otherwise, with the intent that it be issued or transferred by himself or herself or any other person.

Effect of the Bill

The bill amends s. 817.19, F.S., to also make it a third degree felony for any officer, agent, clerk or servant of a corporation, or any other person to fraudulently issue or transfer, or fraudulently sign an *indicia of membership interest with a limited liability company* with the intent that the interest be issued or transferred by himself or herself or another person.

³⁶ This section does not prohibit any person from offering for sale any goods having marked thereon the name of any city in Florida other than that in which said goods were manufactured, if there be no manufactory of similar goods in the city the name of which is used.

³⁷ This section does not prohibit any person from offering for sale any goods, having marked thereon the name of any city in Florida, other than that in which said goods are manufactured, if there be no manufactory of similar goods in the city the name of which is used.

Fraudulently Obtaining Goods or Services from a Health Care Provider

Section 817.50, F.S., makes it a second degree misdemeanor for any person to willfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise, or services from any health care provider³⁸ in this state. It is prima facie evidence of the intent to defraud a health care provider if a person:

- Provides the provider with a false or fictitious name;
- Provides the provider with a false or fictitious address; or
- Assigns to the provider the proceeds of any health maintenance contract or insurance contract knowing that such contract is not currently valid for any reason.³⁹

Effect of the Bill

The bill amends s. 817.50, F.S., to reclassify the offense from a second degree misdemeanor to a third degree felony.

Criminal Use of a Public Record or Public Records Information

Section 817.569, F.S., makes it a first degree misdemeanor for a person to knowingly use any public record⁴⁰ or information obtainable only through such public record to facilitate or further the commission of a first degree misdemeanor. If a person uses the public record to facilitate or further the commission of a felony, the offense is reclassified as a third degree felony.

Effect of the Bill

The bill amends s. 817.569, F.S., to also prohibit a person from knowingly providing false information that becomes part of a public record. If the false information that becomes part of the public record is provided with the purpose of facilitating or furthering the commission of a first degree misdemeanor, the offense is a first degree misdemeanor. The offense is a third degree felony if it is committed to further or facilitate the commission of a felony.

The bill amends s. 921.0022, F.S., the Criminal Punishment Code, offenses severity ranking chart, to reflect the new title.

B. SECTION DIRECTORY:

Section 1. Creates s. 817.011, F.S., relating to definitions.

Section 2. Amends s. 817.02, F.S., relating to obtaining property by false personation.

Section 3. Creates s. 817.032, F.S., relating to information available to identity theft victims.

Section 4. Amends s. 817.11, F.S., relating to obtaining property by fraudulent promise to furnish inside information; and transfers and renumbers ss. 817.12 and 817.13, F.S., as subsections (2) and (3) of s. 817.11, F.S.

Section 5. Amends s. 817.14, F.S., relating to procuring assignments of produce upon false representations.

Section 6. Amends s. 817.15, F.S., relating to making false entries, etc., on books of corporation.

Section 7. Amends s. 817.17, F.S., relating to wrongful use of city name.

³⁸ Section 641.19(14), F.S., defines “provider” to mean “any physician, hospital, or other institution, organization, or person that furnishes health care services and is licensed or otherwise authorized to practice in the state.”

³⁹ Section 817.50, F.S., provides an exception that it does not apply to investigative actions taken by law enforcement officers for law enforcement purposes.

⁴⁰ Section 119.011, F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

Section 8. Amends s. 817.18, F.S., relating to wrongful stamping, marking, etc.; penalty.

Section 9. Amends s. 817.19, F.S., relating to fraudulent issue of certificate of stock of corporation.

Section 10. Amends s. 817.39, F.S., relating to simulated forms of court or legal process, or official seal or stationery; publication, sale or circulation unlawful; penalty.

Section 11. Amends s. 817.40, F.S., relating to false, misleading and deceptive advertising and sales; definitions.

Section 12. Amends s. 817.411, F.S., relating to false information; advertising.

Section 13. Amends s. 817.412, F.S., relating to sale of used goods as new; penalty.

Section 14. Amends s. 817.481, F.S., relating to credit cards; obtaining goods by use of false, expired, etc.; penalty.

Section 15. Amends s. 817.50, F.S., relating to fraudulently obtaining goods, services, etc., from a health care provider.

Section 16. Amends s. 817.568, F.S., relating to criminal use of personal identification information.

Section 17. Amends s. 817.569, F.S., relating to criminal use of a public record or public records information; penalties.

Section 18. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 19. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill expands the language of s. 817.568, F.S., from "individual" to "person," and thus may increase the number of defendants subject to the criminal penalties and \$1,001 surcharge required by s. 817.568, F.S.⁴¹ This will likely result in an indeterminate positive fiscal impact on the parties that that receive deposits from this surcharge, specifically the Florida Department of Law Enforcement, State Attorneys, and Public Defenders.⁴²

⁴¹ In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 817.568, F.S., the court must impose a surcharge of \$1,001, to be deposited as follows:

- \$500 into the Department of Law Enforcement Operating Trust Fund for FDLE to provide grants to local law enforcement agencies to investigate offenses related to the criminal use of PII as provided in s. 943.0412, F.S.;
- \$250 into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of PII; and
- \$250 into the Public Defenders Revenue Trust Fund for the purposes of indigent criminal defense related to the criminal use of PII.⁴¹

⁴² Florida Department of Law Enforcement, Agency Bill Analysis (on file with the Criminal Justice Subcommittee).

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the fiscal impact of this bill. However, the bill expands the application of the felony offenses found in ss. 817.15, 817.19, 817.568, and 817.569, F.S., as well as increases the penalty in s. 817.50, F.S., from a misdemeanor to a third degree felony. This will likely have an indeterminate negative prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill reclassifies a first degree misdemeanor to a third degree felony. To the extent that this reduces the number of persons subject to misdemeanor penalties, the bill may have a positive jail bed impact.

2. Expenditures:

The bill expands the application of the misdemeanor offenses found in ss. 817.17, 817.18, 817.39, and 817.412, F.S. This will likely have a negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses throughout Florida will now be afforded broader protection against all types of fraud and business identity theft. Additionally, individuals will be able to more easily identify when identity theft has occurred and restore their identity and credit after a case of identity theft.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 102 – The definition for “victim” within the newly created s. 817.032, F.S., uses the term consumer, which is not defined. It could be unclear whether this section is intended to provide both individual consumers and business consumers with the right to request documents related to their identity theft.

Line 186 – the language “relevant to the request” may be confusing.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to fraud; creating s. 817.011, F.S.;
3 defining the term "business entity"; amending s.
4 817.02, F.S.; providing for restitution to victims for
5 certain victim out-of-pocket costs; providing for a
6 civil cause of action for certain victims; creating s.
7 817.032, F.S.; defining the term "victim"; requiring
8 business entities to provide copies of business
9 records of fraudulent transactions involving identity
10 theft to victims and law enforcement agencies in
11 certain circumstances; providing for verification of a
12 victim's identity and claim; providing procedures for
13 claims; requiring that certain information be provided
14 to victims without charge; specifying circumstances in
15 which business entities may decline to provide
16 information; providing a limitation on civil liability
17 for business entities that provide information;
18 specifying that no new record retention is required;
19 providing an affirmative defense to business entities
20 in actions seeking enforcement of provisions; amending
21 s. 817.11, F.S.; making editorial changes; amending
22 and renumbering ss. 817.12 and 817.13, F.S.; combining
23 offense, penalty, and evidence provisions and
24 transferring such provisions to s. 817.11, F.S.;
25 amending s. 817.14, F.S.; clarifying provisions;
26 amending s. 817.15, F.S.; substituting the term

27 "business entity" for the term "corporation"; amending
 28 ss. 817.17 and 817.18, F.S.; including counties and
 29 other political subdivisions in provisions prohibiting
 30 the false marking of goods or packaging with a
 31 location of origin; reorganizing penalty provisions;
 32 amending s. 817.19, F.S.; prohibiting fraudulent
 33 issuance of indicia of membership interest in a
 34 limited liability company; amending s. 817.39, F.S.;
 35 substituting the term "business entity" for the term
 36 "corporation"; amending s. 817.40, F.S.; specifying
 37 that the term "misleading advertising" includes
 38 electronic forms of dissemination; amending s.
 39 817.411, F.S.; substituting the term "business entity"
 40 for the term "corporation"; specifying that certain
 41 false statements made through electronic means are
 42 prohibited; amending s. 817.412, F.S.; specifying that
 43 electronic statements are included in provisions
 44 prohibiting false representations of used goods as
 45 new; amending s. 817.481, F.S.; clarifying provisions;
 46 amending s. 817.50, F.S.; revising criminal penalties
 47 for fraudulently obtaining goods or services from a
 48 health care provider; amending s. 817.568, F.S.;
 49 expanding specified identity theft offenses to include
 50 all persons rather than being limited to natural
 51 persons; including dissolved business entities within
 52 certain offenses involving fraudulent use of personal

53 identification information of deceased persons;
 54 amending s. 817.569, F.S.; prohibiting a person from
 55 knowingly providing false information that becomes
 56 part of a public record to facilitate or further the
 57 commission of certain offenses; providing criminal
 58 penalties; amending s. 921.0022, F.S.; conforming
 59 provisions to changes made by the act; providing an
 60 effective date.

61

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

63

64 Section 1. Section 817.011, Florida Statutes, is created
 65 to read:

66 817.011 Definition.—As used in this chapter, the term
 67 "business entity" means any corporation, partnership, limited
 68 partnership, company, limited liability company, proprietorship,
 69 firm, enterprise, franchise, association, self-employed
 70 individual, or trust, whether fictitiously named or not, doing
 71 business in this state.

72 Section 2. Section 817.02, Florida Statutes, is amended to
 73 read:

74 817.02 Obtaining property by false personation.—

75 (1) Whoever falsely personates or represents another
 76 person, and in such assumed character:

77 (a) Receives any property intended to be delivered to that
 78 person ~~the party so personated,~~ with intent to convert the same

79 | to his or her own use; or

80 | (b) To the extent not subject to s. 817.568, damages the
 81 | credit history or rating of, or otherwise causes harm to, the
 82 | person whose identity has been assumed through the taking of
 83 | property from any person,

84 |
 85 | shall be punished as if he or she had been convicted of larceny.

86 | (2) (a) In sentencing a defendant convicted of a violation
 87 | of this section, in addition to restitution to the victim under
 88 | s. 775.089, the court may order restitution for the victim's
 89 | out-of-pocket costs, including attorney fees incurred by the
 90 | victim in clearing the victim's credit history or credit rating,
 91 | or costs incurred in connection with a civil or administrative
 92 | proceeding to satisfy a debt, lien, or other obligation of the
 93 | victim arising as a result of the actions of the defendant.

94 | (b) The sentencing court may issue such orders as are
 95 | necessary to correct a public record that contains false
 96 | information given in violation of this section.

97 | (3) (a) A victim of the conduct subject to this section
 98 | shall have a civil cause of action against a person who has
 99 | engaged in the conduct prohibited by this section as provided in
 100 | s. 772.11.

101 | (b) For purposes of this subsection, the term "victim"
 102 | includes, to the extent not already included within s. 817.568,
 103 | a person whose identity was falsely personated or who suffers a
 104 | loss of property as a result of the false personation.

105 Section 3. Section 817.032, Florida Statutes, is created
 106 to read:

107 817.032 Information available to identity theft victims.-

108 (1) DEFINITION.-As used in this section, the term "victim"
 109 means a consumer whose means of identification or financial
 110 information is used or transferred or is alleged to be used or
 111 transferred without the authority of that consumer with the
 112 intent to commit or to aid or abet an identity theft or a
 113 similar crime.

114 (2) GENERALLY.-For the purpose of documenting fraudulent
 115 transactions resulting from identity theft, within 30 days after
 116 the date of receipt of a request from a victim in accordance
 117 with subsection (4), and subject to verification of the identity
 118 of the victim and the claim of identity theft in accordance with
 119 subsection (3), a business entity that has provided credit to;
 120 provided for consideration products, goods, or services to;
 121 accepted payment from; or otherwise entered into a commercial
 122 transaction for consideration with, a person who has allegedly
 123 made unauthorized use of the means of identification of the
 124 victim, shall provide a copy of the application and business
 125 transaction records in the control of the business entity,
 126 whether maintained by the business entity or by another person
 127 on behalf of the business entity, evidencing any transaction
 128 alleged to be a result of identity theft to:

129 (a) The victim;

130 (b) A federal, state, or local government law enforcement

131 agency, or officer specified by the victim in such a request; or
 132 (c) A law enforcement agency investigating the identity
 133 theft and authorized by the victim to take receipt of records
 134 provided under this section.

135 (3) VERIFICATION OF IDENTITY AND CLAIM.—Before a business
 136 entity provides any information under subsection (2), unless the
 137 business entity, at its discretion, otherwise has a high degree
 138 of confidence that it knows the identity of the victim making a
 139 request under subsection (2), the victim shall provide to the
 140 business entity:

141 (a) As proof of positive identification of the victim, at
 142 the election of the business entity:

143 1. The presentation of a government-issued identification
 144 card;

145 2. Personal identifying information of the same type as
 146 provided to the business entity by the unauthorized person; or

147 3. Personal identifying information that the business
 148 entity typically requests from new applicants or for new
 149 transactions, at the time of the victim's request for
 150 information, including any documentation described in
 151 subparagraphs 1. and 2.

152 (b) As proof of a claim of identity theft, at the election
 153 of the business entity:

154 1. A copy of a police report evidencing the claim of the
 155 victim of identity theft; or

156 2. A properly completed affidavit of fact that is

157 acceptable to the business entity for that purpose.
 158 (4) PROCEDURES.—The request of a victim under subsection
 159 (2) shall:
 160 (a) Be in writing;
 161 (b) Be mailed or delivered to an address specified by the
 162 business entity, if any.
 163 (c) If asked by the business entity, include relevant
 164 information about any transaction alleged to be a result of
 165 identity theft to facilitate compliance with this section,
 166 including:
 167 1. If known by the victim or readily obtainable by the
 168 victim, the date of the application or transaction.
 169 2. If known by the victim or readily obtainable by the
 170 victim, any other identifying information such as an account
 171 number or transaction number.
 172 (5) NO CHARGE TO VICTIM.—Information required to be
 173 provided under subsection (2) shall be provided without charge.
 174 (6) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A
 175 business entity may decline to provide information under
 176 subsection (2) if, in the exercise of good faith, the business
 177 entity determines that:
 178 (a) This section does not require disclosure of the
 179 information;
 180 (b) After reviewing the information provided pursuant to
 181 subsection (3), the business entity does not have a high degree
 182 of confidence in knowing the true identity of the individual

183 requesting the information;

184 (c) The request for the information is based on a
 185 misrepresentation of fact by the individual requesting the
 186 information relevant to the request for information; or

187 (d) The information requested is Internet navigational
 188 data or similar information about a person's visit to a website
 189 or online service.

190 (7) LIMITATION ON CIVIL LIABILITY.—A business entity may
 191 not be held civilly liable in this state for disclosure made in
 192 good faith pursuant to this section.

193 (8) NO NEW RECORDKEEPING OBLIGATION.—This section does not
 194 create an obligation on the part of a business entity to obtain,
 195 retain, or maintain information or records that are not
 196 otherwise required to be obtained, retained, or maintained in
 197 the ordinary course of its business or under other applicable
 198 law.

199 (9) AFFIRMATIVE DEFENSE.—In any civil action brought to
 200 enforce this section, it is an affirmative defense, which the
 201 defendant must establish by a preponderance of the evidence, for
 202 a business entity to file an affidavit or answer stating that:

203 (a) The business entity has made a reasonably diligent
 204 search of its available business records.

205 (b) The records requested under this section do not exist
 206 or are not reasonably available.

207 Section 4. Section 817.11, Florida Statutes, is amended,
 208 and sections 817.12 and 817.13, Florida Statutes, are

209 transferred and renumbered as subsections (2) and (3),
 210 respectively, of section 817.11, Florida Statutes, and amended,
 211 to read:

212 817.11 Obtaining property by fraudulent promise to furnish
 213 inside information.—

214 (1) A ~~no~~ person may not ~~shall~~ defraud or attempt to
 215 defraud any individual out of anything ~~any thing~~ of value by
 216 assuming to have or be able to obtain any secret, advance or
 217 inside information regarding any person, transaction, act or
 218 thing, whether such person, transaction, act or thing exists or
 219 not.

220 (2) ~~817.12~~ A person who violates this section commits
 221 ~~Penalty for violation of s. 817.11. Any person guilty of~~
 222 ~~violating the provisions of s. 817.11 shall be deemed guilty of~~
 223 a felony of the third degree, punishable as provided in s.
 224 775.082, s. 775.083, or s. 775.084.

225 (3) ~~817.13 Paraphernalia as evidence of violation of s.~~
 226 ~~817.11.~~ All paraphernalia of whatsoever kind in possession of
 227 any person and used in defrauding or attempting to defraud as
 228 specified in this section ~~s. 817.11~~ shall be held and accepted
 229 by any court of competent jurisdiction in this state as prima
 230 facie evidence of guilt.

231 Section 5. Section 817.14, Florida Statutes, is amended to
 232 read:

233 817.14 Procuring assignments of produce upon false
 234 representations.—A ~~Any~~ person acting for himself or herself or

235 another person, who shall procure any consignment of produce
 236 grown in this state, to himself or herself or such other, for
 237 sale on commission or for other compensation by any knowingly
 238 false representation as to the prevailing market price at such
 239 time for such produce at the point to which it is consigned, or
 240 as to the price which such person for whom he or she is acting
 241 is at said time paying to other consignors for like produce at
 242 said place, or as to the condition of the market for such
 243 produce at such time and place, and any such person acting for
 244 another who shall procure any consignment for sale as aforesaid
 245 by false representation of authority to him or her by such other
 246 to make a guaranteed price to the consignor, commits ~~shall be~~
 247 ~~guilty of~~ a misdemeanor of the first degree, punishable as
 248 provided in s. 775.082 or s. 775.083.

249 Section 6. Section 817.15, Florida Statutes, is amended to
 250 read:

251 817.15 ~~Making~~ False entries in, etc., on books of business
 252 entity corporation.—Any officer, agent, clerk or servant of a
 253 business entity corporation who makes a false entry in the books
 254 thereof, with intent to defraud, and any person whose duty it is
 255 to make in such books a record or entry of the transfer of
 256 stock, or of the issuing and canceling of certificates thereof,
 257 or of the amount of stock issued by such business entity
 258 ~~corporation~~, who omits to make a true record or entry thereof,
 259 with intent to defraud, commits ~~shall be guilty of~~ a felony of
 260 the third degree, punishable as provided in s. 775.082, s.

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261 775.083, or s. 775.084.

262 Section 7. Section 817.17, Florida Statutes, is amended to
 263 read:

264 817.17 Wrongful use of city, county, or other political
 265 subdivision name.—

266 (1) A ~~No~~ person or persons engaged in manufacturing in
 267 this state, may not ~~shall~~ cause to be printed, stamped, marked,
 268 engraved or branded, upon any of the articles manufactured by
 269 them, or on any of the boxes, packages, or bands containing such
 270 manufactured articles, the name of any city, county, or other
 271 political subdivision of ~~in~~ the state, other than that in which
 272 said articles are manufactured; provided, that ~~nothing in~~ this
 273 section does not ~~shall~~ prohibit any person from offering for
 274 sale any goods having marked thereon the name of any city,
 275 county, or other political subdivision of the state ~~in Florida~~
 276 other than that in which said goods were manufactured, if there
 277 be no manufactory of similar goods in the city, county, or other
 278 political subdivision the name of which is used.

279 (2) A person violating this section commits a misdemeanor
 280 of the second degree, punishable as provided in s. 775.083.

281 Section 8. Section 817.18, Florida Statutes, is amended to
 282 read:

283 817.18 Wrongful marking with a city, county, or other
 284 political subdivision name ~~stamping, marking, etc.; penalty.—~~

285 (1) A ~~No~~ person may not ~~shall~~ knowingly sell or offer for
 286 sale, within the state, any manufactured articles which shall

287 have printed, stamped, marked, engraved, or branded upon them,
 288 or upon the boxes, packages, or bands containing said
 289 manufactured articles, the name of any city, county, or other
 290 political subdivision of ~~in~~ the state, other than that in which
 291 such articles were manufactured; provided, that ~~nothing in~~ this
 292 section does not ~~shall~~ prohibit any person from offering for
 293 sale any goods, having marked thereon the name of any city,
 294 county, or other political subdivision of the state ~~in Florida,~~
 295 other than that in which said goods are manufactured, if there
 296 be no manufactory of similar goods in the city, county, or other
 297 political subdivision the name of which is used.

298 (2) A ~~Any~~ person violating ~~the provisions of this or the~~
 299 ~~preceding~~ section commits ~~shall be guilty of~~ a misdemeanor of
 300 the second degree, punishable as provided in s. 775.083.

301 Section 9. Section 817.19, Florida Statutes, is amended to
 302 read:

303 817.19 Fraudulent issue of stock certificate or indicia of
 304 membership interest ~~of stock of corporation.~~ Any officer, agent,
 305 clerk or servant of a corporation, or any other person, who
 306 fraudulently issues or transfers a certificate of stock of a
 307 corporation or indicia of a membership interest in a limited
 308 liability company to any person not entitled thereto, or
 309 fraudulently signs such certificate or other indicia of
 310 membership interest, in blank or otherwise, with the intent that
 311 it shall be so issued or transferred by himself or herself or
 312 any other person, commits ~~shall be guilty of~~ a felony of the

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313 | third degree, punishable as provided in s. 775.082, s. 775.083,
 314 | or s. 775.084.

315 | Section 10. Subsections (1) and (3) of section 817.39,
 316 | Florida Statutes, are amended to read:

317 | 817.39 Simulated forms of court or legal process, or
 318 | official seal or stationery; publication, sale or circulation
 319 | unlawful; penalty.-

320 | (1) Any person, ~~firm,~~ or business entity ~~corporation~~ who
 321 | prints ~~shall print,~~ for the purpose of sale or distribution and
 322 | for use in the state, or who circulates, publishes, or offers
 323 | ~~shall circulate, publish, or offer~~ for sale any letter, paper,
 324 | document, notice of intent to bring suit, or other notice or
 325 | demand, which simulates a form of court or legal process, or any
 326 | person who without authority of the state prints ~~shall print,~~
 327 | for the purpose of sale or distribution for use in the state, or
 328 | who without authority of the state circulates, publishes, or
 329 | offers ~~shall circulate, publish, use, or offer~~ for sale any
 330 | letters, papers, or documents which simulate the seal of the
 331 | state, or the stationery of a state agency or fictitious state
 332 | agency commits ~~is guilty of~~ a misdemeanor of the second degree,
 333 | punishable as provided in s. 775.082 or s. 775.083.

334 | (3) ~~Nothing in~~ This section does not ~~shall~~ prevent the
 335 | printing, publication, sale, or distribution of genuine legal
 336 | forms for the use of attorneys or clerks of courts.

337 | Section 11. Subsection (5) of section 817.40, Florida
 338 | Statutes, is amended to read:

339 817.40 False, misleading and deceptive advertising and
 340 sales; definitions.—When construing ss. 817.40, 817.41, 817.43-
 341 817.47, and each and every word, phrase or part thereof, where
 342 the context will permit:

343 (5) The phrase "misleading advertising" includes any
 344 statements made, or disseminated, in oral, written, electronic,
 345 or printed form or otherwise, to or before the public, or any
 346 portion thereof, which are known, or through the exercise of
 347 reasonable care or investigation could or might have been
 348 ascertained, to be untrue or misleading, and which are or were
 349 so made or disseminated with the intent or purpose, either
 350 directly or indirectly, of selling or disposing of real or
 351 personal property, services of any nature whatever, professional
 352 or otherwise, or to induce the public to enter into any
 353 obligation relating to such property or services.

354 Section 12. Section 817.411, Florida Statutes, is amended
 355 to read:

356 817.411 False information; advertising.—A ~~No~~ person, ~~firm~~
 357 or business entity may not ~~corporation shall~~ knowingly publish,
 358 disseminate, circulate, or place before the public, or cause
 359 directly or indirectly, to be made, published, disseminated,
 360 circulated, or placed before the public, in a newspaper,
 361 magazine or other publication, or in the form of a notice,
 362 circular, pamphlet, letter or poster, or over any radio or
 363 television station, electronically, or in any other way, any
 364 advertisement, announcement, or statement containing any

365 | assertion, representation, or statement that commodities,
 366 | mortgages, promissory notes, securities, or other things of
 367 | value offered for sale are covered by insurance guaranties where
 368 | such insurance is nonexistent or does not in fact insure against
 369 | the risks covered.

370 | Section 13. Section 817.412, Florida Statutes, is amended
 371 | to read:

372 | 817.412 Sale of used goods as new; penalty.-

373 | (1) It is unlawful for a seller in a transaction where the
 374 | purchase price of goods exceeds \$100 to misrepresent orally, in
 375 | writing, electronically, or by failure to speak that the goods
 376 | are new or original when they are used or repossessed or where
 377 | they have been used for sales demonstration.

378 | (2) A person who violates ~~the provisions of~~ this section
 379 | commits a misdemeanor of the first degree, punishable as
 380 | provided in s. 775.082 or s. 775.083.

381 | Section 14. Subsection (1) of section 817.481, Florida
 382 | Statutes, is amended to read:

383 | 817.481 Credit or purchases cards; obtaining illicitly
 384 | ~~goods by use of false, expired, etc.~~; penalty.-

385 | (1) It shall be unlawful for any person knowingly to
 386 | obtain or attempt to obtain credit, or to purchase or attempt to
 387 | purchase any goods, property, or service, by the use of any
 388 | false, fictitious, counterfeit, or expired credit card,
 389 | telephone number, credit number, or other credit device, or by
 390 | the use of any credit card, telephone number, credit number, or

391 other credit device of another person without the authority of
 392 the person to whom such card, number or device was issued, or by
 393 the use of any credit card, telephone number, credit number, or
 394 other credit device in any case where such card, number or
 395 device has been revoked and notice of revocation has been given
 396 to the person to whom issued.

397 Section 15. Section 817.50, Florida Statutes, is amended
 398 to read:

399 817.50 Fraudulently obtaining goods or ~~services, etc.,~~
 400 from a health care provider.-

401 (1) Whoever shall, willfully and with intent to defraud,
 402 obtain or attempt to obtain goods, products, merchandise, or
 403 services from any health care provider in this state, as defined
 404 in s. 641.19(14), commits a felony ~~misdemeanor~~ of the third
 405 ~~second~~ degree, punishable as provided in s. 775.082, ~~or~~ s.
 406 775.083, or s. 775.084.

407 (2) If any person gives to any health care provider in
 408 this state a false or fictitious name or a false or fictitious
 409 address or assigns to any health care provider the proceeds of
 410 any health maintenance contract or insurance contract, then
 411 knowing that such contract is no longer in force, is invalid, or
 412 is void for any reason, such action shall be prima facie
 413 evidence of the intent of such person to defraud the health care
 414 provider. However, this subsection does not apply to
 415 investigative actions taken by law enforcement officers for law
 416 enforcement purposes in the course of their official duties.

417 Section 16. Paragraph (f) of subsection (1) and
 418 subsections (2), (4), (8), and (9) of section 817.568, Florida
 419 Statutes, are amended to read:

420 817.568 Criminal use of personal identification
 421 information.—

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

423 (f) "Personal identification information" means any name
 424 or number that may be used, alone or in conjunction with any
 425 other information, to identify a specific person ~~individual~~,
 426 including any:

427 1. Name, postal or electronic mail address, telephone
 428 number, social security number, date of birth, mother's maiden
 429 name, official state-issued or United States-issued driver
 430 license or identification number, alien registration number,
 431 government passport number, employer or taxpayer identification
 432 number, Medicaid or food assistance account number, bank account
 433 number, credit or debit card number, or personal identification
 434 number or code assigned to the holder of a debit card by the
 435 issuer to permit authorized electronic use of such card;

436 2. Unique biometric data, such as fingerprint, voice
 437 print, retina or iris image, or other unique physical
 438 representation;

439 3. Unique electronic identification number, address, or
 440 routing code;

441 4. Medical records;

442 5. Telecommunication identifying information or access

443 device; or

444 6. Other number or information that can be used to access
445 a person's financial resources.

446 (2)(a) Any person who willfully and without authorization
447 fraudulently uses, or possesses with intent to fraudulently use,
448 personal identification information concerning another person ~~an~~
449 ~~individual~~ without first obtaining that person's ~~individual's~~
450 consent, commits the offense of fraudulent use of personal
451 identification information, which is a felony of the third
452 degree, punishable as provided in s. 775.082, s. 775.083, or s.
453 775.084.

454 (b) Any person who willfully and without authorization
455 fraudulently uses personal identification information concerning
456 a person ~~an individual~~ without first obtaining that person's
457 ~~individual's~~ consent commits a felony of the second degree,
458 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
459 if the pecuniary benefit, the value of the services received,
460 the payment sought to be avoided, or the amount of the injury or
461 fraud perpetrated is \$5,000 or more or if the person
462 fraudulently uses the personal identification information of 10
463 or more persons ~~individuals~~, but fewer than 20 persons
464 ~~individuals~~, without their consent. Notwithstanding any other
465 provision of law, the court shall sentence any person convicted
466 of committing the offense described in this paragraph to a
467 mandatory minimum sentence of 3 years' imprisonment.

468 (c) Any person who willfully and without authorization

469 fraudulently uses personal identification information concerning
 470 a person ~~an individual~~ without first obtaining that person's
 471 ~~individual's~~ consent commits a felony of the first degree,
 472 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 473 if the pecuniary benefit, the value of the services received,
 474 the payment sought to be avoided, or the amount of the injury or
 475 fraud perpetrated is \$50,000 or more or if the person
 476 fraudulently uses the personal identification information of 20
 477 or more persons ~~individuals~~, but fewer than 30 persons
 478 ~~individuals~~, without their consent. Notwithstanding any other
 479 provision of law, the court shall sentence any person convicted
 480 of committing the offense described in this paragraph to a
 481 mandatory minimum sentence of 5 years' imprisonment. If the
 482 pecuniary benefit, the value of the services received, the
 483 payment sought to be avoided, or the amount of the injury or
 484 fraud perpetrated is \$100,000 or more, or if the person
 485 fraudulently uses the personal identification information of 30
 486 or more persons ~~individuals~~ without their consent,
 487 notwithstanding any other provision of law, the court shall
 488 sentence any person convicted of committing the offense
 489 described in this paragraph to a mandatory minimum sentence of
 490 10 years' imprisonment.

491 (4) Any person who willfully and without authorization
 492 possesses, uses, or attempts to use personal identification
 493 information concerning a person ~~an individual~~ without first
 494 obtaining that person's ~~individual's~~ consent, and who does so

495 | for the purpose of harassing that person ~~individual~~, commits the
 496 | offense of harassment by use of personal identification
 497 | information, which is a misdemeanor of the first degree,
 498 | punishable as provided in s. 775.082 or s. 775.083.

499 | (8)(a) Any person who willfully and fraudulently uses, or
 500 | possesses with intent to fraudulently use, personal
 501 | identification information concerning a deceased individual or
 502 | dissolved business entity commits the offense of fraudulent use
 503 | or possession with intent to use personal identification
 504 | information of a deceased individual or dissolved business
 505 | entity, a felony of the third degree, punishable as provided in
 506 | s. 775.082, s. 775.083, or s. 775.084.

507 | (b) Any person who willfully and fraudulently uses
 508 | personal identification information concerning a deceased
 509 | individual or dissolved business entity commits a felony of the
 510 | second degree, punishable as provided in s. 775.082, s. 775.083,
 511 | or s. 775.084, if the pecuniary benefit, the value of the
 512 | services received, the payment sought to be avoided, or the
 513 | amount of injury or fraud perpetrated is \$5,000 or more, or if
 514 | the person fraudulently uses the personal identification
 515 | information of 10 or more but fewer than 20 deceased individuals
 516 | or dissolved business entities. Notwithstanding any other
 517 | provision of law, the court shall sentence any person convicted
 518 | of committing the offense described in this paragraph to a
 519 | mandatory minimum sentence of 3 years' imprisonment.

520 | (c) Any person who willfully and fraudulently uses

521 | personal identification information concerning a deceased
 522 | individual or dissolved business entity commits the offense of
 523 | aggravated fraudulent use of the personal identification
 524 | information of multiple deceased individuals or dissolved
 525 | business entities, a felony of the first degree, punishable as
 526 | provided in s. 775.082, s. 775.083, or s. 775.084, if the
 527 | pecuniary benefit, the value of the services received, the
 528 | payment sought to be avoided, or the amount of injury or fraud
 529 | perpetrated is \$50,000 or more, or if the person fraudulently
 530 | uses the personal identification information of 20 or more but
 531 | fewer than 30 deceased individuals or dissolved business
 532 | entities. Notwithstanding any other provision of law, the court
 533 | shall sentence any person convicted of the offense described in
 534 | this paragraph to a minimum mandatory sentence of 5 years'
 535 | imprisonment. If the pecuniary benefit, the value of the
 536 | services received, the payment sought to be avoided, or the
 537 | amount of the injury or fraud perpetrated is \$100,000 or more,
 538 | or if the person fraudulently uses the personal identification
 539 | information of 30 or more deceased individuals or dissolved
 540 | business entities, notwithstanding any other provision of law,
 541 | the court shall sentence any person convicted of an offense
 542 | described in this paragraph to a mandatory minimum sentence of
 543 | 10 years' imprisonment.

544 | (9) Any person who willfully and fraudulently creates or
 545 | uses, or possesses with intent to fraudulently use, counterfeit
 546 | or fictitious personal identification information concerning a

547 fictitious person ~~individual~~, or concerning a real person
 548 ~~individual~~ without first obtaining that real person's
 549 ~~individual's~~ consent, with intent to use such counterfeit or
 550 fictitious personal identification information for the purpose
 551 of committing or facilitating the commission of a fraud on
 552 another person, commits the offense of fraudulent creation or
 553 use, or possession with intent to fraudulently use, counterfeit
 554 or fictitious personal identification information, a felony of
 555 the third degree, punishable as provided in s. 775.082, s.
 556 775.083, or s. 775.084.

557 Section 17. Section 817.569, Florida Statutes, is amended
 558 to read:

559 817.569 Criminal use of a public record or public records
 560 information; providing false information; penalties.—A person
 561 who knowingly uses any public record, as defined in s. 119.011,
 562 ~~or~~ who knowingly uses information obtainable only through such
 563 public record, or who knowingly provides false information that
 564 becomes part of a public record to facilitate or further the
 565 commission of:

566 (1) A misdemeanor of the first degree, commits a
 567 misdemeanor of the first degree, punishable as provided in s.
 568 775.082 or s. 775.083.

569 (2) A felony, commits a felony of the third degree,
 570 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

571 Section 18. Paragraphs (a) and (e) of subsection (3) of
 572 section 921.0022, Florida Statutes, are amended to read:

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573 921.0022 Criminal Punishment Code; offense severity
574 ranking chart.—

575 (3) OFFENSE SEVERITY RANKING CHART

576 (a) LEVEL 1

577

Florida Statute	Felony Degree	Description
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578

24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
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579

212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
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580

212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
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581

316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
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582

319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
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584	319.35 (1) (a)	3rd	Tamper, adjust, change, etc., an odometer.
585	320.26 (1) (a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
586	322.212 (1) (a) - (c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
587	322.212 (4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
588	322.212 (5) (a)	3rd	False application for driver license or identification card.
589	414.39 (2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.

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590	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
591	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
592	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
593	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
594	562.27(1)	3rd	Possess still or still apparatus.
595	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.

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596	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
597	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
598	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
599	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
600	817.569(2)	3rd	Use of public record or public records information <u>or</u> <u>providing false information</u> to facilitate commission of a felony.
601	826.01	3rd	Bigamy.
602	828.122(3)	3rd	Fighting or baiting animals.

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603	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
604	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
605	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
606	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
607	838.15(2)	3rd	Commercial bribe receiving.
608	838.16	3rd	Commercial bribery.
609	843.18	3rd	Fleeing by boat to elude a law enforcement officer.

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610	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
611	849.01	3rd	Keeping gambling house.
612	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
613	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
614	849.25(2)	3rd	Engaging in bookmaking.
615	860.08	3rd	Interfere with a railroad signal.
616	860.13(1)(a)	3rd	Operate aircraft while under the influence.
617	893.13(2)(a)2.	3rd	Purchase of cannabis.

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618	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
619	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
620	(e) LEVEL 5		
621	Florida Statute	Felony Degree	Description
622	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
623	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
624	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
625	327.30(5)	3rd	Vessel accidents involving

			personal injury; leaving scene.
626	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
627	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
628	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
629	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
630	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
631	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of

			avoiding or reducing workers' compensation premiums.
632	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
633	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
634	790.01(2)	3rd	Carrying a concealed firearm.
635	790.162	2nd	Threat to throw or discharge destructive device.
636	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
637	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
638	790.23	2nd	Felons in possession of firearms, ammunition, or

639			electronic weapons or devices.
	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
640			
	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
641			
	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
642			
	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
643			
	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
644			
	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
645			

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646	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
647	812.131(2)(b)	3rd	Robbery by sudden snatching.
648	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
649	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
650	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
651	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services

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			received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more <u>persons</u> individuals .
652	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
653	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
654	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
655	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes

			sexual conduct by a child.
656	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.
657	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
658	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
659	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
660	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
661	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal

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662	874.05(2)(a)	2nd	gang; second or subsequent offense.
663	893.13(1)(a)1.	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
664	893.13(1)(c)2.	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).
665			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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666	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.
667	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.
668	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.

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669	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).
670	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
671	Section 19. This act shall take effect October 1, 2015.		



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 89-186 and insert:

7 out-of-pocket costs, including attorney fees and fees associated
8 with services provided by certified public accountants licensed
9 under ch. 473, incurred by the victim in clearing the victim's
10 credit history or credit rating, or costs incurred in connection
11 with a civil or administrative proceeding to satisfy a debt,
12 lien, or other obligation of the victim arising as a result of
13 the actions of the defendant.

14 (b) The sentencing court may issue such orders as are
15 necessary to correct a public record that contains false
16 information given in violation of this section.

17 (3) (a) A victim of the conduct subject to this section



Amendment No. 1

18 shall have a civil cause of action against a person who has
19 engaged in the conduct prohibited by this section as provided in
20 s. 772.11.

21 (b) For purposes of this subsection, the term "victim"
22 includes, to the extent not already included within s. 817.568,
23 a person whose identity was falsely personated or who suffers a
24 loss of property as a result of the false personation.

25 Section 3. Section 817.032, Florida Statutes, is created
26 to read:

27 817.032 Information available to identity theft victims.-

28 (1) DEFINITION.-As used in this section, the term "victim"
29 means a person whose means of identification or financial
30 information is used or transferred or is alleged to be used or
31 transferred without the authority of that person with the intent
32 to commit or to aid or abet an identity theft or a similar
33 crime.

34 (2) GENERALLY.-For the purpose of documenting fraudulent
35 transactions resulting from identity theft, within 30 days after
36 the date of receipt of a request from a victim in accordance
37 with subsection (4), and subject to verification of the identity
38 of the victim and the claim of identity theft in accordance with
39 subsection (3), a business entity that has provided credit to;
40 provided for consideration products, goods, or services to;
41 accepted payment from; or otherwise entered into a commercial
42 transaction for consideration with, a person who has allegedly
43 made unauthorized use of the means of identification of the



Amendment No. 1

44 victim, shall provide a copy of the application and business
45 transaction records in the control of the business entity,
46 whether maintained by the business entity or by another person
47 on behalf of the business entity, evidencing any transaction
48 alleged to be a result of identity theft to:

49 (a) The victim;

50 (b) A federal, state, or local government law enforcement
51 agency, or officer specified by the victim in such a request; or

52 (c) A law enforcement agency investigating the identity
53 theft and authorized by the victim to take receipt of records
54 provided under this section.

55 (3) VERIFICATION OF IDENTITY AND CLAIM.—Before a business
56 entity provides any information under subsection (2), unless the
57 business entity, at its discretion, otherwise has a high degree
58 of confidence that it knows the identity of the victim making a
59 request under subsection (2), the victim shall provide to the
60 business entity:

61 (a) As proof of positive identification of the victim, at
62 the election of the business entity:

63 1. The presentation of a government-issued identification
64 card;

65 2. Personal identifying information of the same type as
66 provided to the business entity by the unauthorized person; or

67 3. Personal identifying information that the business
68 entity typically requests from new applicants or for new
69 transactions, at the time of the victim's request for



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70 information, including any documentation described in
71 subparagraphs 1. and 2.

72 (b) As proof of a claim of identity theft, at the election
73 of the business entity:

74 1. A copy of a police report evidencing the claim of the
75 victim of identity theft; or

76 2. A properly completed affidavit of fact that is
77 acceptable to the business entity for that purpose.

78 (4) PROCEDURES.—The request of a victim under subsection
79 (2) shall:

80 (a) Be in writing;

81 (b) Be mailed or delivered to an address specified by the
82 business entity, if any.

83 (c) If asked by the business entity, include relevant
84 information about any transaction alleged to be a result of
85 identity theft to facilitate compliance with this section,
86 including:

87 1. If known by the victim or readily obtainable by the
88 victim, the date of the application or transaction.

89 2. If known by the victim or readily obtainable by the
90 victim, any other identifying information such as an account
91 number or transaction number.

92 (5) NO CHARGE TO VICTIM.—Information required to be
93 provided under subsection (2) shall be provided without charge.

94 (6) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A
95 business entity may decline to provide information under



Amendment No. 1

96 subsection (2) if, in the exercise of good faith, the business
97 entity determines that:



98 (a) This section does not require disclosure of the
99 information;

100 (b) After reviewing the information provided pursuant to
101 subsection (3), the business entity does not have a high degree
102 of confidence in knowing the true identity of the individual
103 requesting the information;

104 (c) The request for the information is based on a
105 misrepresentation of fact by the individual requesting the
106 information; or

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 193 Crime Stoppers Trust Fund
SPONSOR(S): Broxson and others
TIED BILLS: IDEN./SIM. BILLS: SB 164

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

SUMMARY ANALYSIS

Crime Stoppers programs are citizen-run not-for-profit corporations that operate on the principle that "someone other than the criminal has information that can solve a crime." Crime Stoppers programs allow citizens to anonymously provide information to law enforcement about crimes. Typically, a cash reward is given if the information leads to an arrest.

In 1991, the Legislature created s. 16.555, F.S., which required the Department of Legal Affairs to establish a Crime Stoppers Trust Fund. At the time, the Crime Stoppers Trust Fund was solely funded through federal, state, and private grants awarded to the Department.

In 1998, the Legislature added a funding source by imposing a \$20 court cost on persons convicted of any criminal offense. The proceeds from the \$20 court cost are deposited in a separate account within the Crime Stoppers Trust Fund and designated according to the judicial circuit from which they were collected. Counties may apply to the Department for a grant from the funds collected by their judicial circuit. However, grants may only be awarded to counties that are served by an official member of the Florida Association of Crime Stoppers, Inc. and used only to support Crime Stoppers and their crime fighting programs.

The bill permits a county which is awarded funds under s. 16.555, F.S., to use the funds to purchase and distribute promotional items to increase public awareness and educate the public about Crime Stoppers.

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

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Crime Stoppers

Crime Stoppers programs are citizen run not-for-profit corporations that operate on the principle that “someone other than the criminal has information that can solve a crime.”¹ Crime Stoppers allow citizens to anonymously provide information to law enforcement about crimes.² Typically, a cash reward is given if the information leads to an arrest.³

The Crime Stoppers concept originated in Albuquerque, New Mexico, in 1976 when a detective asked local media to broadcast a reenactment of an unsolved murder he was investigating.⁴ Local media publicized the reenactment as the “Crime of the Week” and provided a phone number to call if anyone had information.⁵ The broadcast promised anonymity for anyone who called with information and a cash reward if the information led to persons involved in the crime.⁶

The first Crime Stoppers program in Florida was established in 1977.⁷ The Florida Association of Crime Stoppers, Inc. (hereinafter “Association”) was established in 1983 as a not-for-profit corporation formed to facilitate the flow of information and spread the Crime Stoppers program throughout the state.⁸ The Association is currently composed of 32 programs and provides trainings for Crime Stoppers programs throughout Florida.⁹

Crime Stoppers Funding

In 1991, the Legislature created s. 16.555, F.S., which required the Department of Legal Affairs (hereinafter “Department”) to establish a Crime Stoppers Trust Fund.¹⁰ At the time, the Crime Stoppers Trust Fund was solely funded through federal, state, and private grants awarded to the Department.¹¹

In 1998, the Legislature added a funding source in s. 938.06, F.S., by imposing a \$20 court cost on persons convicted of any criminal offense.¹² The proceeds from the \$20 court cost are deposited in a separate account within the Crime Stoppers Trust Fund and designated according to the judicial circuit from which they were collected.¹³ Counties may apply to the Department for a grant from the funds collected by their judicial circuit.¹⁴ However, grants may only be awarded to counties that are served by

¹ Big Bend Crime Stoppers, *About Us*, <http://www.bbcsi.org/about-2> (last visited on Jan. 20, 2015).

² *Id.*

³ *Id.*

⁴ Florida Association of Crime Stoppers, *Where It All Started*, <http://www.floridacrimestoppers.com/pages/where> (last visited on Jan. 20, 2015).

⁵ Crime Stoppers USA, *CSUSA Profile*, <http://www.crimestoppersusa.com/profile.htm> (last visited on Jan. 21, 2015).

⁶ Florida Association of Crime Stoppers, *Where It All Started*, <http://www.floridacrimestoppers.com/pages/where> (last visited on Jan. 20, 2015).

⁷ Florida Association of Crime Stoppers, *Who We Are*, <http://www.floridacrimestoppers.com/pages/who> (last visited on Jan. 20, 2015).

⁸ When the Association was originally established, it was named the Florida Association of Crimelines Anonymous, Inc., and the name was officially changed to the Florida Association of Crime Stoppers, Inc., in 1991; see Florida Association of Crime Stoppers, *Who We Are*, <http://www.floridacrimestoppers.com/pages/who> (last visited on Jan. 20, 2015).

⁹ *Id.*

¹⁰ Chapter 91-205, L.O.F.

¹¹ *Id.*

¹² Chapter 98-319, L.O.F.

¹³ Section 938.06, F.S.; Section 16.555, F.S.

¹⁴ Section 16.555, F.S.

a Crime Stoppers program that is an official member of the Association, and the grants may only be used to support Crime Stoppers and their crime fighting programs.¹⁵

Effect of the Bill

The bill amends s. 16.555, F.S., to allow a county which is awarded a grant to use the funds to purchase and distribute promotional items. The bill specifies that the promotional items must be for the purpose of increasing public awareness of, and educating the public about, Crime Stoppers.

B. SECTION DIRECTORY:

Section 1. Amends s. 16.555, F.S., relating to Crime Stoppers Trust Fund; rulemaking.

Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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 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:

Section 16.555(6), F.S., requires the Department to adopt and enforce rules to implement the provisions of s. 16.555, F.S., and specifies what such rules must include (e.g., criteria for local governments to apply for funding from the "Crime Stoppers Trust Fund" in order to aid in local law enforcement). The bill does not appear to create a need for additional 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 the Crime Stoppers Trust Fund;
 3 amending s. 16.555, F.S.; authorizing a county that is
 4 awarded a grant from the trust fund to use such funds
 5 for the purchase and distribution of promotional
 6 items; making technical changes; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsection (5) of section 16.555, Florida
 12 Statutes, is amended to read:

13 16.555 Crime Stoppers Trust Fund; rulemaking.—

14 (5)(a) The department shall be the disbursing authority
 15 for the distribution of funding to units of local government
 16 which apply, ~~upon their application~~ to the department for
 17 funding assistance.

18 (b) Funds deposited in the trust fund pursuant to
 19 paragraph (4)(b) shall be disbursed as provided in this
 20 paragraph. A ~~Any~~ county may apply to the department under s.
 21 938.06 for a grant from the funds collected in the judicial
 22 circuit in which the county is located ~~under s. 938.06~~. A grant
 23 may be awarded only to counties that ~~which~~ are served by an
 24 official member of the Florida Association of Crime Stoppers and
 25 may ~~only~~ be used only to support Crime Stoppers and its ~~their~~
 26 crime fighting programs. Only one such official member is ~~shall~~

27 ~~be~~ eligible for support within any county. ~~In order~~ To aid the
28 department in determining eligibility, the secretary of the
29 Florida Association of Crime Stoppers shall furnish the
30 department with a schedule of authorized crime stoppers programs
31 and shall update the schedule as necessary. The department shall
32 award grants to eligible counties from available funds and shall
33 distribute funds as equitably as possible, based on amounts
34 collected within each county, if ~~when~~ more than one county is
35 eligible within a judicial circuit.

36 (c) A county that is awarded a grant under this section
37 may use such funds to purchase and distribute promotional items
38 to increase public awareness of, and to educate the public
39 about, Crime Stoppers.

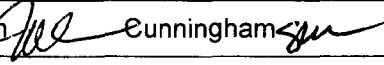
40 Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 197 Tracking Devices or Applications

SPONSOR(S): Metz

TIED BILLS: None **IDEN./SIM. BILLS:** SB 282

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Keegan	
2) Economic Development & Tourism Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 934, F.S., governs the security of electronic and telephonic communications and the procedural requirements for searching and monitoring such communications. The law covers a number of different investigative and monitoring procedures, including wiretapping, obtaining service provider records, and mobile tracking devices. Florida law does not currently prohibit a private individual from using a tracking device or application to determine the location or movement of another person without the other person's consent.

The bill creates the following definitions:

- "Tracking application" means any software program that, once installed on an electronic device, enables the device to be used as a tracking device; and
- "Tracking device" means any device that reveals its location or movement by the transmission of electronic signals.

The bill creates a new section of statute making it a second degree misdemeanor for a person to use a tracking device or application to determine the location or movement of another person without his or her consent. This prohibition does not apply to:

- The owner of a motor vehicle, including a vehicle for rent, who has consented to the tracking device or application;
- The lessor, lessee, and operator of a motor vehicle who have consented to the tracking device or application;
- Any law enforcement agency that is acting pursuant to a court order or otherwise acting lawfully in an ongoing criminal investigation, if the officer using the device or application creates a contemporaneous record describing in detail the circumstances under which the tracking device or application is being used;
- A parent or legal guardian of a minor child. Where the parents of the minor are divorced, separated, or living apart, the consent of both parents is required unless one parent is granted sole custody of the minor child.
- The owner or operator of a correctional institution, as defined in s. 944.241, F.S., that is tracking a prisoner or any person detained under Federal immigration laws;
- Any provider of a commercial mobile radio service, such as a mobile telephone service or vehicle safety or security service, that determines the location of a customer;
- Any commercial motor carrier operation;
- Any commercial enterprise engaged in monitoring solely for good faith marketing purposes.

The bill creates a new second degree misdemeanor, which is punishable by up to 60 days in county jail and a \$500 fine. This may have a negative jail bed impact.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Tracking Electronic Devices

Cell Phone Tracking

Any time a cellular phone is on, it will periodically send a signal to the local “base station”¹ to verify the strength of the phone’s connection to the provider network.² Cellular phones also communicate back and forth with base stations during phone calls.³ Providers divide their service area up among base stations in the area, and the cellular phone communicates with different nearby base stations as the user moves around the service area.⁴ Providers keep close track of which base stations a phone communicates with so the provider knows which base stations to send phone calls to.⁵ The electronic record created by a cellular phone communicating with a base station is often referred to as “cell site location information” (hereinafter “CSLI”).⁶

CSLI is also used by cellular providers to transmit location data for cellular phones that dial 911.⁷ The Federal Communications Commission (hereinafter “FCC”) developed the Enhanced 911 program (hereinafter “E911”) to ensure that wireless carriers provide location information to 911 dispatchers when a 911 call is placed from a cellular phone.⁸ Over time the FCC has created more stringent requirements for cellular providers that currently require specific location data such as latitude and longitude of the 911 caller.⁹ In similar form to the FCC requirements, Florida law requires the establishment of a statewide E911 program requiring providers to route 911 calls to the correct public safety answering points.¹⁰ This is accomplished by “selective routing based on the geographical location from which the call originated,” and requiring providers to create automatic number identification and automatic location-identification features.¹¹

GPS Tracking

The Global Positioning System (hereinafter “GPS”) is a system of twenty-four operating satellites that orbit the earth and transmit radio signals.¹² The GPS system is operated by the United States Air Force,¹³ and is used for civilian applications as well as national security and military operations.¹⁴ GPS can be used for tracking and locating cellular phones that are equipped with hardware that can receive radio signals from GPS satellites.¹⁵ GPS technology can usually identify the location of a cellular phone

¹ The “base station” is the device or communications tower that transmits cellular radio signals so a telephone call can be made wirelessly. These towers are also referred to as “cellular towers.” See IEEE Global History Network, *Base Stations*, http://www.ieeeahn.org/wiki/index.php/Cellular_Base_Stations (last visited Jan. 22, 2015).

² *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (testimony of Matt Blaze, Assoc. Prof., Univ. Pa.).

³ *Id.* at 13.

⁴ *Id.* at 13.

⁵ *Id.* at 14.

⁶ *In re Application of U.S. for an Order Directing a Provider of Elec. Comm’n Serv. to Disclose Records to the Gov’t*, 620 F.3d 304 (3d Cir. 2010).

⁷ Federal Commc’ns Comm’n, *Enhanced 9-1-1 Wireless Services*, <http://www.fcc.gov/encyclopedia/enhanced-9-1-1-wireless-services> (last visited Jan. 23, 2015).

⁸ Federal Commc’ns Comm’n, *Guide: 911 Wireless Services*, <http://www.fcc.gov/guides/wireless-911-services> (last visited Jan. 23, 2015).

⁹ Federal Commc’ns Comm’n, *Enhanced 9-1-1 Wireless Services*, <http://www.fcc.gov/encyclopedia/enhanced-9-1-1-wireless-services> (last visited Jan. 23, 2015).

¹⁰ Section 365.172(3)(h), F.S.

¹¹ *Id.*

¹² GPS.Gov, *Space Segment*, <http://www.gps.gov/systems/gps/space/> (last visited Jan. 23, 2015).

¹³ Schriever Air Force Base, *GPS*, <http://www.schriever.af.mil/GPS/> (last visited Jan. 23, 2015).

¹⁴ GPS.Gov, *GPS Applications*, <http://www.gps.gov/applications/> (last visited Jan. 23, 2015).

¹⁵ *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (statement of Matt Blaze, Assoc. Prof., Univ. Pa.).

within a distance of ten meters;¹⁶ however, more recent cellular phone models are the only models equipped with the proper hardware to utilize this technology.¹⁷

Tracking Software

Tracking software can be downloaded onto phones and other electronic devices and used to track the location of the device for mapping applications or other purposes.¹⁸ Some types of tracking software can monitor messages, emails, web sites that are visited, and contacts that are saved, in addition to tracking a device's location.¹⁹

Florida Law

Chapter 934, F.S., governs the security of electronic and telephonic communications and the procedural requirements for searching and monitoring such communications. The law covers a number of different investigative and monitoring procedures, including wiretapping, obtaining service provider records, and mobile tracking devices. However, many of the chapter's provisions only apply to law enforcement entities (e.g., s. 934.42, F.S., authorizes a law enforcement officer to apply to a judge of competent jurisdiction for an order authorizing or approving the installation and use of a mobile tracking device²⁰).

Section 934.03, F.S., which applies to all persons, and makes it a third degree felony²¹ for a person to intentionally use the contents of an electronic communication, knowing or having reason to know that the information was obtained through the unlawful interception of the electronic communication (i.e., without the consent of both parties). The term "electronic communication" is defined as "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce."²² However, the definition specifically excludes "any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object."²³

Florida law does not currently prohibit a private individual from using a tracking device or application to determine the location or movement of another person without the other person's consent.

Effect of the Bill

The bill creates the following definitions:

- "Tracking application" means any software program that, once installed on an electronic device, enables the device to be used as a tracking device; and
- "Tracking device" means any device that reveals its location or movement by the transmission of electronic signals.

The bill creates a new section of statute making it a second degree misdemeanor²⁴ for a person to use a tracking device or application to determine the location or movement of another person without his or her consent. This prohibition does not apply to:

¹⁶ *Id.*

¹⁷ *Id.* at 22.

¹⁸ *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (statement of Matt Blaze, Assoc. Prof., Univ. Pa.).

¹⁹ CBS DFW, *Stalkers Using Cell Phones to Track Victims*, <http://dfw.cbslocal.com/2015/01/14/stalkers-using-cell-phones-to-track-victims/> (last visited Jan. 26, 2015); Christine Pitawanich, *Virtually Invisible Cell Phone Apps Used to Track and Spy on Victims*, NBC News, Nov. 25, 2014, <http://kobi5.com/news/item/virtually-invisible-cell-phone-apps-used-to-track-and-spy-on-victims.html#.VMvymKNOnCs> (last visited Jan. 26, 2015).

²⁰ Section 934.42, F.S., defines "tracking device" as an electronic or mechanical device which permits the tracking of the movement of a person or object.

²¹ 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.

²² Section 934.02(12), F.S.

²³ *Id.*

²⁴ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

- The owner of a motor vehicle, including the owner of a motor vehicle available for rent, who has consented to the use of the tracking device or application with respect to such vehicle;
- The lessor or lessee of a motor vehicle and the person operating the motor vehicle who have consented to the use of a tracking device or application with respect to such vehicle;
- Any law enforcement agency, including state, federal, and military law enforcement agencies, that is acting pursuant to a court order or lawfully using the tracking device or application in an ongoing criminal investigation, if the law enforcement officer employing the tracking device or application creates a contemporaneous record describing in detail the circumstances under which the tracking device or application is being used.
- A parent or legal guardian of a minor child whose location or movements are being tracked by the parent or legal guardian (when the parents of the minor child are divorced, separated, or otherwise living apart from one another, this exception applies only if both parents consent to the tracking of the minor child's location and movements, unless one parent has been granted sole custody, in which case consent of the noncustodial parent is not required);
- The owner or operator of a correctional institution, as defined in s. 944.241, F.S.,²⁵ that is tracking a prisoner²⁶ or any person detained under the immigration laws of the United States at any such correctional institution who is under its custody or supervision.
- Any provider of a commercial mobile radio service, such as a mobile telephone service or vehicle safety or security service, which allows the provider to determine the location or movement of a device provided to a customer of such service;
- Any commercial motor carrier operation; and
- Any commercial enterprise engaged in good faith marketing or advertising to the public through the use of tracking applications if the location of a member of the public, as revealed to the commercial enterprise through the tracking application, is used only for good faith marketing or advertising and no other purpose.

The bill specifies that a person's consent to be tracked is presumed to be revoked in the following circumstances:

- When the person files a petition for dissolution of marriage from the person to whom prior consent had been given;
- When the person seeks a restraining order against the person to whom prior consent had been given.

B. SECTION DIRECTORY:

Section 1. Creates section 934.425, F.S., use of relating to tracking devices or applications prohibited; exceptions.

Section 2. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

²⁵ Section 944.241, F.S., defines "correctional institution" as any facility under the authority of the department or the Department of Juvenile Justice, a county or municipal detention facility, or a detention facility operated by a private entity.

²⁶ The bill defines the term "prisoner" as any person incarcerated or detained in any correctional institution who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, community control, pretrial release, or a diversionary program.

2. Expenditures:

This bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill creates a new second degree misdemeanor, which is punishable by up to 60 days in county jail and a \$500 fine. This may have a negative jail bed impact.

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:

Federal Search and Seizure

The Fourth Amendment to the United States Constitution ("Fourth Amendment") protects individuals from unreasonable search and seizure.²⁷ The text of the Fourth Amendment provides,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."²⁸

A "search" generally occurs when a state actor infringes on an expectation of privacy that society considers to be reasonable.²⁹ A private individual acting of his or her own volition is generally not considered to be a state actor.³⁰ The language of the Fourth Amendment exhibits a strong preference for conducting searches after securing a valid warrant,³¹ and such warrants can only be issued when a judge finds that probable cause exists.³²

²⁷ *Arizona v. Hicks*, 480 U.S. 321 (1987); *U.S. v. Jacobsen*, 466 U.S. 109 (1983).

²⁸ U.S. CONST. amend. IV.

²⁹ *United States v. Jacobsen*, 466 U.S. 109 (1983); *U.S. v. Maple*, 348 F.3d 260 (D.C. Cir. 2003); *Fraternal Order of Police Montgomery County Lodge 35, Inc. v. Manger*, 929 A.2d 958 (Ct. Spec. App. M.D. 2007).

³⁰ *United States v. Jacobsen*, 466 U.S. 109 (1983); *U.S. v. Maple*, 348 F.3d 260 (D.C. Cir. 2003); *Fraternal Order of Police Montgomery County Lodge 35, Inc. v. Manger*, 929 A.2d 958 (Ct. Spec. App. M.D. 2007).

³¹ *Ornelas v. United States*, 517 U.S. 690 (1996).

³² *Henry v. United States*, 361 U.S. 98, 99 (1959).

Title 18 of the United States Code governs electronic surveillance, including mobile tracking devices, pen registers, and other electronic tracking methods.³³ The law preempts any state laws that govern electronic surveillance and tracking, although states may enact more restrictive requirements.³⁴ Title 18 allows law enforcement to gather stored electronic communications data pursuant to a court order when the law enforcement entity can show “specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.”³⁵ The “specific and articulable facts” standard is lower than that required under the “probable cause” standard.³⁶

A number of Federal trial courts have held that CSLI requires greater protection than what is required for a court order.³⁷ A limited number of Federal appellate courts have discussed the application of the Fourth Amendment to court orders for stored cellular provider information. In 2012, the U.S. Supreme Court opinion in *U.S. v. Jones* found that installing a GPS tracker on a suspect’s vehicle violated the Fourth Amendment when done without a valid search warrant.³⁸ However, Federal appellate courts have been reluctant to extend the warrant requirement to law enforcement requests for historical cellular phone location data.³⁹ The issue remains undecided before the Eleventh Circuit Court of Appeals.⁴⁰

The Federal appellate courts that have addressed the requirements for obtaining historical CSLI have consistently upheld federal laws allowing issuance of a court order instead of a more stringent probable cause warrant.⁴¹ The Sixth Circuit Court of Appeals also addressed this issue in relation to real-time CSLI, and found that only a court order, not a probable cause warrant, was required for law enforcement to access GPS data.⁴² The United States Supreme Court has not yet rendered an opinion on the issue of whether a probable cause warrant is required to obtain real-time or historical CSLI.

Florida Search and Seizure

Article I, s. 12 of the Florida Constitution provides protection against unreasonable search and seizure in a manner similar to the Fourth Amendment; however Section 12 provides additional protection for private communications. Section 12 specifically provides, “The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated.”⁴³ Section 12 also specifies that “Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States

³³ 18 U.S.C. s.s. 2510-22, 2701-12, 3117, 3121-27 (2014).

³⁴ *Florida v. Otte*, 887 So.2d 1186, 1187 (Fla. 2004).

³⁵ 18 U.S.C. s. 2703(d) (2014).

³⁶ *In re U.S. for Historical Cell Site Data*, 724 F.3d 600 (5th Cir. 2013); *United States v. Thousand*, 558 Fed.Appx 666, 670 (7th Cir. 2014).

³⁷ *In re Application of the U.S. for an Order Authorizing the Release of Historical Cell-Site Info.*, 809 F.Supp.2d 127 (E.D.N.Y. 2012); *In the Matter of an Application of the United States of America for an Order Authorizing Disclosure of Location Information of a Specified Wireless Telephone*, 849 F.Supp.2d 526 (D. Md. 2013).

³⁸ *United States v. Jones*, 132 S.Ct. 945 (2012).

³⁹ *In re Application of U.S. for an Order Directing a Provider of Elec. Comm’n Serv. to Disclose Records to the Gov’t*, 620 F.3d 304 (3d Cir. 2010); *In re U.S. for Historical Cell Site Data*, 724 F.3d 600 (5th Cir. 2013).

⁴⁰ In June, 2014 the 11th Circuit found in *United States v. Davis*, 754 F.3d 1205 (11th Cir. 2014), that a warrant was required for historical CSLI, but the court entered an order vacating the opinion and setting it for rehearing shortly thereafter. (See *United States v. Davis*, 573 Fed.Appx. 925 (11th Cir. 2014).

⁴¹ *In re Application of U.S. for an Order Directing a Provider of Elec. Comm’n Serv. to Disclose Records to the Gov’t*, 620 F.3d 304 (3d Cir. 2010); *In re U.S. for Historical Cell Site Data*, 724 F.3d 600 (5th Cir. 2013).

⁴² *United States v. Skinner*, 690 F.3d 772, 777 (6th Cir. 2012) (finding that there is no reasonable expectation of privacy in the data generated in public places by the GPS signal in a cellular phone).

⁴³ Art. I, Sec. 12, FLA. CONST.

Constitution.” Florida courts consistently hold that Section 12 binds these courts to render decisions in accordance with United States Supreme Court Precedent on the Fourth Amendment.⁴⁴

The Florida Supreme Court recently addressed the question of whether probable cause was required for a law enforcement agency to gather real-time CSLI on a cellular phone user.⁴⁵ The Court found that cellular phones have become an “indispensable” part of most peoples’ lives,⁴⁶ and real-time CSLI tracking of a cellular phone requires a probable cause warrant.⁴⁷

Chapter 934, F.S.

As noted above, ch. 934, F.S., governs the security of electronic and telephonic communications and the procedural requirements for searching and monitoring such communications. The statute currently authorizes law enforcement officers to use a pen register,⁴⁸ trap and trace device,⁴⁹ or a mobile tracking device,⁵⁰ after receiving an ex parte court order from a judge.⁵¹ To obtain a court order, the application must include the identity of the applicant, the identity of the law enforcement agency conducting the related investigation, and a certification that “the information likely to be obtained is relevant to an ongoing criminal investigation being conducted.”⁵² This certification is a lower standard than the probable cause standard⁵³ required for obtaining a lawful warrant.

Constitutional Concerns

The bill makes it a crime for a person to use a tracking device or application to determine the location or movement of another person without consent. This prohibition does not apply to:

- Any law enforcement agency, including state, federal, and military law enforcement agencies, *that is acting pursuant to a court order* or lawfully using the tracking device or application in an ongoing criminal investigation, if the law enforcement officer employing the tracking device or application *creates a contemporaneous record describing in detail the circumstances under which the tracking device or application is being used.*

As noted above, the Florida Supreme Court has held a law enforcement officer must have a probable cause warrant to gather real-time CSLI on a cellular phone (not simply a court order). As such, law enforcement officers will have to continue to comply with the Florida Supreme Court’s ruling when gathering such data.

It should also be noted that law enforcement officers who do get a probable cause warrant to gather real-time CSLI are not currently required to create a “contemporaneous record describing in detail the circumstances under which the tracking device or application is being used.”

B. RULE-MAKING AUTHORITY:

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

⁴⁴ *Florida v. Lavazzoli*, 434 So.2d 321 (Fla.1983); *Smallwood v. Florida*, 61 So.3d 448 (Fla. 2011).

⁴⁵ *Id.*

⁴⁶ *Id.* at 17.

⁴⁷ *Id.* at 19.

⁴⁸ Section 934.02(20), F.S., (defining a “pen register” as a “device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted,” but does not capture the contents of the communications).

⁴⁹ Section 934.02(21), F.S., (defining a “trap and trace device” as a “device or process that captures the incoming electronic or other impulses that identify the originating number or dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication,” but does not capture the contents of the communications).

⁵⁰ “Mobile tracking device” is not defined in Chapter 934, F.S.

⁵¹ Sections 934.32, 934.33, and 934.42, F.S.

⁵² Sections 934.32(2) and 934.42(2)(b), F.S.

⁵³ *Tracey v. Florida*, 2014 WL 5285929 (Fla. 2014).

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The definition of the term "tracking application" is somewhat broad in that it includes any software application that has the capability to reveal a person's location, even if that is not the prime purpose of the software (e.g., a game or weather application). Similarly, the definition of the term "tracking device" is broad in that it would likely include any cell phone.

The bill prohibits a person from using a tracking device or application to determine the location or movement of another person without his or her consent. Because the definitions applicable to this prohibition are so broad, the criminal penalties may apply to persons engaging in arguably harmless behavior (e.g., a person who finds a phone and uses the phone's applications to locate its owner).

2. The bill defines the terms "tracking device" and "*tracking application*." However, there are numerous references in the bill to a "tracking device or *application*." The reference to "application" should be changed to "tracking application" to match the definition.
3. The bill specifies that a person's consent to be tracked is presumed to be revoked when the person seeks a restraining order against the person to whom prior consent had been given. The reference to "restraining order" should be replaced with a reference to "an injunction for protection against domestic violence, issued pursuant to s. 741.30, an injunction for protection against repeat violence, sexual violence, or dating violence, issued pursuant to s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315."
4. The bill prohibits a *person* from using a tracking device or application, but does not define term "person." If the intent is to include/exclude business entities, governmental entities, etc., from the bill's prohibitions, the term should be defined.
5. The prohibition on using a tracking device or application to determine the location or movement of another person without his or her consent does not apply to any provider of a "commercial mobile radio service." This term should be defined.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to tracking devices or applications;
 3 creating s. 934.425, F.S.; providing definitions;
 4 prohibiting the use of a tracking device or
 5 application to determine the location or movement of a
 6 person without the person's consent; creating a
 7 presumption that consent is revoked upon initiation of
 8 specified proceedings; providing exceptions; providing
 9 criminal penalties; providing an effective date.

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

12
 13 Section 1. Section 934.425, Florida Statutes, is created
 14 to read:

15 934.425 Use of tracking devices or applications
 16 prohibited; exceptions.—

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

18 (a) "Tracking application" means any software program
 19 that, once installed on an electronic device, enables the device
 20 to be used as a tracking device.

21 (b) "Tracking device" means any device that reveals its
 22 location or movement by the transmission of electronic signals.

23 (2) Except as provided in subsection (3), a person may not
 24 use a tracking device or application to determine the location
 25 or movement of another person without the consent of that
 26 person. For purposes of this section, a person who files a

27 petition for dissolution of marriage or who seeks a restraining
 28 order against another person is presumed to have revoked any
 29 consent given before the initiation of such proceedings to his
 30 or her spouse from whom the dissolution is sought or the person
 31 sought to be restrained, respectively.

32 (3) This section does not apply to:

33 (a) The owner of a motor vehicle, including the owner of a
 34 motor vehicle available for rent, who has consented to the use
 35 of the tracking device or application with respect to such
 36 vehicle.

37 (b) The lessor or lessee of a motor vehicle and the person
 38 operating the motor vehicle who have consented to the use of a
 39 tracking device or application with respect to such vehicle.

40 (c) Any law enforcement agency, including state, federal,
 41 and military law enforcement agencies, that is acting pursuant
 42 to a court order or lawfully using the tracking device or
 43 application in an ongoing criminal investigation, if the law
 44 enforcement officer employing the tracking device or application
 45 creates a contemporaneous record describing in detail the
 46 circumstances under which the tracking device or application is
 47 being used.

48 (d)1. A parent or legal guardian of a minor child whose
 49 location or movements are being tracked by the parent or legal
 50 guardian.

51 2. When the parents of the minor child are divorced,
 52 separated, or otherwise living apart from one another, this

53 exception applies only if both parents consent to the tracking
 54 of the minor child's location and movements, unless one parent
 55 has been granted sole custody, in which case consent of the
 56 noncustodial parent is not required.

57 (e) The owner or operator of a correctional institution,
 58 as defined in s. 944.241, that is tracking a prisoner or any
 59 person detained under the immigration laws of the United States
 60 at any such correctional institution who is under its custody or
 61 supervision. For purposes of this paragraph, the term "prisoner"
 62 means any person incarcerated or detained in any correctional
 63 institution who is accused of, convicted of, sentenced for, or
 64 adjudicated delinquent for a violation of criminal law or the
 65 terms and conditions of parole, probation, community control,
 66 pretrial release, or a diversionary program.

67 (f) Any provider of a commercial mobile radio service,
 68 such as a mobile telephone service or vehicle safety or security
 69 service, which allows the provider to determine the location or
 70 movement of a device provided to a customer of such service.

71 (g) Any commercial motor carrier operation.

72 (h) Any commercial enterprise engaged in good faith
 73 marketing or advertising to the public through the use of
 74 tracking applications if the location of a member of the public,
 75 as revealed to the commercial enterprise through the tracking
 76 application, is used only for good faith marketing or
 77 advertising and no other purpose.

78 (4) A person who violates this section commits a

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79 | misdemeanor of the second degree, punishable as provided in s.
80 | 775.082 or s. 775.083.

81 | Section 2. This act shall take effect October 1, 2015.



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 Metz offered the following:
 4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 934.425, Florida Statutes, is created
 8 to read:

9 934.425 Installation of tracking devices or tracking
 10 applications; exceptions; penalties.--

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

12 (a) "Tracking application" means any software program
 13 whose primary purpose is to track or identify the location or
 14 movement of an individual.

15 (b) "Tracking device" means any device whose primary
 16 purpose is to reveal its location or movement by the
 17 transmission of electronic signals.



Amendment No. 1

18 (c) "Person" means an individual and does not mean a
19 business entity.

20 (d) "Business entity" means any form of corporation,
21 partnership, association, cooperative, joint venture, business
22 trust, or sole proprietorship that conducts business in this
23 state.

24 (2) Except as provided in subsection (4), a person may not
25 knowingly install a tracking device or tracking application on
26 another person's property without the other person's consent.

27 (3) For purposes of this section, a person's consent is
28 presumed to be revoked if:

29 (a) The consenting person and the person to whom consent
30 was given are lawfully married and one person files a petition
31 for dissolution of marriage from the other; or

32 (b) The consenting person or the person to whom consent
33 was given files an injunction for protection against the other
34 person pursuant to s. 741.30, s. 784.046, s. 784.0485, or s.
35 741.315.

36 (4) This section does not apply to:

37 (a) A law enforcement officer as defined in s. 943.10, or
38 any local, state, federal, or military law enforcement agency,
39 that lawfully installs a tracking device or tracking application
40 on another person's property as part of a criminal
41 investigation.

42 (b) A parent or legal guardian of a minor child that
43 installs a tracking device or tracking application on the minor



Amendment No. 1

44 child's property if:

45 1. The parents or legal guardians are lawfully married to
46 each other and are not separated or otherwise living apart, and
47 either parent or legal guardian consents to the installation of
48 the tracking device or tracking application;

49 2. The parent or legal guardian is the sole surviving
50 parent or legal guardian of the minor child;

51 3. The parent or legal guardian has sole custody of the
52 minor child; or

53 4. The parents or legal guardians are divorced, separated,
54 or otherwise living apart and both consent to the installation
55 of the tracking device or tracking application.

56 (c) A caregiver of an elderly person or disabled adult, as
57 those terms are defined in s. 825.101, if the elderly person or
58 disabled adult's treating physician certifies that the
59 installation of a tracking device or tracking application onto
60 the elderly person or disabled adult's property is necessary to
61 ensure the safety of the elderly person or disabled adult.

62 (d) A person acting in good faith on behalf of a business
63 entity for a legitimate business purpose.

64 (4) A person who violates this section commits a
65 misdemeanor of the second degree, punishable as provided in s.
66 775.082 or s. 775.083.

67 Section 2. This act shall take effect October 1, 2015.

68 -----
69 -----



Amendment No. 1

70

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

71

Remove lines 2-6 and insert:

72

An act relating to tracking devices or tracking applications;

73

creating s. 934.425, F.S.; providing definitions; prohibiting

74

the installation of a tracking device or tracking application

75

without the person's consent; creating a

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 15-01 Recording Oral Communications
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: IDEN./SIM. BILLS: HB 131, SB 218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cunningham	<i>jm</i> Cunningham <i>jm</i>

SUMMARY ANALYSIS

Section 934.03, F.S., makes it a third degree felony for a person to intentionally intercept an oral communication. The statute sets forth a variety of exceptions to this prohibition. For example:

- It is not a crime for a person to intercept an oral communication if all parties to the communication consent to the interception; and
- A law enforcement officer or a person acting under the direction of a law enforcement officer may intercept an oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

Oral communications that have been intercepted illegally cannot be used as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof.

In *McDade v. State*, a 16-year old girl secretly recorded conversations with her step-father that confirmed that he had sexually abused her. The trial court admitted these recordings into evidence, and the defendant was convicted. On appeal, the 2nd District Court of Appeal affirmed the trial court's decision to admit the recordings into evidence. The Florida Supreme Court disagreed and held that because the recordings impermissibly intercepted oral communications, they were inadmissible as evidence. However, the court stated the following:

It may well be that a compelling case can be made for an exception from chapter 934's statutory exclusionary rule for recordings that provide evidence of criminal activity – or at least certain types of criminal activities. But the adoption of such an exception is a matter for the Legislature.

The bill amends s. 934.03, F.S., to create an additional exception to the prohibition on intercepting oral communications. The bill makes it lawful for a person to intercept and record an oral communication if:

- The person is a party to the communication; and
- Has reasonable grounds to believe that the recording will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful act of physical force or violence against a person.

The bill creates an additional exception to the prohibitions found in s. 934.03, F.S., violations of which are a third degree felony. To the extent this results in fewer people being convicted for violating s. 934.03, F.S., the bill may have a positive prison bed impact.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 934.03, F.S., makes it a third degree felony¹ for a person to intentionally intercept² an oral communication.³ The statute sets forth a variety of exceptions to this prohibition. For example:

- It is not a crime for a person to intercept an oral communication if all parties to the communication consent to the interception;⁴ and
- A law enforcement officer or a person acting under the direction of a law enforcement officer may intercept an oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.⁵

Oral communications that have been intercepted illegally cannot be used as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof.⁶

In *McDade v. State*,⁷ a 16-year old girl secretly recorded conversations with her step-father that confirmed that he had sexually abused her. The trial court admitted these recordings into evidence, and the defendant was convicted. On appeal, the 2nd District Court of Appeal affirmed the trial court's decision to admit the recordings into evidence reasoning that the defendant did not have an expectation of privacy in the communication that "society was prepared to accept as reasonable."⁸ After examining the plain language of the prohibitions in s. 934.03, F.S., the Florida Supreme Court disagreed and held that because the recordings impermissibly intercepted oral communications, they were inadmissible as evidence.⁹ However, the court stated the following:

It may well be that a compelling case can be made for an exception from chapter 934's statutory exclusionary rule for recordings that provide evidence of criminal activity – or at least certain types of criminal activities. But the adoption of such an exception is a matter for the Legislature.¹⁰

Effect of the Bill

The bill amends s. 934.03, F.S., to create an additional exception to the prohibition on intercepting oral communications. The bill makes it lawful for a person to intercept and record an oral communication if:

- The person is a party to the communication; and

¹ 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.

² Section 934.02, F.S., defines "intercept" as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

³ Section 934.02, F.S., defines "oral communication" as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

⁴ Section 934.03(2)(d), F.S. As of August 2012, Florida was one of 12 states that required the consent of all parties (rather than one party) to a communication to consent in order for interception to be lawful. Reporters Committee for Freedom of the Press, *Reporter's Recording Guide - A State-by-State Guide to Taping Phone Calls and In-Person Conversations*, August 1, 2012, <http://www.rcfp.org/rcfp/orders/docs/RECORDING.pdf> (last accessed on January 22, 2015).

⁵ Section 934.03(2)(c), F.S.

⁶ Section 934.06, F.S.

⁷ 2014 WL 6977944 (Fla. 2014).

⁸ *McDade v. State*, 2014 WL 6977944 (Fla. 2014)(citing *McDade v. State*, 114 So.3d 465 at 470 [Fla. 2d DCA 2013]).

⁹ *McDade v. State*, 2014 WL 6977944 (Fla. 2014).

¹⁰ *Id.*

- Has reasonable grounds to believe that the recording will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful act of physical force or violence against a person.

B. SECTION DIRECTORY:

Section 1. Amends s. 934.03, F.S., relating to interception and disclosure of wire, oral, or electronic communications prohibited.

Section 2. Provides an effective date of July 1, 2015.

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 creates an additional exception to the prohibitions found in s. 934.03, F.S., violations of which are a third degree felony. To the extent this results in fewer people being arrested for violating s. 934.03, F.S., the bill may have a positive prison bed 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.

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

PCB CRJS 15-01

ORIGINAL

2015

1 A bill to be entitled
 2 An act relating to recording oral communications;
 3 providing it is lawful to intercept and record certain
 4 oral communications; providing an effective date.

5
 6 Be It Enacted by the Legislature of the State of Florida:

7
 8 Section 1. Paragraph (k) is added to subsection (2) of
 9 section 934.03, Florida Statutes, to read:

10 934.03 Interception and disclosure of wire, oral, or
 11 electronic communications prohibited.—

12 (2)

13 (k) It is lawful under ss. 934.03-934.09 for a person to
 14 intercept and record an oral communication if the person is a
 15 party to the communication and has reasonable grounds to believe
 16 that the recording will capture a statement by another party to
 17 the communication that the other party intends to commit, is
 18 committing, or has committed an unlawful act of physical force
 19 or violence against a person.

20 Section 2. This act shall take effect July 1, 2015.

Ranking Chart

Violent and Weapons-Related Offenses

Statute	Felony Degree	Offense Description	Rank
828.122(3)	3rd	Fighting or baiting animals.	1
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.	2
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.	2
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.	3
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.	3
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.	3
843.19	3rd	Injure, disable, or kill police dog or horse.	3
870.01(2)	3rd	Riot; inciting or encouraging.	3
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.	4
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.	4
784.075	3rd	Battery on detention or commitment facility staff.	4
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.	4
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.	4
784.081(3)	3rd	Battery on specified official or employee.	4
784.082(3)	3rd	Battery by detained person on visitor or other detainee.	4
784.083(3)	3rd	Battery on code inspector.	4
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.	4
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.	4
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.	4
790.115(2)(c)	3rd	Possessing firearm on school property.	4
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.	4
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.	4
810.06	3rd	Burglary; possession of tools.	4
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.	4
790.01(2)	3rd	Carrying a concealed firearm.	5
790.162	2nd	Threat to throw or discharge destructive device.	5
790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.	5
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.	5
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.	5
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.	5
812.131(2)(b)	3rd	Robbery by sudden snatching.	5
843.01	3rd	Resist officer with violence to person; resist arrest with violence.	5
775.0875(1)	3rd	Taking firearm from law enforcement officer.	6

784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.	6
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.	6
784.041	3rd	Felony battery; domestic battery by strangulation.	6
784.048(3)	3rd	Aggravated stalking; credible threat.	6
784.048(5)	3rd	Aggravated stalking of person under 16.	6
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.	6
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.	6
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.	6
784.081(2)	2nd	Aggravated assault on specified official or employee.	6
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.	6
784.083(2)	2nd	Aggravated assault on code inspector.	6
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.	6
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.	6
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.	6
790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.	6
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.	6
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.	6
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.	6
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).	6
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.	6
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.	7
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).	7
782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).	7
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).	7
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.	7
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.	7
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.	7
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.	7
784.048(7)	3rd	Aggravated stalking; violation of court order.	7
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.	7
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.	7
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.	7
784.081(1)	1st	Aggravated battery on specified official or employee.	7
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.	7
784.083(1)	1st	Aggravated battery on code inspector.	7
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).	7
790.16(1)	1st	Discharge of a machine gun under specified circumstances.	7
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.	7
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.	7
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.	7
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.	7

790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.	7
806.01(2)	2nd	Maliciously damage structure by fire or explosive.	7
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.	7
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.	7
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.	7
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.	7
812.131(2)(a)	2nd	Robbery by sudden snatching.	7
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.	7
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.	8
782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).	8
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.	8
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.	8
810.02(2)(a)	1st,PBL	Burglary with assault or battery.	8
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.	8
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.	8
812.13(2)(b)	1st	Robbery with a weapon.	8
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.	8
782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.	9
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.	9
782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).	9
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.	9
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.	9
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.	9
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.	9
790.161	1st	Attempted capital destructive device offense.	9
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.	9
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.	9
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.	9
812.135(2)(b)	1st	Home-invasion robbery with weapon.	9
859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.	9
782.04(2)	1st,PBL	Unlawful killing of human; act is homicide, unpremeditated.	10
782.07(3)	1st	Aggravated manslaughter of a child.	10
787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm upon or terrorize victim.	10
812.135(2)(a)	1st,PBL	Home-invasion robbery with firearm or other deadly weapon.	10
876.32	1st	Treason against the state.	10

Traffic / Vehicular Offenses

Statute	Felony Degree	Offense Description	Rank
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.	1
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.	1
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.	1
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.	1
322.212(1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.	1
322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.	1
322.212(5)(a)	3rd	False application for driver license or identification card.	1
843.18	3rd	Fleeing by boat to elude a law enforcement officer.	1
860.08	3rd	Interfere with a railroad signal.	1
860.13(1)(a)	3rd	Operate aircraft while under the influence.	1
316.066(3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.	3
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.	3
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.	3
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.	3
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.	3
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.	3
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.	3
327.35(2)(b)	3rd	Felony BUI.	3
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.	3
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.	3
817.234(8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.	3
817.236	3rd	Filing a false motor vehicle insurance application.	3
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.	3
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.	3
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude a law enforcement officer who is in a patrol vehicle with siren and lights activated.	4
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.	5
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.	5
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.	5
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.	5
812.16(2)	3rd	Owning, operating, or conducting a chop shop.	5
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.	6
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.	6

316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.	7
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.	7
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.	7
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.	7
316.193(3)(c)3.a.	2nd	DUI manslaughter.	8
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.	8
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.	8
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.	8
782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.	8
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.	8
860.16	1st	Aircraft piracy.	8
316.193(3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.	9
327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.	9

Theft, Fraud, Property, and Financial Offenses

Statute	Felony Degree	Offense Description	Rank
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.	1
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.	1
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.	1
414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.	1
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.	1
443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.	1
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.	1
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.	1
562.27(1)	3rd	Possess still or still apparatus.	1
713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.	1
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).	1
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.	1
815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).	1
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.	1
817.569(2)	3rd	Use of public record or public records information to facilitate commission of a felony.	1
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.	1
832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.	1
832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.	1
838.15(2)	3rd	Commercial bribe receiving.	1
838.16	3rd	Commercial bribery.	1
849.01	3rd	Keeping gambling house.	1
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.	1
849.23	3rd	Gambling-related machines; "common offender" as to property rights.	1
849.25(2)	3rd	Engaging in bookmaking.	1
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.	2
806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.	2
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.	2
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.	2
812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.	2
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.	2
817.234(1)(a)2.	3rd	False statement in support of insurance claim.	2
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.	2
817.52(3)	3rd	Failure to redeliver hired vehicle.	2
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.	2
817.60(5)	3rd	Dealing in credit cards of another.	2
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.	2

817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.	2
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.	2
831.01	3rd	Forgery.	2
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.	2
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.	2
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.	2
831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.	2
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.	2
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.	2
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.	3
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.	3
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.	3
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.	3
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.	3
697.08	3rd	Equity skimming.	3
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.	3
812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.	3
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.	3
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.	3
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.	3
817.233	3rd	Burning to defraud insurer.	3
817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.	3
817.413(2)	3rd	Sale of used goods as new.	3
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.	3
860.15(3)	3rd	Overcharging for repairs and parts.	3
517.07(1)	3rd	Failure to register securities.	4
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.	4
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.	4
812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.	4
812.014(2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.	4
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.	4
817.568(2)(a)	3rd	Fraudulent use of personal identification information.	4
817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.	4
914.14(2)	3rd	Witnesses accepting bribes.	4
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.	5
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.	5
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.	5
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.	5
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.	5

812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.	5
812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.	5
812.019(1)	2nd	Stolen property; dealing in or trafficking in.	5
817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.	5
817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.	5
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	5
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
817.625(2)(b)	2nd	\$5,000 or more or use of personal identification information of 10 or more individuals. Second or subsequent fraudulent use of scanning device or reencoder.	5
812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.	6
812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.	6
812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.	6
812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.	6
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.	6
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.	6
409.92(2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.	7
409.92(2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.	7
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.	7
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.	7
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.	7
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.	7
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.	7
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.	7
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.	7
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.	7
812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.	7
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.	7
817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.	7
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.	7
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.	7
817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.	7
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.	7
817.535(2)(a)	3rd	Filing false lien or other unauthorized document.	7
825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.	7
838.015	2nd	Bribery.	7
838.016	2nd	Unlawful compensation or reward for official behavior.	7
838.22	2nd	Bid tampering.	7
843.0855(3)	3rd	Unlawful simulation of legal process.	7

896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.	7
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.	7
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.	8
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.	8
655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.	8
812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.	8
817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.	8
817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.	8
817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.	8
817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.	8
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.	8
825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.	8
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.	8
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.	8
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.	8
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.	8
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.	8
409.920(2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.	9
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.	9
560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.	9
655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.	9
775.0844	1st	Aggravated white collar crime.	9
817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.	9
817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.	9
817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.	9
817.568(7)	2nd,	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.	9
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.	
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.	

Sexual Offenses

Statute	Felony Degree	Offense Description	Rank
826.01	3rd	Bigamy	1
847.011(1)(a)	3rd	Sell, distribute, etc., obscene lewd, etc., material (2nd conviction)	1
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related	2
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 year	4
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years	4
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.	5
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.	5
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.	5
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.	5
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.	5
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.	5
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.	5
847.0137(2) & (3)	3rd	Transmission of pornography by electronic device or equipment.	5
847.0138(2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.	5
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.	6
794.05(1)	2nd	Unlawful sexual activity with specified minor.	6
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.	6
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.	6
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense	6
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult	6
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance	6
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.	6
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.	6
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.	6
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.	7
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.	7
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.	7
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.	7
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.	7
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.	7
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.	7
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.	7

800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.	7
827.04(3)	3rd	Impregnation of a child under 16 years of age by a person 21 years of age or older	7
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.	7
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.	7
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.	7
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.	7
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.	7
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.	7
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.	7
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.	7
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.	7
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.	7
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.	7
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.	7
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.	7
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.	7
787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult	8
787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside FL to inside state	8
794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.	8
794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.	8
794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.	8
794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.	8
794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.	8
800.04(4)(b)	2nd	Lewd or lascivious battery.	8
800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.	8
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult	8
787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.	9
787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.	9
787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.	9
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.	9
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.	9
794.011(4)(a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.	9
794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.	9
794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.	9
794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.	9

794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.	9
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.	9
800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.	9
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.	9
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.	9
787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm upon or terrorize victim.	10
787.01(3)(a)	Life	Kidnapping; child under age 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.	10
787.06(3)(g)	Life	Human trafficking for commercial sexual activity of a child under the age of 18 or mentally defective or incapacitated person.	10
787.06(4)(a)	Life	Selling or buying of minors into human trafficking.	10
794.011(3)	Life	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.	10

Drug Offenses

Statute	Felony Degree	Offense Description	Rank
562.27(1)	3rd	Possess still or still apparatus	1
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5), F.S., drugs.	1
893.13(2)(a)2.	3rd	Purchase of cannabis	1
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams)	1
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.	2
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia	2
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).	3
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.	3
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.	3
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.	3
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.	3
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.	3
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.	3
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.	3
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.	3
499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.	4
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.	4
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).	4
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).	5
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.	5
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.	5
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.	5
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.	5

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).	5
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.	5
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.	6
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.	6
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.	7
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.	7
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).	7
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.	7
893.135(1)(b)1.a	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.	7
893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.	7
893.135(1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.	7
893.135(1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.	7
893.135(1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.	7
893.135(1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.	7
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.	7
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.	7
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.	7
893.135(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.	7
893.135(1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.	7
893.135(1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.	7
893.135(1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.	7
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.	7
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.	8
499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.	8
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).	8
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).	8
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).	8
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.	8
893.135(1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.	8
893.135(1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.	8
893.135(1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.	8
893.135(1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.	8
893.135(1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.	8
893.135(1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.	8
893.135(1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.	8
893.135(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.	8
893.135(1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.	8
893.135(1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.	8

893.135(1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.	8
893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.	8
499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.	9
893.135	1st	Attempted capital trafficking offense.	9
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.	9
893.135(1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.	9
893.135(1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.	9
893.135(1)(c)2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.	9
893.135(1)(c)3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.	9
893.135(1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.	9
893.135(1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.	9
893.135(1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.	9
893.135(1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.	9
893.135(1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.	9
893.135(1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.	9
499.0051(10)	1st	Knowing sale or purchase of contraband prescription drugs resulting in death	10

MISCELLANEOUS OFFENSES

Environmental Offenses

Statute	Felony Degree	Offense Description	Rank
379.2431(1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.	2
379.2431(1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.	2
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.	2
590.28(1)	3rd	Intentional burning of lands.	2
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.	3
379.2431(1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.	3
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.	5
379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.	5

Health Care Offenses

Statute	Felony Degree	Offense Description	Rank
400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.	3
817.505(4)	3rd	Patient brokering.	3
499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.	4
499.0051(2)	3rd	Failure to authenticate pedigree papers.	4
499.0051(3)	2nd	Knowing forgery of pedigree papers.	6
456.065(2)	3rd	Practicing a health care profession without a license.	7
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.	7
458.327(1)	3rd	Practicing medicine without a license.	7
459.013(1)	3rd	Practicing osteopathic medicine without a license.	7
460.411(1)	3rd	Practicing chiropractic medicine without a license.	7
461.012(1)	3rd	Practicing podiatric medicine without a license.	7
462.17	3rd	Practicing naturopathy without a license.	7
463.015(1)	3rd	Practicing optometry without a license.	7
464.016(1)	3rd	Practicing nursing without a license.	7
465.015(2)	3rd	Practicing pharmacy without a license.	7
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.	7
467.201	3rd	Practicing midwifery without a license.	7
468.366	3rd	Delivering respiratory care services without a license.	7

483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.	7
483.901(9)	3rd	Practicing medical physics without a license.	7
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.	7
484.053	3rd	Dispensing hearing aids without a license.	7

Abuse / Neglect Offenses

Statute	Felony Degree	Offense Description	Rank
825.102(1)	3rd	Abuse of an elderly person or disabled adult.	6
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.	6
827.03(2)(c)	3rd	Abuse of a child.	6
827.03(2)(d)	3rd	Neglect of a child.	6
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.	7
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.	7
872.06	2nd	Abuse of a dead human body.	7
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.	8
827.03(2)(a)	1st	Aggravated child abuse.	9

Correctional Facility Offenses

944.47(1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.	3
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.	3
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).	3
843.021	3rd	Possession of a concealed handcuff key by a person in custody.	4
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.	4
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).	4
843.12	3rd	Aids or assists person to escape.	6
944.4	2nd	Escapes.	6
944.46	3rd	Harboring, concealing, aiding escaped prisoners.	6
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.	6
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.	6

Miscellaneous Offenses

Statute	Felony Degree	Offense Description	Rank
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.	1
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.	2
843.08	3rd	Falsely impersonating an officer.	2
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.	3
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.	3
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.	3
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.	3
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.	3
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.	4
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.	4
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.	4
787.07	3rd	Human smuggling.	4
837.02(1)	3rd	Perjury in official proceedings.	4
837.021(1)	3rd	Make contradictory statements in official proceedings.	4
838.022	3rd	Official misconduct.	4
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.	4
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.	4
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.	4
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.	4
918.12	3rd	Tampering with jurors.	4
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.	4
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.	5
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.	5
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.	5
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.	5
836.05	2nd	Threats; extortion.	6
836.1	2nd	Written threats to kill or do bodily injury.	6
402.319(2)	2nd	Misrepresentation & negligence or intentional act resulting in great bodily harm, permanent disfigurement, permanent disability, or death.	7
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.	7
787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.	7
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer	7
838.021(3)(a)	2nd	Unlawful harm to a public servant.	7
843.0855(2)	3rd	Impersonation of a public officer or employee.	7

843.0855(4)	3rd	Intimidation of a public officer or employee.	7
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.	7
874.1	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.	7
777.03(2)(a)	1st	Accessory after the fact, capital felony.	8
787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.	8
787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.	8
787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.	8
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.	8
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.	8
787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.	9