



Criminal Justice Subcommittee

**Thursday, March 12, 2015
9:00 AM – 11:00 AM
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: Thursday, March 12, 2015 09:00 am
End Date and Time: Thursday, March 12, 2015 11:00 am
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 571 Personal Privacy by Rodrigues, R.
HB 711 Care for Retired Law Enforcement Dogs by Kerner
HB 717 No Contact Orders by Raschein
HB 897 Controlled Substances by Ingram

Consideration of the following proposed committee substitute(s):

PCS for HB 201 -- Diabetes Awareness Training for Law Enforcement Officers

NOTICE FINALIZED on 03/10/2015 16:18 by Denson.Karan

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 571 Personal Privacy
SPONSOR(S): Rodrigues
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1530

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

SUMMARY ANALYSIS

The evolution of the Internet, the widespread use of electronic devices, and the advancement of data gathering technologies has made it exceptionally easy to gather digital data about users. The bill contains a variety of provisions relating to the privacy of digital information. Specifically, the bill:

- Prohibits government entities from selling personal identifying information for secondary commercial purposes;
- Prohibits providers of electronic communications services to the public from providing third parties with information that allows an Internet protocol address to be linked to a specific subscriber or customer without the express permission of the subscriber or customer;
- Declares that digital data is constitutionally protected from unreasonable search and seizure;
- Prohibits law enforcement, with exceptions, from using a wall-penetrating radar device without a warrant;
- Specifies that information contained in a portable electronic device (PED) is not subject to a search by a government entity, including a search incident to arrest, except pursuant to a valid warrant or pursuant to a lawful exception to the search warrant requirement;
- Makes it a first degree misdemeanor for a government entity to enter into a nondisclosure agreement with a vendor who sells equipment to monitor electronic devices;
- Imposes a multitude of reporting requirements on the courts, state attorneys, and the Florida Department of Law Enforcement (FDLE) relating to cases in which a PED search warrant was applied for;
- Prohibits a government entity, with exceptions, from using an automatic license plate reader to gather evidence or other information;
- Specifies that all license plate surveillance programs administered in this state by either a government agency or by a contractor acting on behalf of a government agency are subject to public records laws;
- Prohibits data collected on students from being provided to the federal government or to commercial companies without the written consent of the student (or parent if the student is under 18);
- Requires all contracts between school districts and companies that process or receive student data to explicitly prohibit such companies from selling, distributing, or accessing any student data, except as instructed by the school district in order to comply with local, state, or federal reporting requirements;
- Requires all personally identifiable student data, with few exceptions, to be deleted or destroyed upon the student's graduation, withdrawal, or expulsion, except as otherwise required by law;
- Authorizes a variety of civil actions for violations of the above-described prohibitions; and
- Prohibits the Department of Highway Safety and Motor Vehicles from:
 - Incorporating a radio frequency identification device upon or within any driver license; and
 - Obtaining fingerprints or biometric DNA material for purposes of issuing, etc., a driver license.

The bill may have a negative fiscal impact on both state and federal government entities. See fiscal section.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Personal Identifying Information

Florida law contains a multitude of provisions exempting personal identifying information held by governmental entities from public records requirements.¹ In most instances, such information is deemed confidential and exempt.² As a result, government entities are prohibited from selling such information for secondary commercial purposes.

Effect of the Bill

The bill creates an unnumbered section of statute prohibiting government entities from selling personal identifying information for secondary commercial purposes. The bill defines “secondary commercial purposes” to include the use of personal information data acquired from a government entity, by a private entity, and not expressly authorized by law.

Internet Privacy

The widespread use of the Internet has made it much easier to gather data about users.³ For example, websites such as Facebook and Twitter accumulate substantial amounts of information, such as the age, friends, and interests of people who sign up for accounts and spend time on their sites.⁴ Some of it is collected without users being aware of it.

The advertising industry obtains its data in two main ways. “First-party” data are collected by firms with which the user has a direct relationship.⁵ Advertisers and publishers can compile them by requiring users to register online. This enables the companies to recognize consumers across multiple devices and see what they read and buy on their site.⁶

“Third-party” data are gathered by thousands of specialist firms across the web. To gather information about users and help serve appropriate ads, sites often host a multitude of third parties that observe who comes to the site and build up digital dossiers about them.⁷ BlueKai, for example, compiles around one billion profiles of potential customers around the world.⁸

To identify users as they move from site to site, third parties use technologies such as cookies, web beacons, e-tags and a variety of other tools.⁹ Cookies, widely used on desktop computers, are small pieces of code that are dropped on a user’s browser. According to TRUSTe, the 100 most widely used websites are monitored by more than 1,300 firms.¹⁰ Some of these firms share data with other outsiders, an arrangement known as “piggybacking.”

¹ See, e.g., ss. 119.071(4) and (5), 119.0712(1), and 121.4501(19), F.S.

² There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

³ *Getting to know you*, The Economist, September 14, 2013, <http://www.economist.com/news/special-report/21615871-everything-people-do-online-avidly-followed-advertisers-and-third-party> (last visited on March 10, 2015).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

All this allows firms to glean what sites users have visited, what they have shopped for, what postcode they live in, and so on. From this the firms can infer other personal details, such as a person's income, the size of their home, and whether it is rented or owned.¹¹

The system of data-gathering raises several consumer privacy questions. Other concerns relate to the security of the information and how to prevent data leakage.¹²

Effect of the Bill

The bill prohibits providers of electronic communications services to the public from providing third parties with information that allows an Internet protocol address to be linked to a specific subscriber or customer without the express permission of the subscriber or customer. The bill requires the request for permission:

- To be clear and conspicuous; and
- To require the subscriber or customer to take an affirmative action to acknowledge such permission.

The bill specifies that these provisions do not prohibit a provider of electronic communications services from complying with a lawful subpoena or warrant.

The bill authorizes a person to institute a civil action to seek injunctive relief to enforce compliance with the above-described provisions, or to recover damages and penalties from a provider that violates such provisions. A person is entitled to recover a \$10,000 penalty for each violation. Additionally, civil actions must commence within 2 years after the date that the information is disclosed.

The bill also provides that the Legislature declares that digital data is property that is constitutionally protected from unreasonable search and seizure.

Search and Seizure

Generally

The Fourth Amendment to the United States Constitution (Fourth Amendment) protects individuals from unreasonable search and seizure.¹³ 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.¹⁴

A "search" generally occurs when a state actor infringes on an expectation of privacy that society considers to be reasonable.¹⁵ In most instances, the Fourth Amendment requires that a warrant be issued before a search can be conducted.¹⁶

Article I, Section 12 of the Florida Constitution provides protection against unreasonable search and seizure in a manner similar to the United States Constitution. However, Section 12 provides additional protection for private communications as follows:

¹¹ *Id.*

¹² *Id.*

¹³ *Arizona v. Hicks*, 480 U.S. 321 (1987); *U.S. v. Jacobsen*, 466 U.S. 109 (1983).

¹⁴ U.S. CONST. amend. IV.

¹⁵ *U.S. 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).

¹⁶ See e.g., *Minnesota v. Dickerson*, 508 U.S. 366 (1993); *Arizona v. Hicks*, 480 U.S. 321 (1987); and *Ornelas v. U.S.*, 517 U.S. 690 (1996).

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.¹⁷

Section 12 goes on to require that “[a]rticles 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 Constitution.” Florida courts consistently hold that Section 12 of the Florida Constitution binds courts to render decisions in accordance with United States Supreme Court precedent on the Fourth Amendment.¹⁸

Exceptions to the Warrant Requirement

As noted above, the Fourth Amendment usually requires that a warrant be issued before a search can be conducted. However, a number of exceptions to the warrant requirement exist.¹⁹ These exceptions are usually hallmarked by circumstances which make a warrant impractical, impossible, or unreasonable to obtain prior to conducting a search or seizure.

A common exception to the warrant requirement is the exigent circumstances exception, which allows a warrantless search under circumstances where the safety or property of officers or the public is threatened.²⁰ “An entry may be justified by hot pursuit of a fleeing felon, the imminent destruction of evidence, the need to prevent a suspect’s escape, or the risk of danger to the police or others.”²¹

The “search incident to arrest” is an exception to the warrant requirement that arises out of the same safety-oriented logic that forms the basis for the exigent circumstances exception.²² The United States Supreme Court has long recognized the exception to the warrant requirement for searches incident to arrest.²³ However, the Court has broadened this exception over time from the narrowly-tailored exception described in *Trupiano v. United States*,²⁴ to the broader exception described in *Chimel v. California*.²⁵ The Court in *Chimel* held that regardless of whether any additional exigency exists, “[w]hen an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons... [and] to search for and seize any evidence.”²⁶ The Court continued to say a search incident to arrest may include searching the arrestee’s person as well as any nearby area where the arrestee could have grabbed a weapon or evidence.²⁷

Wall-Penetrating Radar

In recent years, researchers have developed new radar technologies that can “see” through walls and other objects.²⁸ Wall penetrating radar devices have been used mainly for military purposes (e.g., to provide a situational understanding of enemies inside a building while the army is operating a counter-terrorism action plan).²⁹ However, recent news reports suggest that at least 50 law enforcement

¹⁷ FLA. CONST. art. I, § 12.

¹⁸ *State v. Lavazzoli*, 434 So.2d 321 (Fla.1983); *Smallwood v. State*, 61 So.3d 448 (Fla. 2011).

¹⁹ *Donovan v. Dewey*, 452 U.S. 594 (1981).

²⁰ *Minnesota v. Olson*, 495 U.S. 91 (1990).

²¹ *Id.* at 91.

²² *Arizona v. Gant*, 556 U.S. 332 (2009).

²³ *Trupiano v. United States*, 334 U.S. 699 (1948).

²⁴ The Court described the exception as “a strictly limited right” of law enforcement officers, and further explained that the exception does not exist simply on the basis that an arrest has been affected. *Trupiano*, 344 U.S. at 708.

²⁵ *Chimel v. California*, 395 U.S. 752, 763 (1969).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Seeing through walls: New radar technology provides real-time video of what’s going on behind solid walls*, October 18, 2011, <http://www.sciencedaily.com/releases/2011/10/111018102703.htm> (last visited March 5, 2015).

²⁹ *Super-resolution imaging with wall penetrating radar*, July 8, 2014, http://www.dgist.ac.kr/site/dgist_eng/menu/508.do?siteId=dgist_eng&snapshotId=3&pageId=429&cmd=read&contentNo=27398 (last visited March 5, 2015).

agencies in the United States, including the FBI and the U.S. Marshals Office, have equipped their officers with such devices.³⁰

The device these agencies are using looks like a stud-finder. Its display shows whether it has detected movement on the other side of a wall and, if so, how far away it is — it does not show a picture of what's happening inside.³¹ Other radar devices have far more advanced capabilities, including three-dimensional displays of where people are located inside a building, according to marketing materials from their manufacturers. One is capable of being mounted on a drone.³²

Officials say the information gleaned from using wall-penetrating radar devices is critical for keeping law enforcement officers safe if they need to storm buildings or rescue hostages. But privacy advocates have expressed concern about the circumstances in which law enforcement agencies may be using the radars.³³

To date, courts have not specifically ruled whether the use of wall-penetrating radar constitutes a search for Fourth Amendment purposes. However, in *Kyllo v. U.S.*,³⁴ the United States Supreme Court reviewed a case in which a thermal imaging device was used to determine whether the defendant was in his home. The Court held that when the government uses a device that is not in general public use, to explore details of a private home that would previously have been unknowable without physical intrusion, the surveillance is a Fourth Amendment search and is presumptively unreasonable without a warrant.³⁵

Effect of the Bill

The bill creates s. 901.40, F.S., which prohibits law enforcement officers and agencies from using a wall-penetrating radar device. The bill creates exceptions to this prohibition by specifying that such devices may be used:

- To execute a lawful arrest warrant issued pursuant to s. 901.02, F.S.;
- To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk;
- If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a wall- penetrating radar device; or
- If the law enforcement agency has a reasonable belief that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property; to forestall the imminent escape of a suspect or the destruction of evidence; or to achieve purposes, including, but not limited to, facilitating the search for a missing person.

The bill specifies that evidence obtained in violation of the prohibition is not admissible in a criminal, civil, administrative, or other proceeding except as proof of a violation.

³⁰ *New police radars can 'see' inside homes*, Brad Heath, USA Today, January 20, 2015, <http://www.usatoday.com/story/news/2015/01/19/police-radar-see-through-walls/22007615/> (last visited March 5, 2015).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ 553 U.S. 27 (2001).

³⁵ *Id.*

Portable Electronic Devices

Search and Seizure

In 2013, the Florida Supreme Court reviewed a case in which a law enforcement officer searched an arrestee's cell phone after placing the arrestee in the officer's patrol car.³⁶ After extensively reviewing relevant state and federal case law, the Court held that the search incident to arrest exception to the search warrant requirement does not allow a police officer to search an arrestee's cell phone.³⁷ The Court reasoned that because there was no possibility that the suspect could use the device as a weapon or destroy evidence that existed on the phone, the rationales for the exception did not apply.³⁸

Florida Security of Communications

Currently, ch. 934, F.S., governs the security of electronic and telephonic communications. The law covers a number of different investigative and monitoring procedures, including wiretapping, obtaining service provider records, and mobile tracking devices, among others.

Law enforcement officers are currently authorized to acquire service providers' records for portable electronic devices on the provider's network after securing a court order issued under s. 934.23(5), F.S.³⁹ In order to obtain this court order, the law enforcement officer is required to offer "specific and articulable facts showing that there are reasonable grounds to believe the contents of a wire or electronic communication or the records of other information sought are relevant and material to an ongoing criminal investigation."⁴⁰ The showing of "specific and articulable facts" required in s. 934.23(5), F.S., is a lower standard than the probable cause standard⁴¹ required for obtaining a lawful warrant.

Effect of the Bill

Search and Seizure

The bill defines the term "portable electronic device" (PED) as any portable device that is capable of creating, receiving, accessing, or storing electronic data or communications, including, but not limited to, cellular telephones.

The bill specifies that information⁴² contained in a PED is not subject to a search by a government entity,⁴³ including a search incident to arrest, except pursuant to a valid warrant or pursuant to a lawful exception to the search warrant requirement. Evidence obtained in violation of this provision is not admissible in a criminal, civil, administrative, or other proceeding except as proof of a violation.

Nondisclosure Agreements

The bill prohibits a government entity from entering into a nondisclosure agreement with a vendor who sells equipment to monitor electronic devices. All existing nondisclosure agreements are declared void as being against the public policy of the state. The bill also specifies that records otherwise protected by such agreements are declared subject to the public records laws, and requires an agency to disclose such agreements or related records upon request.

³⁶ *Smallwood v. State*, 113 So. 3d 724 (Fla. 2013).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Mitchell v. State*, 25 So.3d 632 (Fla. 4th DCA 2009).

⁴⁰ Section 934.23(5), F.S.

⁴¹ *Tracey v. State*, 69 So.3d 992, 998 (Fla. 4th DCA 2011).

⁴² The bill defines "information" to include any information concerning the substance or meaning or purported substance or meaning of a communication, including, but not limited to, the name and address of the sender and receiver and the time, date, location, and duration of the communication.

⁴³ The bill defines "government entity" as a federal, state, or local government agency, including, but not limited to, a law enforcement agency or any other investigative entity, agency, department, division, bureau, board, or commission or an individual acting or purporting to act for, or on behalf of, a federal, state, or local government agency. The term does not include a federal agency to the extent that federal law preempts this section.

The bill makes it a first degree misdemeanor for a government entity to purposely violate the above-described provision. Additionally, the bill specifies that a person injured by a government entity as a result of a violation of the above-described provisions may file civil suit against the government entity.

Reporting Requirements

The bill requires communication common carriers and electronic communications services doing business in this state to annually⁴⁴ report the following information for the preceding calendar year to the Florida Department of Law Enforcement (FDLE):⁴⁵

- The number of requests made for pen register or trap and trace information;
- The number of requests made for electronic serial number reader information;
- The number of requests made for location information;
- The number of individuals whose location information was disclosed; and
- The amount that each law enforcement agency was billed by the communication common carrier or electronic communications service for such requests.

The bill also imposes a multitude of reporting requirements on the courts and state attorneys relating to the application for PED search warrants. Specifically, the bill requires the court to submit the following information to FDLE:

- The receipt of an application for a warrant;
- The type of warrant for which the application was made;
- Whether any application for an order of extension was granted, granted as modified by the court, or denied;
- The period of monitoring authorized by the warrant and the number and duration of any extensions of the warrant;
- The offense under investigation, as specified in the application for the warrant or an extension of the warrant; and
- The name of the law enforcement agency or prosecutor that submitted an application for the warrant or an extension of the warrant.

This information must be reported:

- By the 30th day after expiration of a PED search warrant or an order extending the period of a PED search warrant; or
- By the 30th day after the court denies an application for a PED search warrant.

The bill requires each prosecutor that submits an application for a PED search warrant or an extension of a PED search warrant to submit the following information for the preceding calendar year to FDLE:

- The information required to be submitted by a court (described above) with respect to each application submitted by the prosecutor for the warrant or an extension of the warrant;
- A general description of information collected under each warrant that was issued by the court, including the approximate number of individuals for whom location information was intercepted and the approximate duration of the monitoring of the location information of those individuals;
- The number of arrests made as a result of information obtained under a PED search warrant;
- The number of criminal trials commenced as a result of information obtained under a PED search warrant; and
- The number of convictions obtained as a result of information obtained under a PED search warrant.⁴⁶

The bill specifies that all of the above-described reports that are submitted to FDLE are subject to disclosure under the public records laws and are not confidential or exempt.

⁴⁴ By January 15th of each year.

⁴⁵ Disaggregated by each law enforcement agency in this state making the applicable requests.

⁴⁶ This information must be submitted by January 15 of each year.

By March 1 of each year, FDLE must submit a report to the Governor and the Legislature that contains the following information for the preceding calendar year:

- An assessment of the extent of tracking or monitoring by law enforcement agencies of pen registers, trap and trace devices, electronic serial number readers, and location information;
- A comparison of the ratio of the number of applications for PED warrants to the number of arrests and convictions resulting from information obtained under a PED warrant;
- Identification of the types of offenses investigated under a PED warrant; and
- With respect to both state and local jurisdictions, an estimate of the total cost of conducting investigations under a PED warrant.

License Plate Readers

Generally

Financed largely by federal and state grants, law-enforcement agencies across the country have been adopting a new technology to combat auto theft and other crimes - automated license plate readers (LPRs).⁴⁷ Launched in the United Kingdom in the 1990s as part of a comprehensive network of counterterrorism surveillance assets, LPR technology migrated to the United States, where it has been used extensively by local, state, and federal law enforcement agencies.⁴⁸

LPR systems may consist of fixed, portable, and mobile cameras and typically pair infrared and visible-light cameras to scan surrounding area for license plates.⁴⁹ The infrared camera, with optical character recognition software, can identify license plates and “read” plate characters. Generally, the vehicle and plate are both photographed.⁵⁰ License plate information is then compared to a database of plates connected with criminal activity to determine if the scanned license plate is of interest to law enforcement.⁵¹ If a match is detected, the system alerts the officer and, in some cases, displays a photo so an operator quickly can identify the suspect vehicle.⁵²

LPR systems, while primarily used to detect stolen vehicles and plates, are increasingly being used for a variety of investigations.⁵³ Authorities can mine databases to determine what vehicles are in the vicinity of a crime scene, to provide photos of those vehicles to confirm suspect alibis, and to analyze crime patterns.⁵⁴

Florida Legislation

In 2014, legislation was passed⁵⁵ that made the following information held by an agency confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Images and data containing or providing personal identifying information obtained through the use of an automated license plate recognition system; and
- Personal identifying information of an individual in data generated or resulting from images obtained through the use of an automated license plate recognition system.

Now codified in s. 316.0777, F.S., the legislation allowed such information to be disclosed as follows:

⁴⁷ *License Plate Readers for Law Enforcement: Opportunities and Obstacles*, Keith Gierlack, Shara Williams, Tom LaTourrette, James M. Anderson, Lauren A. Mayer, Johanna Zmud, http://www.rand.org/pubs/research_reports/RR467.html (last visited on March 10, 2015).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* (citing *License Plate Recognition Technology (LPR): Impact Evaluation and Community Assessment*, Cynthia Lum, Linda Merola, Julie Willis, and Breanne Cave, Center for Evidence-Based Crime Policy, George Mason University, Fairfax, VA, 2010; *Automated License Plate Recognition (ALPR) Use by Law Enforcement: Policy and Operational Guide*, David J. Roberts and Meghann Casanova, International Association of Chiefs of Police, Washington, DC, 2010).

⁵⁴ *Id.* (citing *Cops Move to Protect License Plate Data*, Eric Roper, Minneapolis Star Tribune, November 4, 2012).

⁵⁵ Ch. 2014-170, Laws of Florida.

- Any such information may be disclosed by or to a criminal justice agency in the performance of the criminal justice agency's official duties.
- Any such information relating to a license plate registered to an individual may be disclosed to the individual, unless such information constitutes active criminal intelligence information or active criminal investigative information.

That same year, legislation was also passed⁵⁶ that required the Department of State, in consultation with the FDLE, to establish a retention schedule for records containing images and data generated through the use of an automated license plate recognition system. The retention schedule must establish a maximum period that the records may be retained.

Currently, Florida law does not prohibit a government entity from using a LPR.

Effect of the Bill

The bill prohibits a government entity or agency, including a law enforcement entity or agency, from using a LPR to gather evidence or other information. The bill provides the following exceptions to this prohibition:

- For toll collection enforcement.
- To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk.
- If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a license plate reader.
- If the law enforcement agency possesses reasonable belief that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes, including, but not limited to, facilitating the search for a missing person.

The bill specifies that all license plate surveillance programs administered in this state by either a government agency or by a contractor acting on behalf of a government agency are subject to public records laws. All existing government-maintained LPR surveillance databases must purge all records not obtained by warrant.

The bill requires government agencies that operate a LPR to:

- Upon request, disclose whether a database has been created with the data collected; and
- Delete all data collected by the license plate reader no sooner than 14 days and no later than 30 days after collection, unless the data has been flagged by law enforcement as containing evidence of a crime or being relevant to an ongoing criminal investigation.

The bill prohibits a government agency from requesting or receiving from a private party data from a LPR that is collected and retained in a manner inconsistent with the above-described provisions.

The bill specifies that evidence obtained or collected in violation of the above-described provisions is not admissible in a criminal prosecution. The bill also authorizes an aggrieved party to initiate a civil action against a government agency to obtain appropriate relief or to prevent or remedy a violation.

Student Data

Florida law contains a variety of provisions relating to the privacy of student data. For example, s. 1002.22, F.S., requires the rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies to be protected in accordance with the Family Educational Rights and Privacy Act (FERPA)⁵⁷ and the implementing regulations issued pursuant thereto. In order for public educational institutions and agencies to remain

⁵⁶ Ch. 2014-216, Laws of Florida.

⁵⁷ 20 U.S.C. § 1232g.

eligible to receive federal funds and participate in federal programs, the State Board of Education must comply with the FERPA after the board has evaluated and determined that the FERPA is consistent with the following principles:

- Students and their parents shall have the right to access their education records, including the right to inspect and review those records.
- Students and their parents shall have the right to waive their access to their education records in certain circumstances.
- Students and their parents shall have the right to challenge the content of education records in order to ensure that the records are not inaccurate, misleading, or otherwise a violation of privacy or other rights.
- Students and their parents shall have the right of privacy with respect to such records and reports.
- Students and their parents shall receive annual notice of their rights with respect to education records.⁵⁸

The statute specifies that if any official or employee of an institution refuses to comply, the aggrieved parent or student has an immediate right to bring an action in circuit court to enforce his or her rights by injunction.⁵⁹

Similarly, s. 1002.221, F.S., specifies that education records, as defined in FERPA, are confidential and exempt from public record. The statute prohibits an agency or institution⁶⁰ from releasing a student's education records without the written consent of the student or parent to any individual, agency, or organization, except in accordance with and as permitted by the FERPA.⁶¹

Section 1002.221, F.S., also allows an agency or institution, in accordance with FERPA, to release a student's education records without written consent of the student or parent to parties to an interagency agreement among the Department of Juvenile Justice, the school, law enforcement authorities, and other signatory agencies.⁶² The statute specifies that information provided in furtherance of an interagency agreement is intended solely for use in determining the appropriate programs and services for each juvenile or the juvenile's family, or for coordinating the delivery of the programs and services, and as such is inadmissible in any court proceeding before a dispositional hearing unless written consent is provided by a parent or other responsible adult on behalf of the juvenile.⁶³

In addition, s. 1002.222, F.S., prohibits an agency or institution from:

- Collecting, obtaining, or retaining information on the political affiliation, voting history, religious affiliation, or biometric information⁶⁴ of a student or a parent or sibling of the student.
- Sharing education records made confidential and exempt by s. 1002.221, F.S., or federal law to:
 - A person, except when authorized by s. 1002.221, F.S., or in response to a lawfully issued subpoena or court order;

⁵⁸ Section 1002.22, F.S.

⁵⁹ *Id.* Any aggrieved parent or student who receives injunctive relief may be awarded attorney fees and court costs

⁶⁰ Section 1002.22, F.S., defines "agency" as any board, agency, or other entity that provides administrative control or direction of or performs services for public elementary or secondary schools, centers, or other institutions as defined in this chapter. "Institution" is defined as any public school, center, institution, or other entity that is part of Florida's education system under s. 1000.04(1), (3), and (4).

⁶¹ Section 1002.221, F.S.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ "Biometric information" means information collected from the electronic measurement or evaluation of any physical or behavioral characteristics that are attributable to a single person, including fingerprint characteristics, hand characteristics, eye characteristics, vocal characteristics, and any other physical characteristics used for the purpose of electronically identifying that person with a high degree of certainty. Examples of biometric information include, but are not limited to, a fingerprint or hand scan, a retina or iris scan, a voice print, or a facial geometry scan. Notwithstanding the provisions of this paragraph, a school district that used a palm scanner system for identifying students for breakfast and lunch programs on March 1, 2014, may continue to use the palm scanner system through the 2014-2015 school year. s. 1002.222, F.S.

- A public body, body politic, or political subdivision except when authorized by s. 1002.221, F.S., or in response to a lawfully issued subpoena or court order; or
- An agency of the federal government except when authorized by s. 1002.221, F.S., required by federal law, or in response to a lawfully issued subpoena or court order.

According to the State University System Board of Governors (BOG), each university has regulations and policies related to student data privacy.⁶⁵ The BOG also notes that most identifying student information is protected under federal law (FERPA) and state law (ss. 1002.222 and 1002.225, F.S.).⁶⁶ According to the BOG, FERPA prohibits schools from disclosing student education records or non-directory information (e.g., student identification numbers, financial records, etc.) without consent.⁶⁷

Effect of the Bill

The bill creates a new section of statute, s. 1002.227, F.S., that prohibits data collected on a student who is 18 years of age or older from being provided to the federal government or to commercial companies without the written consent of the adult student. Similarly, the bill prohibits data collected on a student who is younger than 18 years of age from being provided to the federal government or to commercial companies without the written consent of the parent or the guardian of the student.

The bill requires all contracts between school districts and companies that process or receive student data (company) to explicitly prohibit such companies from selling, distributing, or accessing any student data, except as instructed by the school district in order to comply with local, state, or federal reporting requirements.

The bill specifies that any data collected from students through online learning is the property of the school district, not the company.

The bill prohibits technical companies that contract with public schools from mining student data for commercial purposes.

The bill also provides that except as otherwise required by law, or where such information is the subject of an ongoing disciplinary, administrative, or judicial action or proceeding, upon a student's graduation, withdrawal, or expulsion from an educational institution, all personally identifiable student data related to that student:

- Stored in a student information system must be deleted.
- In the possession or under the control of a school employee or third party must be deleted or destroyed.

The bill specifies that a violation of the above-described provisions shall result in a civil fine of up to \$10,000 against the elected school board members under whose jurisdiction the violation occurred. Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to knowingly and willfully violated these above-described provisions.

Driver Licenses - RFID Technology

RFID Technology

Radio Frequency Identification (RFID) technology uses radio waves to identify people or objects. RFID devices read information contained in a wireless device or "tag" from a distance without making any physical contact or requiring a line of sight.⁶⁸ RFID technology has been commercially available in

⁶⁵ State University System Board of Governors 2015 Legislative Bill Analysis of HB 571, March 3, 2015 (on file with the Criminal Justice Subcommittee).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Radio Frequency Identification (RFID): What is it?*, U.S. Department of Homeland Security, August 9, 2012, <http://www.dhs.gov/radio-frequency-identification-rfid-what-it> (last visited on March 11, 2015).

some form since the 1970s.⁶⁹ It is now part of our daily lives, and can be found in car keys, employee identification, medical history/billing, highway toll tags and security access cards.⁷⁰

The United States government uses two types of RFID technology for border management:

- Vicinity RFID-enabled documents can be securely and accurately read by authorized readers from up to 20 to 30 feet away.
- Proximity RFID-enabled documents must be scanned in close proximity to an authorized reader and can only be read from a few inches away.⁷¹

According to the U.S. Department of Homeland Security (USDHS), no personal information is stored on RFID cards – only a number, which points to the information housed in secure databases.⁷²

Driver Licenses

In recent years, the USDHS has been working with states to enhance their driver licenses and identification documents to comply with travel rules under the Western Hemisphere Travel Initiative.⁷³ State-issued enhanced drivers licenses (EDLs) provide proof of identity and U.S. citizenship, are issued in a secure process, and include technology that makes travel easier.⁷⁴

The USDHS reports that the top 39 land ports of entry, which process more than 95 percent of land border crossings, are equipped with RFID technology that helps facilitate travel by individual presenting EDLs or one of the other RFID-enabled documents.⁷⁵ As such enhanced drivers licenses make it easier for U.S. citizens to cross the border into the United States because they include:

- A vicinity Radio Frequency Identification (RFID) chip that will signal a secure system to pull up your biographic and biometric data for the border patrol officer as you approach the border inspection booth; and
- A Machine Readable Zone (MRZ) or barcode that the border patrol officer can read electronically if RFID isn't available.⁷⁶

Florida Legislation

In recent years, legislation has been filed in Florida that prohibited the Florida Department of Highway Safety and Motor Vehicles (DHSMV) from incorporating RFID technology into driver licenses and identification cards.⁷⁷ None of this legislation has become law.

Effect of the Bill

The bill prohibits the Department of Highway Safety and Motor Vehicles (DHSMV) from:

- Incorporating any radio frequency identification device, or "RFID," or any similar electronic tracking device upon or within any driver license or identification card; and
- Obtaining fingerprints or biometric DNA material from a United States citizen for purposes of any issuance, renewal, reinstatement, or modification of a driver license or identification card.

B. SECTION DIRECTORY:

Section 1. Cites the act as the "Florida Privacy Protection Act."

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Enhanced Drivers Licenses: What Are They?* U.S. Department of Homeland Security, November 6, 2014, <http://www.dhs.gov/enhanced-drivers-licenses-what-are-they> (last visited on March 11, 2015).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *See, e.g.*, SB1346 (2014), HB 109 (2012), SB 220 (2012), and CS/CS/SB 1150 (2011).

Section 2. Provides a legislative declaration that digital data is property that is constitutionally protected from unreasonable search and seizure.

Section 3. Prohibits government entities from selling personal identifying information for secondary commercial purposes.

Section 4. Creates s. 901.40, F.S., relating to prohibition against use of wall-penetrating radar device.

Section 5. Creates s. 922.235, F.S., relating to Internet protocol address privacy.

Section 6. Creates s. 934.70, F.S., relating to portable electronic device privacy.

Section 7. Creates s. 934.80, F.S., relating to license plate readers.

Section 8. Creates s. 1002.227, F.S., relating to contract requirements relating to student data.

Section 9. Prohibits the Department of Highway Safety and Motor Vehicles from incorporating any radio frequency identification device upon or within a driver license or identification card and from obtaining fingerprints or biometric DNA material from a US citizen for purposes of issuing, renewing, reinstating, or modifying a driver license or identification card.

Section 10. Provides a severability clause.

Section 11. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill prohibits government entities from selling personal identifying information for secondary commercial purposes. As noted above, Florida law contains a multitude of provisions making personal identifying information held by governmental entities confidential and exempt. As such, it is doubtful that government entities are selling such information for secondary commercial purposes. However, to the extent this occurs, government entities would no longer be able to do so, and would see a negative fiscal impact.

2. Expenditures:

The bill imposes a multitude of reporting requirements on the courts, state attorneys, and the Florida Department of Law Enforcement (FDLE) relating to cases in which a PED search warrant was applied for. These requirements may have a negative fiscal impact on these entities.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill makes it a first degree misdemeanor for a government entity to enter into a nondisclosure agreement with a vendor who sells equipment to monitor electronic devices. This could have a negative fiscal impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits providers of electronic communications services to the public from providing third parties with information that allows an Internet protocol address to be linked to a specific subscriber or customer without the express permission of the subscriber or customer. The bill authorizes a civil action against providers who violate this prohibition. These provisions could have a substantial negative fiscal impact on providers.

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.

Additionally, portions of the bill appear to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because they are a criminal law.

2. Other:

Wall-Penetrating Radar

To date, courts have not specifically ruled whether the use of wall-penetrating radar constitutes a search for Fourth Amendment purposes. However, in *Kyllo v. U.S.*,⁷⁸ the United States Supreme Court reviewed a case in which a thermal imaging device was used to determine whether the defendant was in his home. The Court held that when the government uses a device that is not in general public use, to explore details of a private home that would previously have been unknowable without physical intrusion, the surveillance is a Fourth Amendment search and is presumptively unreasonable without a warrant.⁷⁹

The bill creates s. 901.40, F.S., which prohibits law enforcement officers and agencies from using a wall-penetrating radar device. The bill creates exceptions to this prohibition by specifying that such devices may be used:

- To execute a lawful arrest warrant issued pursuant to s. 901.02, F.S.;
- To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk;
- If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a wall- penetrating radar device; or
- If the law enforcement agency has a reasonable belief that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property; to forestall the imminent escape of a suspect or the destruction of evidence; or to achieve purposes, including, but not limited to, facilitating the search for a missing person.

Three of the above-described exceptions do not require a law enforcement officer to get a warrant before using a wall-penetrating radar device. While there are instances in which a search may be conducted without a warrant (e.g., search incident to a lawful arrest, exigent circumstances), it could

⁷⁸ 553 U.S. 27 (2001).

⁷⁹ *Id.*

be argued that the bill authorizes a law enforcement officer to use a wall-penetrating radar device in violation of the Fourth Amendment.

Single Subject

Article III, section 6 of the Florida Constitution provides that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” This constitutional provision is commonly referred to as the single subject rule. The purpose of the single subject rule is to prevent “logrolling” where a single enactment becomes a cloak for dissimilar legislation having no necessary or appropriate connection with the subject matter.⁸⁰ The act may be as broad as the legislature chooses provided the matters included in the act have a natural or logical connection.⁸¹

In *State v. Thompson*,⁸² the Florida Supreme Court held that a bill violated the single subject rule because it involved criminal penalties relating to career offenders and also created a civil cause of action for damages relating to violations of injunctions for protection against domestic violence.

The bill creates a criminal penalty applicable to governmental entities that purposefully enter into nondisclosure agreements with a vendor who sells equipment to monitor electronic devices. The bill also creates civil causes of action:

- Against providers of electronic communications services to the public who provide third parties with information that allows an Internet protocol address to be linked to a specific subscriber or customer without the express permission of the subscriber or customer;
- Against a governmental entity that improperly searches a PED;
- Against a governmental entity entities that purposefully enter into nondisclosure agreements with a vendor who sells equipment to monitor electronic devices; and
- Against a government agency that violates the bill’s provisions relating to LPRs.

It could be argued that these provisions violate the single subject rule.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Wall-Penetrating Radar

The bill prohibitions relating to wall-penetrating radar appear to better suited for ch. 903, F.S. (entitled “Search and Inspection Warrants), rather than ch. 901, F.S. (entitled “Arrests”).

Portable Electronic Devices

The bill imposes a variety to reporting requirements relating to PED warrants on the courts (e.g., whether the warrant was granted, the offense under investigation, and the name of the law enforcement agency or prosecutor submitting the warrant). No such reporting requirements exist for search warrants for any other type of object.

The bill also imposes a variety to reporting requirements relating to PED warrants on state attorneys (e.g., a general description of information collected under each warrant, he number of arrests made as a result of information obtained under a warrant, the number of criminal trials commenced as a result of information obtained under warrant; and the number of convictions obtained as a result of information obtained under warrant). No such reporting requirements exist for search warrants for any other type of object. Additionally, it is likely not possible to accurately report whether a trial commenced or a convicted was obtained solely because of the issuance of a PED warrant.

⁸⁰ *State v. Lee*, 356 So. 2d 276 (Fla.1978).

⁸¹ *Chenoweth v. Kemp*, 396 So. 2d 1122 (Fla.1981).

⁸² 750 So. 2d 643, 647 (Fla. 1999).

The bill also requires FDLE to submit a report to the Governor and the Legislature that contains the following information for the preceding calendar year:

- An assessment of the extent of tracking or monitoring by law enforcement agencies of pen registers, trap and trace devices, electronic serial number readers, and location information;
- A comparison of the ratio of the number of applications for PED warrants to the number of arrests and convictions resulting from information obtained under a PED warrant;
- Identification of the types of offenses investigated under a PED warrant; and
- With respect to both state and local jurisdictions, an estimate of the total cost of conducting investigations under a PED warrant.

It is likely not possible to determine whether an arrest or conviction resulted from the issuance of a PED warrant. Nor is it likely feasible for FDLE to estimate the total cost of conducting investigations under a PED warrant.

Internet Privacy

The bill prohibits providers of electronic communications services to the public from providing third parties with information that allows an Internet protocol address to be linked to a specific subscriber or customer without the express permission of the subscriber or customer. It is unknown how often providers of electronic communications services currently engage in this behavior. It is also unknown the reasons providers share such information. However, to the extent providers are sharing such information for legitimate and appropriate reasons, they will no longer be able to do so.

It should also be noted that the bill creates this prohibition in ch. 922, F.S., which relates to the execution of inmates. This placement does not seem appropriate.

License Plate Readers

The bill specifies that all license plate surveillance programs administered in this state by either a government agency or by a contractor acting on behalf of a government agency are subject to public records laws. This contradicts legislation passed last year that made specified LPR information held by an agency confidential and exempt.

Student Data

The bill prohibits data collected on students from being provided to the federal government or to commercial companies without the written consent of the student (or their parent if the student is under 18). The BOG reports that if universities are required to obtain written consent of the student or the student's parent or guardian prior to releasing information to the federal government or commercial companies, this will impede the university and the company acting on its behalf from complying with exceptions to FERPA and Florida Public Records laws.⁸³

The bill requires all contracts between school districts and companies that process or receive student data (company) to explicitly prohibit such companies from selling, distributing, or accessing any student data, except as instructed by the school district in order to comply with local, state, or federal reporting requirements. The BOG reports that it is unclear whether the bill's contract requirements apply to school districts only or any institution with student data.⁸⁴

The bill also requires all personally identifiable student data, with few exceptions, to be deleted or destroyed upon the student's graduation, withdrawal, or expulsion except as otherwise required by law. The BOG reports that while record retention schedules promulgated by the Division of Library and

⁸³ State University System Board of Governors 2015 Legislative Bill Analysis of HB 571, March 3, 2015 (on file with the Criminal Justice Subcommittee).

⁸⁴ *Id.*

Information Services may allow these records to be retained for a period of time, once that period has expired the document must be destroyed despite best practices or the best interest of the university.⁸⁵

The BOG reports that it is unclear whether the newly-created s. 1002.227, F.S., applies to school districts only, or whether universities are included. If the section applies to universities, then subsection (3) (prohibiting data collected on students from being provided to the federal government or to commercial companies without the written consent of the student) would seem to conflict with many critical data processes currently in place across the State University System both for federal and state reporting.⁸⁶

In order to receive federal student financial aid, the universities and the BOG need access to longitudinal student records for financial aid auditing and reporting requirements.⁸⁷ The universities and the Board of Governors aggregate this longitudinal data in order to supply aggregate reports to the federal government to meet their requirements. Without these records universities would not be able to comply with federal audit and reporting requirements which would jeopardize their ability to receive federal student financial aid.⁸⁸

These data are also used to establish metrics for use with Florida's standard and performance-based university budgeting process.⁸⁹ Deletion of student information upon graduation, withdrawal, or expulsion would prohibit the universities and the Board from accurately creating and validating the annual budget. Florida's longitudinal student data is also used by all of Florida's educational sectors in program evaluation, program improvement, articulation, student transfer, credentialing, and by state auditors. The inability of institutions to hold this data would adversely affect their ability to perform standard operations.⁹⁰ Deletion of student educational information upon withdrawal or expulsion deprives universities of the ability to readmit students previously withdrawn, transfer educational information at the request of withdrawn students transferring to another institution, and prevent readmission of expelled students. Deletion of educational information after graduation also prevents students from obtaining transcripts for internships, employment, and continuing education.⁹¹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

1 A bill to be entitled
 2 An act relating to personal privacy; providing a short
 3 title; providing that digital data is protected from
 4 unreasonable search and seizure; prohibiting certain
 5 government agencies from selling personal identifying
 6 information for certain purposes; defining the term
 7 "secondary commercial purposes"; creating s. 901.40,
 8 F.S.; prohibiting use of certain radar technology by
 9 law enforcement agencies except for specified
 10 purposes; providing that evidence unlawfully collected
 11 is not admissible in criminal, civil, or
 12 administrative actions; creating s. 922.235, F.S.;
 13 prohibiting certain Internet protocol addresses from
 14 being disclosed unless certain conditions are met;
 15 providing a private right of action; providing
 16 limitations; creating s. 934.70, F.S.; providing
 17 definitions; providing restrictions on government
 18 searches of portable electronic devices; requiring a
 19 warrant for all searches of such devices; prohibiting
 20 government entities from entering into nondisclosure
 21 agreements with vendors of certain equipment used to
 22 monitor portable electronic devices; declaring
 23 existing nondisclosure agreements void; providing that
 24 such agreement is subject to public records laws;
 25 providing that evidence unlawfully collected is not
 26 admissible in criminal, civil, or administrative

27 | actions; providing exceptions; providing criminal
 28 | penalties for violations; authorizing a private right
 29 | of action against governmental entities for
 30 | violations; requiring common carriers, electronic
 31 | communications services, courts, and prosecutors to
 32 | prepare certain reports to be delivered to the Florida
 33 | Department of Law Enforcement; providing requirements
 34 | for such reports; requiring the department to prepare
 35 | reports to be delivered to certain legislative and
 36 | executive entities; providing requirements for such
 37 | reports; creating s. 934.80, F.S.; prohibiting state
 38 | agency use of license plate readers; providing
 39 | exceptions; providing that license plate reader
 40 | records are expressly subject to the public records
 41 | laws; requiring certain data held by government
 42 | agencies to be purged; providing that a government
 43 | agency may not receive certain data from a third
 44 | party; providing a private right of action; providing
 45 | that records obtained unlawfully are not admissible in
 46 | a criminal prosecution; creating s. 1002.227, F.S.;
 47 | requiring school district contracts involving student
 48 | data contain a provision barring contractors from
 49 | selling, distributing, or accessing such data;
 50 | providing exceptions; declaring student data to be the
 51 | property of the school district; providing that
 52 | student data shall not be provided to the Federal

53 Government or commercial interests without written
 54 permission of a parent or guardian or the student;
 55 prohibiting companies from mining student data for
 56 commercial purposes; requiring a school or third party
 57 to delete or destroy certain student data under
 58 specified circumstances; providing penalties;
 59 restricting the use of public funds in defense of or
 60 for the reimbursement of a person who knowingly or
 61 willfully violates this act; prohibiting the
 62 Department of Highway Safety and Motor Vehicles from
 63 incorporating an electronic tracking device upon or
 64 within a driver license or identification card;
 65 prohibiting the Department of Highway Safety and Motor
 66 Vehicles from obtaining fingerprints or biometric DNA
 67 material of citizens; providing severability;
 68 providing an effective date.

69

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

71

72 Section 1. This act may be cited as the "Florida Privacy
 73 Protection Act."

74 Section 2. The Legislature declares that digital data is
 75 property that is constitutionally protected from unreasonable
 76 search and seizure.

77 Section 3. All government entities, as defined in s.
 78 934.70, Florida Statutes, are prohibited from selling personal

79 identifying information for secondary commercial purposes. For
 80 purposes of this section, the term "secondary commercial
 81 purposes" includes the use of personal information data acquired
 82 from a government entity, by a private entity, and not expressly
 83 authorized by law.

84 Section 4. Section 901.40, Florida Statutes, is created to
 85 read:

86 901.40 Prohibition against use of wall-penetrating radar
 87 device.—A law enforcement officer or law enforcement agency in
 88 this state may not use a wall-penetrating radar device. This
 89 section does not prohibit the use of a wall-penetrating radar
 90 device:

91 (1) To execute a lawful arrest warrant issued pursuant to
 92 s. 901.02.

93 (2) To counter a high risk of a terrorist attack by a
 94 specific individual or organization if the United States
 95 Secretary of Homeland Security determines that credible
 96 intelligence indicates that there is such a risk.

97 (3) If the law enforcement agency first obtains a search
 98 warrant signed by a judge authorizing the use of a wall-
 99 penetrating radar device.

100 (4) If the law enforcement agency has a reasonable belief
 101 that, under particular circumstances, swift action is needed to
 102 prevent imminent danger to life or serious damage to property;
 103 to forestall the imminent escape of a suspect or the destruction
 104 of evidence; or to achieve purposes, including, but not limited

105 | to, facilitating the search for a missing person.

106 |

107 | Evidence obtained in violation of this section is not admissible
 108 | in a criminal, civil, administrative, or other proceeding except
 109 | as proof of a violation of this section.

110 | Section 5. Section 922.235, Florida Statutes, is created
 111 | to read:

112 | 922.235 Internet protocol address privacy.-

113 | (1) A provider of electronic communications services to
 114 | the public shall not provide third parties with information that
 115 | allows an Internet protocol address to be linked to a specific
 116 | subscriber or customer without the express permission of the
 117 | subscriber or customer. The request for permission must be clear
 118 | and conspicuous and must require the subscriber or customer to
 119 | take an affirmative action to acknowledge such permission. This
 120 | subsection does not prohibit a provider of electronic
 121 | communications services from complying with a lawful subpoena or
 122 | warrant.

123 | (2) A person may institute a civil action in a court of
 124 | competent jurisdiction to seek injunctive relief to enforce
 125 | compliance with this section or to recover damages and penalties
 126 | from a provider that violates this section. A person is entitled
 127 | to recover a \$10,000 penalty for each violation of this section.

128 | (3) An action under this section must commence within 2
 129 | years after the date that the information is disclosed.

130 | Section 6. Section 934.70, Florida Statutes, is created to

131 read:

132 934.70 Portable electronic device privacy.-

133 (1) DEFINITIONS.-As used in this section, the term:

134 (a) "Department" means the Department of Law Enforcement.

135 (b) "Government entity" means a federal, state, or local
 136 government agency, including, but not limited to, a law
 137 enforcement agency or any other investigative entity, agency,
 138 department, division, bureau, board, or commission or an
 139 individual acting or purporting to act for, or on behalf of, a
 140 federal, state, or local government agency. The term does not
 141 include a federal agency to the extent that federal law preempts
 142 this section.

143 (c) "Information" includes any information concerning the
 144 substance or meaning or purported substance or meaning of a
 145 communication, including, but not limited to, the name and
 146 address of the sender and receiver and the time, date, location,
 147 and duration of the communication.

148 (d) "Portable electronic device" means any portable device
 149 that is capable of creating, receiving, accessing, or storing
 150 electronic data or communications, including, but not limited
 151 to, cellular telephones.

152 (2) Information contained in a portable electronic device
 153 is not subject to search by a government entity, including a
 154 search incident to a lawful arrest, except pursuant to a warrant
 155 signed by a judge and based on probable cause or pursuant to a
 156 lawful exception to the warrant requirement.

157 (3) A government entity may not enter into a nondisclosure
 158 agreement with a vendor who sells equipment to monitor
 159 electronic devices. Any existing nondisclosure agreements are
 160 declared void as being against the public policy of the state.
 161 Records otherwise protected by such agreements are declared
 162 subject to the public records laws, and an agency may not refuse
 163 to disclose such agreements or related records upon request by
 164 citing such an agreement.

165 (4) Evidence obtained in violation of this section is not
 166 admissible in a criminal, civil, administrative, or other
 167 proceeding except as proof of a violation of this section.

168 (5) A government entity that purposely violates this
 169 section commits a misdemeanor of the first degree, punishable as
 170 provided in s. 775.082 or s. 775.083. A person injured by a
 171 government entity as a result of a violation of this section may
 172 file civil suit against the government entity.

173 (6)(a) By January 15 of each year, a communication common
 174 carrier or electronic communications service doing business in
 175 this state shall report to the department the following
 176 information for the preceding calendar year, disaggregated by
 177 each law enforcement agency in this state making the applicable
 178 requests:

179 1. The number of requests made for pen register or trap
 180 and trace information.

181 2. The number of requests made for electronic serial
 182 number reader information.

183 3. The number of requests made for location information.

184 4. The number of individuals whose location information
 185 was disclosed.

186 5. The amount that each law enforcement agency was billed
 187 by the communication common carrier or electronic communications
 188 service for each request made under subsections (1)-(3).

189 (b) By the 30th day after expiration of a warrant or order
 190 issued under subsection (2) or an order extending the period of
 191 a warrant or order issued under subsection (2), or by the 30th
 192 day after the court denies an application for a warrant or order
 193 under subsection (2), the court shall submit to the department
 194 the following information, as applicable:

195 1. The receipt of an application for a warrant or order
 196 under this article.

197 2. The type of warrant or order for which the application
 198 was made.

199 3. Whether any application for an order of extension was
 200 granted, granted as modified by the court, or denied.

201 4. The period of monitoring authorized by the warrant or
 202 order and the number and duration of any extensions of the
 203 warrant.

204 5. The offense under investigation, as specified in the
 205 application for the warrant or order or an extension of the
 206 warrant or order.

207 6. The name of the law enforcement agency or prosecutor
 208 that submitted an application for the warrant or order or an

209 | extension of the warrant or order.

210 | (c) By January 15 of each year, each prosecutor that
 211 | submits an application for a warrant or order or an extension of
 212 | a warrant or order under this section shall submit to the
 213 | department the following information for the preceding calendar
 214 | year:

215 | 1. The information required to be submitted by a court
 216 | under paragraph (b) with respect to each application submitted
 217 | by the prosecutor for the warrant or order or an extension of
 218 | the warrant or order.

219 | 2. A general description of information collected under
 220 | each warrant or order that was issued by the court, including
 221 | the approximate number of individuals for whom location
 222 | information was intercepted and the approximate duration of the
 223 | monitoring of the location information of those individuals.

224 | 3. The number of arrests made as a result of information
 225 | obtained under a warrant or order issued pursuant to subsection
 226 | (2).

227 | 4. The number of criminal trials commenced as a result of
 228 | information obtained under a warrant or order issued pursuant to
 229 | subsection (2).

230 | 5. The number of convictions obtained as a result of
 231 | information obtained under a warrant or order issued pursuant to
 232 | subsection (2).

233 | (d) Reports submitted to the department under this section
 234 | are expressly declared subject to disclosure under the public

235 records laws and are not confidential or exempt.

236 (e) By March 1 of each year, the department shall submit a
 237 report to the Governor, the President of the Senate, the Speaker
 238 of the House of Representatives, and the chairs of the standing
 239 committees of the Senate and the House of Representatives with
 240 primary jurisdiction over criminal justice. The report shall
 241 contain the following information for the preceding calendar
 242 year:

243 1. An assessment of the extent of tracking or monitoring
 244 by law enforcement agencies of pen registers, trap and trace
 245 devices, electronic serial number readers, and location
 246 information.

247 2. A comparison of the ratio of the number of applications
 248 for warrants or orders made pursuant to subsection (2) to the
 249 number of arrests and convictions resulting from information
 250 obtained under a warrant or order issued pursuant to subsection
 251 (2).

252 3. Identification of the types of offenses investigated
 253 under a warrant or order issued pursuant to subsection (2).

254 4. With respect to both state and local jurisdictions, an
 255 estimate of the total cost of conducting investigations under a
 256 warrant or order issued pursuant to subsection (2).

257 Section 7. Section 934.80, Florida Statutes, is created to
 258 read:

259 934.80 License plate readers.—

260 (1) A government entity or agency, including a law

261 enforcement entity or agency, may not use a license plate reader
 262 to gather evidence or other information, except that a license
 263 plate reader may be used:

264 (a) For toll collection enforcement.

265 (b) To counter a high risk of a terrorist attack by a
 266 specific individual or organization if the United States
 267 Secretary of Homeland Security determines that credible
 268 intelligence indicates that there is such a risk.

269 (c) If the law enforcement agency first obtains a search
 270 warrant signed by a judge authorizing the use of a license plate
 271 reader.

272 (d) If the law enforcement agency possesses reasonable
 273 belief that, under particular circumstances, swift action is
 274 needed to prevent imminent danger to life or serious damage to
 275 property, to forestall the imminent escape of a suspect or the
 276 destruction of evidence, or to achieve purposes, including, but
 277 not limited to, facilitating the search for a missing person.

278 (2) A government agency that operates a license plate
 279 reader shall, upon request, disclose whether a database has been
 280 created with the data collected. All license plate surveillance
 281 programs administered in this state by either a government
 282 agency or by a contractor acting on behalf of a government
 283 agency are subject to public records laws. All existing
 284 government-maintained license plate reader surveillance
 285 databases shall purge all records not obtained by warrant.

286 (3) A government agency that operates a license plate

287 reader shall delete all data collected by the license plate
 288 reader no sooner than 14 days and no later than 30 days after
 289 collection, unless the data has been flagged by law enforcement
 290 as containing evidence of a crime or being relevant to an
 291 ongoing criminal investigation.

292 (4) A government agency may not request or receive from a
 293 private party data from a license plate reader that is collected
 294 and retained in a manner inconsistent with this section.

295 (5) An aggrieved party may initiate a civil action against
 296 a government agency to obtain appropriate relief or to prevent
 297 or remedy a violation of this section.

298 (6) Evidence obtained or collected in violations of this
 299 section is not admissible in a criminal prosecution.

300 Section 8. Section 1002.227, Florida Statutes, is created
 301 to read:

302 1002.227 Contract requirements relating to student data.-

303 (1) All contracts between school districts and companies
 304 that process or receive student data shall explicitly prohibit
 305 the companies from selling, distributing, or accessing any
 306 student data, except as instructed by the school district in
 307 order to comply with local, state, or federal reporting
 308 requirements.

309 (2) Any data collected from students through online
 310 learning is the property of the school district, not the
 311 company.

312 (3)(a) Data collected on a student who is younger than 18

313 years of age may not be provided to the Federal Government or to
 314 commercial companies without the written consent of the parent
 315 or the guardian of the student.

316 (b) Data collected on a student who is 18 years of age or
 317 older may not be provided to the Federal Government or to
 318 commercial companies without the written consent of the adult
 319 student.

320 (c) This subsection does not prohibit any party from
 321 complying with a lawful subpoena or warrant.

322 (4) Education technical companies that contract with
 323 public schools shall be prohibited from mining student data for
 324 commercial purposes.

325 (5) Except as otherwise required by law, or where such
 326 information is the subject of an ongoing disciplinary,
 327 administrative, or judicial action or proceeding, upon a
 328 student's graduation, withdrawal, or expulsion from an
 329 educational institution, all personally identifiable student
 330 data related to that student:

331 (a) Stored in a student information system shall be
 332 deleted.

333 (b) In the possession or under the control of a school
 334 employee or third party shall be deleted or destroyed.

335 (6) (a) A violation of this section shall result in a civil
 336 fine of up to \$10,000 against the elected school board members
 337 under whose jurisdiction the violation occurred.

338 (b) Except as required by applicable law, public funds may

339 not be used to defend or reimburse the unlawful conduct of any
 340 person found to knowingly and willfully violate this section.

341 Section 9. The Department of Highway Safety and Motor
 342 Vehicles shall not incorporate any radio frequency
 343 identification device, or "RFID," or any similar electronic
 344 tracking device upon or within any driver license or
 345 identification card issued by the department. The department may
 346 not obtain fingerprints or biometric DNA material from a United
 347 States citizen for purposes of any issuance, renewal,
 348 reinstatement, or modification of a driver license or
 349 identification card issued by the department.

350 Section 10. If any provision of this act or its
 351 application to any person or circumstance is held invalid, the
 352 invalidity does not affect other provisions or applications of
 353 this act which can be given effect without the invalid provision
 354 or application, and to this end the provisions of this act are
 355 severable.

356 Section 11. This act shall take effect July 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 Rodrigues, R. offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. This act may be cited as the "Florida Privacy
8 Protection Act."

9 Section 2. The Legislature declares that digital data is
10 property that is constitutionally protected from unreasonable
11 search and seizure.

12 Section 3. Section 933.41, Florida Statutes, is created to
13 read:

14 933.41 Prohibition against search using wall-penetrating
15 radar device.-

16 (1) A law enforcement officer or law enforcement agency in
17 this state may not use a wall-penetrating radar device, except



Amendment No. 1

18 pursuant to a warrant signed by a judge and based on probable
19 cause or pursuant to a lawful exception to the search warrant
20 requirement, including exceptions to the search warrant
21 requirement established by the United States Supreme Court and
22 Florida Supreme Court.

23 (2) Evidence obtained in violation of this section is not
24 admissible in a criminal, civil, administrative, or other
25 proceeding except as proof of a violation of this section.

26 Section 4. Section 934.60, Florida Statutes, is created to
27 read:

28 934.60 Internet protocol address privacy.-

29 (1) A provider of electronic communications services to
30 the public shall not provide third parties with information that
31 allows an Internet protocol address to be linked to a specific
32 subscriber or customer without the express permission of the
33 subscriber or customer. The request for permission must be clear
34 and conspicuous and must require the subscriber or customer to
35 take an affirmative action to acknowledge such permission. This
36 subsection does not prohibit a provider of electronic
37 communications services from complying with a lawful subpoena,
38 court order, or warrant.

39 (2) A person may institute a civil action in a court of
40 competent jurisdiction to seek injunctive relief to enforce
41 compliance with this section or to recover damages and penalties
42 from a provider that violates this section. A person is entitled
43 to recover a \$10,000 penalty for each violation of this section.



Amendment No. 1

44 (3) An action under this section must commence within 2
45 years after the date that the information is disclosed.

46 (4) Consenting to a provider's terms and conditions or a
47 provider's privacy statement describing such provider's data
48 sharing practices shall

49 Section 5. Section 934.70, Florida Statutes, is created to
50 read:

51 934.70 Portable electronic device privacy.-

52 (1) DEFINITIONS.-As used in this section, the term:

53 (a) "Department" means the Department of Law Enforcement.

54 (b) "Government entity" means a federal, state, or local
55 government agency, including, but not limited to, a law
56 enforcement agency or any other investigative entity, agency,
57 department, division, bureau, board, or commission or an
58 individual acting or purporting to act for, or on behalf of, a
59 federal, state, or local government agency. The term does not
60 include a federal agency to the extent that federal law preempts
61 this section.

62 (c) "Information" includes any information concerning the
63 substance or meaning or purported substance or meaning of a
64 communication, including, but not limited to, the name and
65 address of the sender and receiver and the time, date, location,
66 and duration of the communication.

67 (d) "Portable electronic device" means any portable device
68 that is capable of creating, receiving, accessing, or storing
69 electronic data or communications, including, but not limited

786529 - h0571-strike.docx

Published On: 3/11/2015 6:21:39 PM



Amendment No. 1

70 to, cellular telephones.

71 (2) Information contained in a portable electronic device
72 is not subject to search by a government entity, including a
73 search incident to a lawful arrest, except pursuant to a warrant
74 signed by a judge and based on probable cause or pursuant to a
75 lawful exception to the warrant requirement, including
76 exceptions to the warrant requirement established by the United
77 States Supreme Court and Florida Supreme Court.

78 (3) Evidence obtained in violation of subsection (2) is
79 not admissible in a criminal, civil, administrative, or other
80 proceeding except as proof of a violation of this section.

81 (4) A government entity may not enter into a nondisclosure
82 agreement with a vendor who sells equipment to monitor
83 electronic devices. Any existing nondisclosure agreements are
84 declared void as being against the public policy of the state.
85 Records otherwise protected by such agreements are declared
86 subject to the public records laws, and an agency may not refuse
87 to disclose such agreements or related records upon request by
88 citing such an agreement.

89 (5) A person injured by a government entity as a result of
90 a violation of subsection (4) may file civil suit against the
91 government entity.

92 (6) (a) By January 15 of each year, a communication common
93 carrier or electronic communications service doing business in
94 this state shall report to the department the following
95 information for the preceding calendar year, disaggregated by

786529 - h0571-strike.docx

Published On: 3/11/2015 6:21:39 PM



Amendment No. 1

96 each law enforcement agency in this state making the applicable
97 requests:

98 1. The number of requests made for pen register or trap
99 and trace information.

100 2. The number of requests made for electronic serial
101 number reader information.

102 3. The number of requests made for location information.

103 4. The number of individuals whose location information
104 was disclosed.

105 5. The amount that each law enforcement agency was billed
106 by the communication common carrier or electronic communications
107 service for each request made under subsections (1)-(3).

108 (b) By the 30th day after expiration of a warrant or order
109 issued under subsection (2) or an order extending the period of
110 a warrant or order issued under subsection (2), or by the 30th
111 day after the court denies an application for a warrant or order
112 under subsection (2), the court shall submit to the department
113 the following information, as applicable:

114 1. The receipt of an application for a warrant or order
115 under this article.

116 2. The type of warrant or order for which the application
117 was made.

118 3. Whether any application for an order of extension was
119 granted, granted as modified by the court, or denied.

120 4. The period of monitoring authorized by the warrant or
121 order and the number and duration of any extensions of the

786529 - h0571-strike.docx

Published On: 3/11/2015 6:21:39 PM



Amendment No. 1

122 warrant.

123 5. The offense under investigation, as specified in the
124 application for the warrant or order or an extension of the
125 warrant or order.

126 6. The name of the law enforcement agency or prosecutor
127 that submitted an application for the warrant or order or an
128 extension of the warrant or order.

129 (c) By January 15 of each year, each prosecutor that
130 submits an application for a warrant or order or an extension of
131 a warrant or order under this section shall submit to the
132 department the following information for the preceding calendar
133 year:

134 1. The information required to be submitted by a court
135 under paragraph (b) with respect to each application submitted
136 by the prosecutor for the warrant or order or an extension of
137 the warrant or order.

138 2. A general description of information collected under
139 each warrant or order that was issued by the court, including
140 the approximate number of individuals for whom location
141 information was intercepted and the approximate duration of the
142 monitoring of the location information of those individuals.

143 3. The number of arrests made as a result of information
144 obtained under a warrant or order issued pursuant to subsection
145 (2).

146 4. The number of criminal trials commenced as a result of
147 information obtained under a warrant or order issued pursuant to

786529 - h0571-strike.docx

Published On: 3/11/2015 6:21:39 PM



Amendment No. 1

148 subsection (2).

149 5. The number of convictions obtained as a result of
150 information obtained under a warrant or order issued pursuant to
151 subsection (2).

152 (d) Reports submitted to the department under this section
153 are expressly declared subject to disclosure under the public
154 records laws and are not confidential or exempt.

155 (e) By March 1 of each year, the department shall submit a
156 report to the Governor, the President of the Senate, the Speaker
157 of the House of Representatives, and the chairs of the standing
158 committees of the Senate and the House of Representatives with
159 primary jurisdiction over criminal justice. The report shall
160 contain the following information for the preceding calendar
161 year:

162 1. An assessment of the extent of tracking or monitoring
163 by law enforcement agencies of pen registers, trap and trace
164 devices, electronic serial number readers, and location
165 information.

166 2. A comparison of the ratio of the number of applications
167 for warrants or orders made pursuant to subsection (2) to the
168 number of arrests and convictions resulting from information
169 obtained under a warrant or order issued pursuant to subsection
170 (2).

171 3. Identification of the types of offenses investigated
172 under a warrant or order issued pursuant to subsection (2).

173 4. With respect to both state and local jurisdictions, an

786529 - h0571-strike.docx

Published On: 3/11/2015 6:21:39 PM



Amendment No. 1

174 estimate of the total cost of conducting investigations under a
175 warrant or order issued pursuant to subsection (2).

176 Section 6. Section 1002.227, Florida Statutes, is created
177 to read:

178 1002.227 Contract requirements relating to student data.-

179 (1) All contracts between school districts and companies
180 that process or receive student data shall explicitly prohibit
181 the companies from selling, distributing, or accessing any
182 student data, except as instructed by the school district in
183 order to comply with local, state, or federal reporting
184 requirements.

185 (2) Any data collected from students through online
186 learning is the property of the school district, not the
187 company.

188 (3) (a) Data collected on a student who is younger than 18
189 years of age may not be provided to the Federal Government or to
190 commercial companies without the written consent of the parent
191 or the guardian of the student.

192 (b) Data collected on a student who is 18 years of age or
193 older may not be provided to the Federal Government or to
194 commercial companies without the written consent of the adult
195 student.

196 (c) This subsection does not prohibit any party from
197 complying with a lawful subpoena or warrant.

198 (4) Education technical companies that contract with
199 public schools shall be prohibited from mining student data for

786529 - h0571-strike.docx

Published On: 3/11/2015 6:21:39 PM



Amendment No. 1

200 commercial purposes.

201 (5) Except as otherwise required by law, or where such
202 information is the subject of an ongoing disciplinary,
203 administrative, or judicial action or proceeding, upon a
204 student's graduation, withdrawal, or expulsion from an
205 educational institution, all personally identifiable student
206 data related to that student:

207 (a) Stored in a student information system shall be
208 deleted.

209 (b) In the possession or under the control of a school
210 employee or third party shall be deleted or destroyed.

211 (6) (a) A violation of this section shall result in a civil
212 fine of up to \$10,000 against the elected school board members
213 under whose jurisdiction the violation occurred.

214 (b) Except as required by applicable law, public funds may
215 not be used to defend or reimburse the unlawful conduct of any
216 person found to knowingly and willfully violate this section.

217 Section 7. The Department of Highway Safety and Motor
218 Vehicles shall not incorporate any radio frequency
219 identification device, or "RFID," or any similar electronic
220 tracking device upon or within any driver license or
221 identification card issued by the department. The department may
222 not obtain fingerprints or biometric DNA material from a United
223 States citizen for purposes of any issuance, renewal,
224 reinstatement, or modification of a driver license or
225 identification card issued by the department.

786529 - h0571-strike.docx

Published On: 3/11/2015 6:21:39 PM



Amendment No. 1

252 government entities from entering into nondisclosure agreements
253 with vendors of certain equipment used to monitor portable
254 electronic devices; declaring existing nondisclosure agreements
255 void; providing that such agreement is subject to public records
256 laws; authorizing a private right of action against governmental
257 entities for violations; requiring common carriers, electronic
258 communications services, courts, and prosecutors to prepare
259 certain reports to be delivered to the Florida Department of Law
260 Enforcement; providing requirements for such reports; requiring
261 the department to prepare reports to be delivered to certain
262 legislative and executive entities; providing requirements for
263 such reports; creating s. 1002.227, F.S.; requiring school
264 district contracts involving student data contain a provision
265 barring contractors from selling, distributing, or accessing
266 such data; providing exceptions; declaring student data to be
267 the property of the school district; providing that student data
268 shall not be provided to the Federal Government or commercial
269 interests without written permission of a parent or guardian or
270 the student; prohibiting companies from mining student data for
271 commercial purposes; requiring a school or third party to delete
272 or destroy certain student data under specified circumstances;
273 providing penalties; restricting the use of public funds in
274 defense of or for the reimbursement of a person who knowingly or
275 willfully violates this act; prohibiting the Department of
276 Highway Safety and Motor Vehicles from incorporating an
277 electronic tracking device upon or within a driver license or

786529 - h0571-strike.docx

Published On: 3/11/2015 6:21:39 PM



Amendment No. 1

278 identification card; prohibiting the Department of Highway
279 Safety and Motor Vehicles from obtaining fingerprints or
280 biometric DNA material of citizens; providing severability;
281 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 711 Care for Retired Law Enforcement Dogs
SPONSOR(S): Kerner
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1016

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

SUMMARY ANALYSIS

The bill creates s. 943.69, F.S., entitled the "Care for Retired Law Enforcement Dogs Program Act" (Program). The purpose of the Program is to provide a stable funding source for former handlers and adopters of retired law enforcement dogs to provide veterinary care for the dogs.

A law enforcement dog is eligible for the Program if the dog:

- Served or was employed by a law enforcement agency in the state for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders; and
- Received certification in obedience and apprehension work from a certifying organization.

The bill requires the Florida Department of Law Enforcement (FDLE) to contract with a not for profit corporation to administer and manage the Program. The not for profit corporation must:

- Be dedicated to the protection or care of retired law enforcement dogs;
- Hold an exempt status under s. 501(a) of the Internal Revenue Code and have held that status for five years;
- Agree to be subject to review and audit at the discretion of the Auditor General; and
- Demonstrate the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs.

The bill appropriates the sum of \$300,000 in recurring funds from the General Revenue Fund to FDLE for the purpose of implementing the Program.

The bill requires the not for profit corporation to be the disbursing authority for the funds appropriated to FDLE. The corporation must disburse funds upon receiving:

- Valid documentation from a law enforcement agency verifying the dog served or was employed by such agency; and
- A valid invoice, submitted by the former handler or adopter of a retired law enforcement dog, from a veterinarian for veterinary care provided in the state to a retired law enforcement dog.

Annual disbursements are limited to \$1,500 per dog. The bill prohibits a former handler or adopter of a retired law enforcement dog from:

- Using accumulated unused funds from one year for use in a future year; and
- Receiving reimbursement if funds for the Program are depleted in the year for which the reimbursement is sought.

The bill is effective on July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Law enforcement canines serve in many different disciplines including narcotics detection, explosives detection, search and rescue, patrol, and human remains detection.¹ These disciplines require a huge physical demand from the canine, and many suffer injuries during their service.² As a result, law enforcement canines often have medical needs upon retirement.

Law enforcement canines generally retire at 7 or 8 years of age.³ When the time comes for the canine to retire, they are usually adopted by their handler, but are sometimes be adopted by a family.⁴ Once the canine is retired, their owner is responsible for the canine's medical bills, which can be costly.⁵

Recently, efforts have been made to ensure that law enforcement canines are provided medical care after retirement. For example, a police department in England recently decided to pay pension benefits to its retired police dogs.⁶ These benefits include up to \$798 a year for three years for medical bills after retirement.⁷ In September 2012, a Delaware nonprofit organization called the National K-9 Working Dog, Inc., proposed its "Police K-9 Bill Of Rights," which seeks to amend federal law to provide medical benefits for retired police dogs.⁸ A number of nonprofit organizations have also been established that advocate for similar rights of retired law enforcement dogs.⁹

Effect of the Bill

The bill creates s. 943.69, F.S., entitled the "Care for Retired Law Enforcement Dogs Program" (Program). The purpose of the Program is to provide a stable funding source for former handlers and adopters of retired law enforcement dogs to provide veterinary care for the dogs.

The bill provides the following legislative findings:

- Law enforcement dogs have become an integral part of many law enforcement efforts statewide, including suspect apprehension through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations;
- Law enforcement agencies agree that the use of law enforcement dogs is an extremely cost-effective means for crime control and that these dogs possess skills and abilities that frequently exceed that of existing technology;
- The work of law enforcement dogs is often dangerous and can expose these dogs to injuries at a rate higher than that of non-service dogs; and
- Law enforcement dogs provide significant contributions to the residents of this state.

¹ <http://www.retiredpaws.org/> (last visited on March 4, 2014).

² *Police dogs face danger in the line of duty*, December 27, 2013, http://articles.orlandosentinel.com/2013-12-27/news/os-police-dogs-face-dangers-20131227_1_such-dogs-bowden-suspected-car-burglar (last visited on March 4, 2015).

³ Brevard Sheriff's Office, *K-9 Unit*, March 4, 2015, <http://www.brevardsheriff.com/home/commands-services/operational-services/k-9-unit/> (last visited March 4, 2015). See also Florida Highway Patrol, *Retired K9s*, <http://www.flhsmv.gov/fhp/cip/ActiveK9s/Retired.htm> (last visited March 4, 2015).

⁴ <http://www.retiredpaws.org/> (last visited on March 4, 2015).

⁵ *Id.*

⁶ *England's Retired Police Dogs To Receive Pension*, November 4, 2013, <http://www.dogonews.com/2013/11/4/englands-retired-police-dogs-to-receive-pension> (last visited on March 4, 2015).

⁷ *Police Dogs To Get Full Pensions For Medical Bills After Retirement In Nottinghamshire, England*, November 5, 2013, http://www.huffingtonpost.com/2013/11/05/police-dog-pensions_n_4215560.html (last visited on March 4, 2015).

⁸ *Police K-9 Bill of Rights*, <http://nationalk-9workingdog.org/police-k-9-bill-of-rights/> (last visited on March 4, 2015).

⁹ See, e.g., "Retired Paws" based in Sahuarita, Arizona, <http://www.retiredpaws.org/> (last visited on March 4, 2015).

The bill requires FDLE to contract with a corporation not for profit organized under ch. 617, F.S., to administer and manage the Program. Notwithstanding the competitive sealed bid procedures required under ch. 287, F.S., FDLE must enter into a contract with a corporation that:

- Is dedicated to the protection or care of retired law enforcement dogs;
- Holds exempt status under s. 501(a) of the Internal Revenue Code as an organization described in s. 501(c)(3) of the Internal Revenue Code;
- Has held its exempt status for at least 5 years;
- Agrees to be subject to review and audit at the discretion of the Auditor General to ensure accurate accounting and disbursement of state funds; and
- Demonstrates the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs in complying with Program requirements.

Beginning in FY 2015-2016, and each year thereafter, the bill appropriates the sum of \$300,000 in recurring funds from the General Revenue Fund to the Florida Department of Law Enforcement (FDLE) for the purpose of implementing the Program.

The bill requires the contract between FDLE and the corporation to contain provisions specifying that:

- The corporation must receive administrative fees, including salaries and benefits, of up to 10 percent of the appropriated funds; and
- Any funds held in the separate account in the name of the corporation must revert to FDLE if the contract expires or is terminated.

The bill requires the corporation to be the disbursing authority for the funds appropriated to FDLE.¹⁰ The corporation must disburse funds upon receiving:

- Valid documentation from the law enforcement agency from which the dog retired verifying that the dog served or was employed by such agency; and
- A valid invoice, submitted by the former handler or adopter of a retired law enforcement dog, from a veterinarian for veterinary care provided in the state to a retired law enforcement dog.

Annual disbursements are limited to \$1,500 per dog. The bill prohibits a former handler or adopter of a retired law enforcement dog from using accumulated unused funds from one year for use in a future year and from receiving reimbursement if Program funds are depleted in the year in which the reimbursement is sought.

On July 1 of each year, the Executive Office of the Governor is required to certify forward all unexpended appropriated funds. In no event may the fund balance for the Program exceed \$400,000.

The bill defines "retired law enforcement dog" as any dog who:

- Served or was employed by a law enforcement agency in the state for the principle purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders; and
- Received certification in obedience and apprehension work from a certifying organization.¹¹

The bill also provides definitions for law enforcement agency,¹² veterinarian,¹³ and veterinary care.¹⁴

¹⁰ Funds appropriated for the Program must be held in FDLE's Operating Trust Fund in a separate depository account in the name of the corporation and subject to the provisions of the contract with FDLE.

¹¹ Such as the National Police Canine Association, <http://www.npca.net/> (last visited on March 4, 2015).

¹² "Law enforcement agency" means a lawfully established state or local public agency having primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

¹³ "Veterinarian" is defined in accordance with s. 474.202, F.S., as a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under the authority ch. 474, F.S.

B. SECTION DIRECTORY:

Section 1. Creates s. 943.69, F.S., relating to the "Care for Retired Law Enforcement Dogs Program."

Section 2. Provides an appropriation.

Section 3. 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 appropriates \$300,000 in recurring funds from the General Revenue Fund to FDLE for the purpose of implementing the Program. The funds must be held in FDLE's Operating Trust Fund in a separate depository account in the name of the contracting not for profit corporation.

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.

¹⁴ "Veterinary care" means any veterinary medical service described in s. 474.202, F.S., which is provided by a veterinarian licensed under ch. 474, F.S. The term includes annual wellness examinations, vaccines, internal and external parasite prevention treatments, testing and treatment of illnesses and diseases, medications, emergency care and surgeries, specialty care such as veterinary oncology, euthanasia, and cremation.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill creates rulemaking authority for FDLE to implement the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to care for retired law enforcement
 3 dogs; creating s. 943.69, F.S.; providing a short
 4 title; defining terms; providing legislative findings;
 5 creating the Care for Retired Law Enforcement Dogs
 6 Program within the Department of Law Enforcement;
 7 requiring the department to contract with a
 8 corporation not for profit to administer and manage
 9 the program; providing requirements for the
 10 corporation not for profit; providing requirements for
 11 the disbursement of funds for the veterinary care of
 12 eligible retired law enforcement dogs; placing an
 13 annual cap on the amount of funds available for the
 14 care of an eligible retired law enforcement dog;
 15 prohibiting a former handler or adopter from seeking
 16 reimbursement if funds are depleted for the year such
 17 reimbursement is sought; providing for the deposit of
 18 program funds; providing for the reversion of funds to
 19 the department under certain circumstances;
 20 authorizing the carryforward of unexpended
 21 appropriations for use in the program up to certain
 22 limits; requiring the department to adopt rules;
 23 providing an appropriation; providing an effective
 24 date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52

Section 1. Section 943.69, Florida Statutes, is created to read:

943.69 Care for Retired Law Enforcement Dogs Program.—

(1) SHORT TITLE.—This section may be cited as the "Care for Retired Law Enforcement Dogs Program Act."

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

(a) "Law enforcement agency" means a lawfully established state or local public agency having primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

(b) "Retired law enforcement dog" means a dog that was previously in the service of or employed by a law enforcement agency in this state for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders and that received certification in obedience and apprehension work from a certifying organization such as the National Police Canine Association or other certifying organization.

(c) "Veterinarian" has the same meaning as provided in s. 474.202.

(d) "Veterinary care" means a veterinary medical service specified in s. 474.202 which is provided by a veterinarian licensed under chapter 474. The term includes annual wellness examinations, vaccines, internal and external parasite

53 prevention treatments, testing and treatment of illnesses and
 54 diseases, medications, emergency care and surgeries, specialty
 55 care such as veterinary oncology, euthanasia, and cremation.

56 (3) LEGISLATIVE FINDINGS.—The Legislature finds that:

57 (a) Law enforcement dogs have become an integral part of
 58 many law enforcement efforts statewide, including the
 59 apprehension of suspects through tracking and searching,
 60 evidence location, drug and bomb detection, and search and
 61 rescue operations;

62 (b) Law enforcement agencies agree that the use of law
 63 enforcement dogs is an extremely cost-effective means of crime
 64 control and that these dogs possess skills and abilities that
 65 frequently exceed those of existing technology;

66 (c) The service of law enforcement dogs is often dangerous
 67 and can expose them to injury at a rate higher than that of
 68 nonservice dogs; and

69 (d) Law enforcement dogs provide significant contributions
 70 to the residents of this state.

71 (4) ESTABLISHMENT OF PROGRAM.—The Care for Retired Law
 72 Enforcement Dogs Program is created within the Department of Law
 73 Enforcement to provide a stable funding source for veterinary
 74 care provided to these dogs.

75 (5) ADMINISTRATION.—The Department of Law Enforcement
 76 shall contract with a corporation not for profit organized under
 77 chapter 617 to administer and manage the Care for Retired Law
 78 Enforcement Dogs Program. Notwithstanding the competitive sealed

79 bid procedures required under chapter 287, the department shall
 80 enter into a contract with a corporation not for profit that:
 81 (a) Is dedicated to the protection or care of retired law
 82 enforcement dogs;
 83 (b) Is exempt from taxation under s. 501(a) of the
 84 Internal Revenue Code as an organization described in s.
 85 501(c)(3) of that code;
 86 (c) Has maintained such tax-exempt status for at least 5
 87 years;
 88 (d) Agrees to be subject to review and audit at the
 89 discretion of the Auditor General in order to ensure accurate
 90 accounting and disbursement of state funds; and
 91 (e) Demonstrates the ability to effectively and
 92 efficiently disseminate information and to assist former
 93 handlers and adopters of retired law enforcement dogs in
 94 complying with this section.
 95 (6) FUNDING.—
 96 (a) The corporation not for profit shall be the disbursing
 97 authority for funds appropriated by the Legislature to the
 98 department for the Care for Retired Law Enforcement Dogs
 99 Program. These funds shall be disbursed upon receipt of:
 100 1. Valid documentation from the law enforcement agency
 101 from which the dog retired which verifies that the dog was in
 102 the service of or employed by such agency; and
 103 2. A valid invoice from a veterinarian for veterinary care
 104 provided in this state to a retired law enforcement dog which is

105 submitted by the former handler or adopter of a retired law
 106 enforcement dog.

107 (b) Annual disbursements to a former handler or adopter to
 108 reimburse him or her for the cost of care provided to a retired
 109 law enforcement dog may not exceed \$1,500 per dog. A former
 110 handler or adopter of a retired law enforcement dog may not
 111 accumulate unused funds from a current year for use in a future
 112 year.

113 (c) A former handler or adopter of a retired law
 114 enforcement dog who seeks reimbursement for veterinary services
 115 may not receive reimbursement if funds appropriated for the Care
 116 for Retired Law Enforcement Dogs Program are depleted in the
 117 year for which the reimbursement is sought.

118 (d) Funds appropriated for the Care for Retired Law
 119 Enforcement Dogs Program shall be held in a separate depository
 120 account in the Operating Trust Fund of the department in the
 121 name of the corporation not for profit and are subject to the
 122 provisions of the corporation's contract with the department.

123 The contract must provide that:

124 1. The corporation not for profit must receive
 125 administrative fees, including salaries and benefits, of up to
 126 10 percent of appropriated funds; and

127 2. Any funds held in the separate depository account in
 128 the name of the corporation not for profit must revert to the
 129 department upon expiration or termination of the contract.

130 (e) Notwithstanding s. 216.301, and pursuant to s.

HB 711

2015

131 | 216.351, on July 1 of each year, the Executive Office of the
 132 | Governor shall certify forward all unexpended funds appropriated
 133 | pursuant to this section. However, the fund balance for the Care
 134 | for Retired Law Enforcement Dogs Program may not exceed
 135 | \$400,000.

136 | (7) RULEMAKING.-The department shall adopt rules pursuant
 137 | to ss. 120.536(1) and 120.54 to implement this section.

138 | Section 2. For the 2015-2016 fiscal year, and each fiscal
 139 | year thereafter, the sum of \$300,000 in recurring funds is
 140 | appropriated from the General Revenue Fund to the Department of
 141 | Law Enforcement for the purpose of implementing the Care for
 142 | Retired Law Enforcement Dogs Program.

143 | Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 717 No Contact Orders
SPONSOR(S): Raschein and others
TIED BILLS: None IDEN./SIM. BILLS: CS/SB 342

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

SUMMARY ANALYSIS

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges. With some exceptions, every person charged with a crime is entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

When pretrial release is granted, s. 903.047, F.S., requires the court to impose a condition specifying that the defendant must "refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure." Currently, s. 903.047, F.S., does not specify what actions are encompassed by the phrase, "any contact of any type with the victim." As such, it is unclear what type of contact is prohibited.

The bill amends s. 903.047, F.S., clarifying that an order of no contact is effective immediately and enforceable for the duration of the pretrial release or until modified by the court. The bill also provides that, unless otherwise specified by the court, the term "no contact" includes:

- Communicating orally or in any written form, either in person, telephonically, electronically, or in any other manner, either directly or indirectly through a third person, with the victim or any other person named in the order;
Having physical or violent contact with the victim or other named person or his or her property;
Being within 500 feet of the victim's or other named person's residence, even if the defendant and the victim or other named person share the residence; and
Being within 500 feet of the victim's or other named person's vehicle, place of employment, or a specified place frequented regularly by such person.

The Office of the State Courts Administrator (OSCA) anticipates that the bill may cause a temporary increase in the number of contempt proceedings or prosecutions for violations of conditions of release. However, OSCA does anticipate that the impact of the bill will be manageable within its existing resources. Additionally, to the extent the bill results in more defendants violating their conditions of pretrial release and being detained, it could have a negative jail bed impact.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Pretrial Release

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.¹ Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.² If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.³

When determining whether to release a defendant on pretrial release, and what the conditions of pretrial release should be, the court must consider:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the defendant;
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition;
- The defendant's past and present conduct (e.g., record of convictions, previous flight to avoid prosecution, failure to appear at court proceedings);
- The nature and probability of danger which the defendant's release poses to the community;
- The source of funds used to post bail or procure an appearance bond;⁴
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence;
- The street value of any drug or controlled substance involved in the criminal charge;
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release;
- Any other facts that the court considers relevant;
- Whether the crime charged is a violation of ch. 874, F.S. (relating to criminal gangs), or alleged to be subject to enhanced punishment under ch. 874, F.S.; and
- Whether the defendant is required to register as a sexual offender or a sexual predator.⁵

Generally, pretrial release is granted in one of three ways - by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.⁶ In each instance, s. 903.047, F.S., requires the court to impose a condition specifying that the defendant must "refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure."⁷

The court may detain a defendant if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria described above, and any other relevant facts, that the defendant has violated a condition of pretrial release and the violation, in the discretion of the court,

¹ Report No. 14-13, "County Pretrial Release Programs: Calendar Year 2013," Office of Program Policy Analysis & Government Accountability, December 2014.

² The conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130(d), Fla. R. Crim. Proc.

³ FLA. CONST. art. I, s. 14, FLA. R. CRIM. PROC. 3.131(a).

⁴ Particularly whether the proffered funds, real property, property, or any proposed collateral or bond premium may be linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities. s. 903.046(2)(f), F.S.

⁵ s. 903.046(2), F.S.

⁶ Report No. 14-13, "County Pretrial Release Programs: Calendar Year 2013," Office of Program Policy Analysis & Government Accountability, December 2014.

⁷ Upon motion by the defendant, the court may modify this conditions if good cause is shown and the interests of justice so require. The victim has the right to be heard at such a proceeding, and the state attorney must notify the victim of the pendency of any such proceeding. s. 903.047(2), F.S.

supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial.⁸

Effect of the Bill

As noted above, when a defendant is granted pretrial release, s. 903.047, F.S., requires the court to impose a condition specifying that the defendant must “refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure.”

Section 903.047, F.S., does not specify what actions are encompassed by the phrase, “any contact of any type with the victim.” As such, it is unclear what type of contact is prohibited.

The bill amends s. 903.047, F.S., clarifying that an order of no contact is effective immediately and enforceable for the duration of the pretrial release or until modified by the court. The bill also provides that, unless otherwise specified by the court, the term “no contact” includes:

- Communicating orally or in any written form, either in person, telephonically, electronically, or in any other manner, either directly or indirectly through a third person, with the victim or any other person named in the order;
- Having physical or violent contact with the victim or other named person or his or her property;
- Being within 500 feet of the victim's or other named person's residence, even if the defendant and the victim or other named person share the residence; and
- Being within 500 feet of the victim's or other named person's vehicle, place of employment, or a specified place frequented regularly by such person.

The bill also reenacts ss. 741.29, 784.046, and 901.15, F.S., for purposes of incorporating the changes made to s. 903.047, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 903.047, F.S., relating to conditions of pretrial release.

Section 2. Reenacts s. 741.29, F.S., relating to domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting.

Section 3. Reenacts s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

Section 4. Reenacts s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 5. Provides an effective date of October 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 Office of the State Courts Administrator (OSCA) anticipates that the bill may cause a temporary increase in the number of contempt proceedings or prosecutions for violations of conditions of

release, but OSCA cannot accurately determine the fiscal impact of the legislation due to the unavailability of data needed to determine its impact on judicial workloads.⁹ Nevertheless, OSCA anticipates that the impact of the bill will be manageable within its existing resources.¹⁰

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 clarifies what types of contact are prohibited during pretrial release. To the extent this results in more defendants violating their conditions of pretrial release and being detained, it could 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 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

n/a

⁹ Office of the State Courts Administrator, Agency Bill Analysis for SB 342, which was identical to HB 717 as originally filed (on file with the Criminal Justice Subcommittee).

¹⁰ *Id.*

HB 717

2015

1 A bill to be entitled
 2 An act relating to no contact orders; amending s.
 3 903.047, F.S.; providing for the effect and
 4 enforceability of orders of no contact as a part of
 5 pretrial release; specifying acts prohibited by a no
 6 contact order; reenacting ss. 741.29(6), 784.046(13)
 7 and (15), and 901.15(13), F.S., relating to domestic
 8 violence, repeat, sexual, or dating violence, and
 9 arrest without a warrant, respectively, to incorporate
 10 the amendments made to s. 903.047, F.S., in references
 11 thereto; providing an effective date.

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

14
 15 Section 1. Section 903.047, Florida Statutes, is amended
 16 to read:

17 903.047 Conditions of pretrial release.—

18 (1) As a condition of pretrial release, whether such
 19 release is by surety bail bond or recognizance bond or in some
 20 other form, the defendant must ~~shall~~:

21 (a) Refrain from criminal activity of any kind.

22 (b) Refrain from any contact of any type with the victim,
 23 except through pretrial discovery pursuant to the Florida Rules
 24 of Criminal Procedure. An order of no contact is effective
 25 immediately and enforceable for the duration of the pretrial
 26 release or until it is modified by the court. As used in this

27 section, unless otherwise specified by the court, the term "no
28 contact" includes the following prohibited acts:

29 1. Communicating orally or in any written form, either in
30 person, telephonically, electronically, or in any other manner,
31 either directly or indirectly through a third person, with the
32 victim or any other person named in the order.

33 2. Having physical or violent contact with the victim or
34 other named person or his or her property.

35 3. Being within 500 feet of the victim's or other named
36 person's residence, even if the defendant and the victim or
37 other named person share the residence.

38 4. Being within 500 feet of the victim's or other named
39 person's vehicle, place of employment, or a specified place
40 frequented regularly by such person.

41 (c) Comply with all conditions of pretrial release.

42 (2) Upon motion by the defendant when bail is set, or upon
43 later motion properly noticed pursuant to law, the court may
44 modify the condition required by paragraph (1)(b) if good cause
45 is shown and the interests of justice so require. The victim
46 shall be permitted to be heard at any proceeding in which such
47 modification is considered, and the state attorney shall notify
48 the victim of the provisions of this subsection and of the
49 pendency of any such proceeding.

50 Section 2. For the purpose of incorporating the amendment
51 made by this act to section 903.047, Florida Statutes, in a
52 reference thereto, subsection (6) of section 741.29, Florida

53 Statutes, is reenacted to read:

54 741.29 Domestic violence; investigation of incidents;
55 notice to victims of legal rights and remedies; reporting.—

56 (6) A person who willfully violates a condition of
57 pretrial release provided in s. 903.047, when the original
58 arrest was for an act of domestic violence as defined in s.
59 741.28, commits a misdemeanor of the first degree, punishable as
60 provided in s. 775.082 or s. 775.083, and shall be held in
61 custody until his or her first appearance.

62 Section 3. For the purpose of incorporating the amendment
63 made by this act to section 903.047, Florida Statutes, in a
64 reference thereto, subsections (13) and (15) of section 784.046,
65 Florida Statutes, are reenacted to read:

66 784.046 Action by victim of repeat violence, sexual
67 violence, or dating violence for protective injunction; dating
68 violence investigations, notice to victims, and reporting;
69 pretrial release violations; public records exemption.—

70 (13) Whenever a law enforcement officer determines upon
71 probable cause that an act of dating violence has been committed
72 within the jurisdiction, or that a person has violated a
73 condition of pretrial release as provided in s. 903.047 and the
74 original arrest was for an act of dating violence, the officer
75 may arrest the person or persons suspected of its commission and
76 charge such person or persons with the appropriate crime. The
77 decision to arrest and charge shall not require consent of the
78 victim or consideration of the relationship of the parties.

79 (15) A person who willfully violates a condition of
80 pretrial release provided in s. 903.047, when the original
81 arrest was for an act of dating violence as defined in this
82 section, commits a misdemeanor of the first degree, punishable
83 as provided in s. 775.082 or s. 775.083, and shall be held in
84 custody until his or her first appearance.

85 Section 4. For the purpose of incorporating the amendment
86 made by this act to section 903.047, Florida Statutes, in a
87 reference thereto, subsection (13) of section 901.15, Florida
88 Statutes, is reenacted to read:

89 901.15 When arrest by officer without warrant is lawful.—A
90 law enforcement officer may arrest a person without a warrant
91 when:

92 (13) There is probable cause to believe that the person
93 has committed an act that violates a condition of pretrial
94 release provided in s. 903.047 when the original arrest was for
95 an act of domestic violence as defined in s. 741.28, or when the
96 original arrest was for an act of dating violence as defined in
97 s. 784.046.

98 Section 5. 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 Raschein offered the following:

Amendment (with title amendment)

Remove line 26 and insert:

7 release or until it is modified by the court. The defendant
 8 shall receive a copy of the order of no contact which specifies
 9 the applicable prohibited acts before the defendant is released
 10 from custody on pretrial release. As used in this

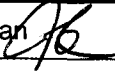

T I T L E A M E N D M E N T

Remove line 5 and insert:

15 pretrial release; requiring that the defendant receive a copy of
 16 the order of no contact prior to release; specifying acts
 17 prohibited by a no

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 897 Controlled Substances
SPONSOR(S): Ingram
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1098

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

SUMMARY ANALYSIS

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

Each year since 2011, the Florida Legislature has added numerous synthetic cannabinoids, cathinones, and phenethylamines to Schedule I of Florida's controlled substances schedules. Since the 2014 Legislative Session, new formulas of synthetic cannabinoids have been developed that are made up of chemicals not covered by current law.

The bill adds five new synthetic cannabinoids to Schedule I of Florida's controlled substance schedules. As a result, the criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill may have a negative prison bed impact on the Department of Corrections and a negative jail bed impact on local governments because it expands the list of substances included in Schedule I, thereby expanding the scope of criminal laws associated with these substances. State and local law enforcement crime labs may also see a rise in evidence submissions associated with the newly added substances.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Scheduling Synthetic Drugs

Background

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”¹ of the substances listed therein and whether there is a currently accepted medical use for the substance.² Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.³ Cannabis and heroin are examples of Schedule I substances.⁴

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on the schedule in which the substance is listed.⁵ Other factors, such as the quantity of controlled substances involved in a crime, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

In recent years, synthetic drugs have emerged in Florida. Synthetic drugs, such as cannabinoids and cathinones, are industrial grade chemicals mixed to produce a “high” similar to what would be experienced when using illegal drugs such as marijuana or methamphetamine.⁶ According to the United States Drug Enforcement Administration (DEA), these substances have not been approved for human consumption by the United States Food and Drug Administration (FDA).⁷

Synthetic Cannabinoids

Synthetic cannabinoids (also known as “K2” or “Spice”) are chemically engineered substances that have a similar structure to tetrahydrocannabinol (THC) and produce a high similar to marijuana when ingested.⁸ The chemicals are often applied to a plant material to mimic marijuana.⁹ Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system.¹⁰ No legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the FDA for human consumption.¹¹

¹ Section 893.035(3)(a), F.S., defines “potential for abuse” to mean that a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: 1) used in amounts that create a hazard to the user's health or the safety of the community; 2) diverted from legal channels and distributed through illegal channels; or 3) taken on the user's own initiative rather than on the basis of professional medical advice.

² See s. 893.03, F.S.

³ *Id.*

⁴ *Id.*

⁵ See, e.g., s. 893.13(1)(a) and (c), F.S.

⁶ OFFICE OF NATIONAL DRUG CONTROL POLICY, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited March 7, 2015).

⁷ UNITED STATES DRUG ENFORCEMENT ADMINISTRATION, *Chemicals Used in “Spice” and K2” Type Products Now under Federal Control and Regulation*, <http://www.dea.gov/pubs/pressrel/pr030111.html> (last visited March 7, 2015).

⁸ OFFICE OF NATIONAL DRUG CONTROL POLICY, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited March 7, 2015).

⁹ *Id.*

¹⁰ Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I, 75 Fed. Reg. 71,635-38 (Nov. 24, 2010) (supplementary information), also available at <https://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule#h-6>.

¹¹ *Id.*

Despite being labeled “not for human consumption,” synthetic cannabinoids are used as recreational drugs and have been marketed as a legal alternative to illegal methods of getting “high.”¹² They can be purchased on the internet, in smoke shops, and convenience stores.¹³ The effects of ingesting synthetic cannabinoids can be very serious, and may include seizures, hallucinations, paranoia, anxiety, and tachycardia (racing heartbeat), among others.¹⁴

Synthetic Drugs Legislation

Each year since 2011, the Florida Legislature has added numerous synthetic cannabinoids, cathinones, and phenethylamines to Schedule I of Florida’s controlled substances schedules.¹⁵ As a result, the criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances now apply to these synthetic substances. For example:

- It is a first degree misdemeanor¹⁶ to possess three grams or less of listed synthetic cannabinoids;¹⁷ and
- It is a third degree felony¹⁸ to knowingly sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, listed synthetic cannabinoids.¹⁹

Since the 2014 Legislative Session, new formulas of synthetic cannabinoids have been developed that are made of chemicals not covered by current law. In December, 2014, the DEA federally scheduled two new synthetic cannabinoids that are not scheduled as controlled substances in Florida.²⁰

Effect of the Bill

The bill amends s. 893.03(1)(c), F.S., to add five synthetic cannabinoids to Schedule I of Florida’s controlled substances schedules:

- AB-CHMINACA: N-[1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;
- FUB-PB-22: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate;
- Fluoro-NNEI: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide;
- 5-Fluoro-AMB: Methyl 2-(1-(fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate; and
- THJ 2201 [1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone.

As a result, the criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill reenacts ss. 39.01(30)(a) and (g); 316.193(5); 322.2616(2)(c); 327.35(5); 440.102(11)(b); 458.3265(1)(e); 459.0137(1)(e); 782.04(1)(a) and (4); 893.0356(2)(a) and (5); 893.05(1); 893.12(2)(b)-(d); 893.13(1)(a), (c), (d)-(f), (h), (2)(a), (4)(b), (5)(b), and (7)(a); 893.135(1)(k) and (l); 921.0022(3)(b), (c), (e), F.S.; to incorporate the changes to s. 893.03, F.S.

B. SECTION DIRECTORY:

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

Section 2. Reenacts s. 39.01, F.S., relating to definitions.

¹² United States Drug Enforcement Administration, *Chemicals Used in “Spice” and K2” Type Products Now under Federal Control and Regulation*, <http://www.dea.gov/pubs/pressrel/pr030111.html> (last visited March 7, 2015).

¹³ Synthetic Substances Ban, Brief # 12-150, Florida Fusion Center (March 23, 2012) available at www.tspd.us/Substances_Ban.pdf

¹⁴ Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I, 76 Fed. Reg. 11,075-78 (March 1, 2011) (supplementary information) also available at http://www.deadiversion.usdoj.gov/fed_regs/rules/2011/fr0301.htm.

¹⁵ Chs. 14-159, 13-29, 12-23, 11-73, 11-90, Laws of Fla.

¹⁶ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹⁷ s. 893.13(6)(b), F.S.

¹⁸ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

¹⁹ s. 893.13(1)(a), F.S.

²⁰ Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cannabinoids Into Schedule I, 79 Fed. Reg. 75,767-771 (Dec. 2014) also available at http://www.deadiversion.usdoj.gov/fed_regs/rules/2014/fr1219.htm

- Section 3. Reenacts s. 316.193, F.S., relating to driving under the influence; penalties.
- Section 4. Reenacts s. 322.2616, F.S., relating to suspension of license; persons under 21 years of age; right to review.
- Section 5. Reenacts s. 327.35, F.S., relating to boating under the influence; penalties; "designated drivers."
- Section 6. Reenacts s. 440.102, F.S., relating to drug-free workplace program requirements.
- Section 7. Reenacts s. 458.3265, F.S., relating to pain-management clinics.
- Section 8. Reenacts s. 459.0137, F.S., relating to pain-management clinics.
- Section 9. Reenacts s. 782.04, F.S., relating to murder.
- Section 10. Reenacts s. 893.0356, F.S., relating to control of new substances; findings of fact; "controlled substance analog" defined.
- Section 11. Reenacts s. 893.05, F.S., relating to practitioners and persons administering controlled substances in their absence.
- Section 12. Reenacts s. 893.12, F.S., relating to contraband; seizure, forfeiture, sale.
- Section 13. Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.
- Section 14. Reenacts s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.
- Section 15. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 16. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the fiscal impact of this bill. However, during the 2014 Legislative Session, the Conference determined that HB 697, which is similar to this bill, would have an insignificant negative prison bed impact. As a result, it is expected that the bill will have an insignificant negative prison bed impact on the Department of Corrections.

The bill may also impact the Florida Department of Law Enforcement Crime Laboratory expenditures because the lab may see a rise in evidence submissions associated with the newly added substances.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

This bill may have a negative jail bed impact because possession of three grams or less of the new Schedule I substances is a first degree misdemeanor.

The bill may also impact local agencies that fund or maintain their own crime lab because these labs may see a rise in evidence submissions associated with the newly added substances.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 893.03, F.S.; adding certain substances to the
 4 Schedule I list of controlled substances; reenacting
 5 s. 39.01(30)(a) and (g), F.S., relating to definitions
 6 used in chapter 39, F.S., s. 316.193(5), F.S.,
 7 relating to driving under the influence, s.
 8 322.2616(2)(c), F.S., relating to suspension of driver
 9 licenses, s. 327.35(5), F.S., relating to boating
 10 under the influence, s. 440.102(11)(b), F.S., relating
 11 to drug-free workplace programs, ss. 458.3265(1)(e)
 12 and 459.0137(1)(e), F.S., relating to pain-management
 13 clinics, s. 782.04(1)(a) and (4), F.S., relating to
 14 murder, s. 893.0356(2)(a) and (5), F.S., relating to
 15 controlled substance analogs, s. 893.05(1), F.S.,
 16 relating to practitioners and persons administering
 17 controlled substances in their absence, s.
 18 893.12(2)(b), (c), and (d), F.S., relating to
 19 contraband seizure and forfeiture, s. 893.13(1)(a),
 20 (c), (d), (e), (f), (h), (2)(a), (4)(b), (5)(b), and
 21 (7)(a), F.S., relating to controlled substance
 22 offenses, s. 893.135(1)(k) and (l), F.S., relating to
 23 offenses involving trafficking in controlled
 24 substances, and s.921.0022(3)(b), (c), and (e), F.S.,
 25 relating to the offense severity ranking chart of the
 26 Criminal Punishment Code, F.S., to incorporate the

27 amendment made by the act to s. 893.03, F.S., in
 28 references thereto; providing an effective date.
 29

30 Be It Enacted by the Legislature of the State of Florida:
 31

32 Section 1. Paragraph (c) of subsection (1) of section
 33 893.03, Florida Statutes, is amended to read:

34 893.03 Standards and schedules.—The substances enumerated
 35 in this section are controlled by this chapter. The controlled
 36 substances listed or to be listed in Schedules I, II, III, IV,
 37 and V are included by whatever official, common, usual,
 38 chemical, or trade name designated. The provisions of this
 39 section shall not be construed to include within any of the
 40 schedules contained in this section any excluded drugs listed
 41 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 42 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
 43 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 44 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 45 Anabolic Steroid Products."

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

51 (c) Unless specifically excepted or unless listed in
 52 another schedule, any material, compound, mixture, or

53 preparation that contains any quantity of the following
 54 hallucinogenic substances or that contains any of their salts,
 55 isomers, including optical, positional, or geometric isomers,
 56 and salts of isomers, if the existence of such salts, isomers,
 57 and salts of isomers is possible within the specific chemical
 58 designation:

- 59 1. Alpha-ethyltryptamine.
- 60 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-
 61 methylaminorex).
- 62 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
- 63 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 64 5. 4-Bromo-2,5-dimethoxyphenethylamine.
- 65 6. Bufotenine.
- 66 7. Cannabis.
- 67 8. Cathinone.
- 68 9. Diethyltryptamine.
- 69 10. 2,5-Dimethoxyamphetamine.
- 70 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
- 71 12. Dimethyltryptamine.
- 72 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
 73 analog of phencyclidine).
- 74 14. N-Ethyl-3-piperidyl benzilate.
- 75 15. N-ethylamphetamine.
- 76 16. Fenethylamine.
- 77 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
- 78 18. Ibogaine.

- 79 | 19. Lysergic acid diethylamide (LSD).
- 80 | 20. Mescaline.
- 81 | 21. Methcathinone.
- 82 | 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 83 | 23. 4-methoxyamphetamine.
- 84 | 24. 4-methoxymethamphetamine.
- 85 | 25. 4-Methyl-2,5-dimethoxyamphetamine.
- 86 | 26. 3,4-Methylenedioxy-N-ethylamphetamine.
- 87 | 27. 3,4-Methylenedioxyamphetamine.
- 88 | 28. N-Methyl-3-piperidyl benzilate.
- 89 | 29. N,N-dimethylamphetamine.
- 90 | 30. Parahexyl.
- 91 | 31. Peyote.
- 92 | 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine
- 93 | analog of phencyclidine).
- 94 | 33. Psilocybin.
- 95 | 34. Psilocyn.
- 96 | 35. *Salvia divinorum*, except for any drug product approved
- 97 | by the United States Food and Drug Administration which contains
- 98 | *Salvia divinorum* or its isomers, esters, ethers, salts, and
- 99 | salts of isomers, esters, and ethers, if the existence of such
- 100 | isomers, esters, ethers, and salts is possible within the
- 101 | specific chemical designation.
- 102 | 36. Salvinorin A, except for any drug product approved by
- 103 | the United States Food and Drug Administration which contains
- 104 | Salvinorin A or its isomers, esters, ethers, salts, and salts of

105 isomers, esters, and ethers, if the existence of such isomers,
 106 esters, ethers, and salts is possible within the specific
 107 chemical designation.

- 108 37. Tetrahydrocannabinols.
- 109 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
 110 (Thiophene analog of phencyclidine).
- 111 39. 3,4,5-Trimethoxyamphetamine.
- 112 40. 3,4-Methylenedioxy methcathinone.
- 113 41. 3,4-Methylenedioxypropiovalerone (MDPV).
- 114 42. Methylmethcathinone.
- 115 43. Methoxymethcathinone.
- 116 44. Fluoromethcathinone.
- 117 45. Methylethcathinone.
- 118 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
 119 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
 120 homologue.
- 121 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
 122 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
 123 also known as HU-210.
- 124 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.
- 125 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.
- 126 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole,
 127 also known as JWH-200.
- 128 51. BZP (Benzylpiperazine).
- 129 52. Fluorophenylpiperazine.
- 130 53. Methylphenylpiperazine.

- 131 | 54. Chlorophenylpiperazine.
- 132 | 55. Methoxyphenylpiperazine.
- 133 | 56. DBZP (1,4-dibenzylpiperazine).
- 134 | 57. TFMPP (3-Trifluoromethylphenylpiperazine).
- 135 | 58. MBDB (Methylbenzodioxolylbutanamine).
- 136 | 59. 5-Hydroxy-alpha-methyltryptamine.
- 137 | 60. 5-Hydroxy-N-methyltryptamine.
- 138 | 61. 5-Methoxy-N-methyl-N-isopropyltryptamine.
- 139 | 62. 5-Methoxy-alpha-methyltryptamine.
- 140 | 63. Methyltryptamine.
- 141 | 64. 5-Methoxy-N,N-dimethyltryptamine.
- 142 | 65. 5-Methyl-N,N-dimethyltryptamine.
- 143 | 66. Tyramine (4-Hydroxyphenethylamine).
- 144 | 67. 5-Methoxy-N,N-Diisopropyltryptamine.
- 145 | 68. DiPT (N,N-Diisopropyltryptamine).
- 146 | 69. DPT (N,N-Dipropyltryptamine).
- 147 | 70. 4-Hydroxy-N,N-diisopropyltryptamine.
- 148 | 71. N,N-Diallyl-5-Methoxytryptamine.
- 149 | 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 150 | 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 151 | 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 152 | 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
- 153 | 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 154 | 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
- 155 | 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
- 156 | 79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).

- 157 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 158 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).
- 159 82. Ethcathinone.
- 160 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
- 161 84. Naphyrone (naphthylpyrovalerone).
- 162 85. N-N-Dimethyl-3,4-methylenedioxcathinone.
- 163 86. N-N-Diethyl-3,4-methylenedioxcathinone.
- 164 87. 3,4-methylenedioxy-propiofenone.
- 165 88. 2-Bromo-3,4-Methylenedioxypropiofenone.
- 166 89. 3,4-methylenedioxy-propiofenone-2-oxime.
- 167 90. N-Acetyl-3,4-methylenedioxcathinone.
- 168 91. N-Acetyl-N-Methyl-3,4-Methylenedioxcathinone.
- 169 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone.
- 170 93. Bromomethcathinone.
- 171 94. Buphedrone (alpha-methylamino-butyrophenone).
- 172 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
- 173 96. Dimethylcathinone.
- 174 97. Dimethylmethcathinone.
- 175 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
- 176 99. (MDPPP) 3,4-Methylenedioxy-alpha-
- 177 pyrrolidinopropiofenone.
- 178 100. (MDPBP) 3,4-Methylenedioxy-alpha-
- 179 pyrrolidinobutiophenone.
- 180 101. Methoxy-alpha-pyrrolidinopropiofenone (MOPPP).
- 181 102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).
- 182 103. Benocyclidine (BCP) or

- 183 benzothiophenylcyclohexylpiperidine (BTCP).
- 184 104. Fluoromethylaminobutyrophenone (F-MABP).
- 185 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
- 186 106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).
- 187 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
- 188 108. Methyleneethylaminobutyrophenone (Me-EABP).
- 189 109. Methylamino-butyrophenone (MABP).
- 190 110. Pyrrolidinopropiophenone (PPP).
- 191 111. Pyrrolidinobutiophenone (PBP).
- 192 112. Pyrrolidinovalerophenone (PVP).
- 193 113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).
- 194 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
- 195 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
- 196 naphthalenylmethanone).
- 197 116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-
- 198 yl)methanone).
- 199 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
- 200 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-
- 201 yl)methanone).
- 202 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
- 203 yl)methanone).
- 204 120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).
- 205 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-
- 206 6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
- 207 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-
- 208 indole).

HB 897

2015

- 209 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
 210 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-
 211 yl)ethanone).
 212 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-
 213 yl)methanone).
 214 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-
 215 yl)ethanone).
 216 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-
 217 yl)ethanone).
 218 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
 219 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
 220 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 221 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 222 ol).
 223 131. HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-
 224 methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-
 225 enyl] methanol).
 226 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-
 227 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
 228 1,4-dione).
 229 133. CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-
 230 yl)methanone).
 231 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
 232 undecanamide).
 233 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
 234 undecanamide).

HB 897

2015

- 235 136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-
 236 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).
 237 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-2-
 238 iodophenyl)methanone).
 239 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-
 240 (naphthalen-1-yl)methanone).
 241 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-
 242 yl)methanone).
 243 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-
 244 methoxyphenylethanone).
 245 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
 246 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
 247 naphthalenylmethanone).
 248 142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-
 249 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
 250 naphthalenylmethanone).
 251 143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).
 252 144. Fluoroamphetamine.
 253 145. Fluoromethamphetamine.
 254 146. Methoxetamine.
 255 147. Methiopropamine.
 256 148. 4-Methylbuphedrone (2-Methylamino-1-(4-
 257 methylphenyl)butan-1-one).
 258 149. APB ((2-aminopropyl)benzofuran).
 259 150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).
 260 151. UR-144 ((1-pentyl-1H-indol-3-yl) (2,2,3,3-

HB 897

2015

- 261 tetramethylcyclopropyl)methanone).
- 262 152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl) (2,2,3,3-
- 263 tetramethylcyclopropyl)methanone).
- 264 153. (1-(5-chloropentyl)-1H-indol-3-yl) (2,2,3,3-
- 265 tetramethylcyclopropyl)methanone.
- 266 154. AKB48 (1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-
- 267 indazole-3-carboxamide).
- 268 155. AM-2233((2-iodophenyl) [1-[(1-methyl-2-
- 269 piperidinyl)methyl]-1H-indol-3-yl]-methanone).
- 270 156. STS-135 (1-(5-fluoropentyl)-N-
- 271 tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indole-3-carboxamide).
- 272 157. URB-597 ((3'-(aminocarbonyl) [1,1'-biphenyl]-3-yl)-
- 273 cyclohexylcarbamate).
- 274 158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid,
- 275 cyclohexyl ester).
- 276 159. URB-754 (6-methyl-2-[(4-methylphenyl)amino]-1-
- 277 benzoxazin-4-one).
- 278 160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).
- 279 161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).
- 280 162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).
- 281 163. 2C-P (2-(2,5-Dimethoxy-4-(n)-
- 282 propylphenyl)ethanamine).
- 283 164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-
- 284 methoxyphenyl)methyl]-benzeneethanamine).
- 285 165. 3,4-Methylenedioxymethamphetamine (MDMA).
- 286 166. PB-22 (1-pentyl-8-quinolinyl ester-1H-indole-3-

- 287 | carboxylic acid).
- 288 | 167. 5-Fluoro PB-22 (8-quinolinyl ester-1-(5-
- 289 | fluoropentyl)-1H-indole-3-carboxylic acid).
- 290 | 168. BB-22 (1-(cyclohexylmethyl)-8-quinolinyl ester-1H-
- 291 | indole-3-carboxylic acid).
- 292 | 169. 5-Fluoro AKB48 (N-((3s,5s,7s)-adamantan-1-yl)-1-(5-
- 293 | fluoropentyl)-1H-indazole-3-carboxamide).
- 294 | 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
- 295 | pentyl-1H-indazole-3-carboxamide).
- 296 | 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
- 297 | (4-fluorobenzyl)-1H-indazole-3-carboxamide).
- 298 | 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-
- 299 | 1-pentyl-1H-indazole-3-carboxamide).
- 300 | 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
- 301 | yl)-1-(fluoropentyl)-1H-indole-3-carboxamide).
- 302 | 174. 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)
- 303 | methyl]-benzeneethanamine).
- 304 | 175. 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-
- 305 | methoxyphenyl)methyl]-benzeneethanamine).
- 306 | 176. AB-CHMINACA: N-[1-(aminocarbonyl)-2-methylpropyl]-1-
- 307 | (cyclohexylmethyl)-1H-indazole-3-carboxamide.
- 308 | 177. FUB-PB-22: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-
- 309 | indole-3-carboxylate.
- 310 | 178. Fluoro-NNEI: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-
- 311 | indole-3-carboxamide.
- 312 | 179. 5-Fluoro-AMB: Methyl 2-(1-(fluoropentyl)-1H-indazole-

313 3-carboxamido)-3-methylbutanoate.

314 180. THJ 2201 [1-(5-Fluoropentyl)-1H-indazol-3-
 315 yl](naphthalen-1-yl)methanone.

316 Section 2. For the purpose of incorporating the amendment
 317 made by this act to section 893.03, Florida Statutes, in
 318 references thereto, paragraphs (a) and (g) of subsection (30) of
 319 section 39.01, Florida Statutes, are reenacted to read:

320 39.01 Definitions.—When used in this chapter, unless the
 321 context otherwise requires:

322 (30) "Harm" to a child's health or welfare can occur when
 323 any person:

324 (a) Inflicts or allows to be inflicted upon the child
 325 physical, mental, or emotional injury. In determining whether
 326 harm has occurred, the following factors must be considered in
 327 evaluating any physical, mental, or emotional injury to a child:
 328 the age of the child; any prior history of injuries to the
 329 child; the location of the injury on the body of the child; the
 330 multiplicity of the injury; and the type of trauma inflicted.

331 Such injury includes, but is not limited to:

332 1. Willful acts that produce the following specific
 333 injuries:

- 334 a. Sprains, dislocations, or cartilage damage.
- 335 b. Bone or skull fractures.
- 336 c. Brain or spinal cord damage.
- 337 d. Intracranial hemorrhage or injury to other internal
 338 organs.

- 339 e. Asphyxiation, suffocation, or drowning.
- 340 f. Injury resulting from the use of a deadly weapon.
- 341 g. Burns or scalding.
- 342 h. Cuts, lacerations, punctures, or bites.
- 343 i. Permanent or temporary disfigurement.
- 344 j. Permanent or temporary loss or impairment of a body
- 345 part or function.

346
 347 As used in this subparagraph, the term "willful" refers to the
 348 intent to perform an action, not to the intent to achieve a
 349 result or to cause an injury.

350 2. Purposely giving a child poison, alcohol, drugs, or
 351 other substances that substantially affect the child's behavior,
 352 motor coordination, or judgment or that result in sickness or
 353 internal injury. For the purposes of this subparagraph, the term
 354 "drugs" means prescription drugs not prescribed for the child or
 355 not administered as prescribed, and controlled substances as
 356 outlined in Schedule I or Schedule II of s. 893.03.

357 3. Leaving a child without adult supervision or
 358 arrangement appropriate for the child's age or mental or
 359 physical condition, so that the child is unable to care for the
 360 child's own needs or another's basic needs or is unable to
 361 exercise good judgment in responding to any kind of physical or
 362 emotional crisis.

363 4. Inappropriate or excessively harsh disciplinary action
 364 that is likely to result in physical injury, mental injury as

365 defined in this section, or emotional injury. The significance
 366 of any injury must be evaluated in light of the following
 367 factors: the age of the child; any prior history of injuries to
 368 the child; the location of the injury on the body of the child;
 369 the multiplicity of the injury; and the type of trauma
 370 inflicted. Corporal discipline may be considered excessive or
 371 abusive when it results in any of the following or other similar
 372 injuries:

- 373 a. Sprains, dislocations, or cartilage damage.
- 374 b. Bone or skull fractures.
- 375 c. Brain or spinal cord damage.
- 376 d. Intracranial hemorrhage or injury to other internal
 377 organs.
- 378 e. Asphyxiation, suffocation, or drowning.
- 379 f. Injury resulting from the use of a deadly weapon.
- 380 g. Burns or scalding.
- 381 h. Cuts, lacerations, punctures, or bites.
- 382 i. Permanent or temporary disfigurement.
- 383 j. Permanent or temporary loss or impairment of a body
 384 part or function.
- 385 k. Significant bruises or welts.

386 (g) Exposes a child to a controlled substance or alcohol.
 387 Exposure to a controlled substance or alcohol is established by:

- 388 1. A test, administered at birth, which indicated that the
 389 child's blood, urine, or meconium contained any amount of
 390 alcohol or a controlled substance or metabolites of such

391 substances, the presence of which was not the result of medical
 392 treatment administered to the mother or the newborn infant; or
 393 2. Evidence of extensive, abusive, and chronic use of a
 394 controlled substance or alcohol by a parent when the child is
 395 demonstrably adversely affected by such usage.

396
 397 As used in this paragraph, the term "controlled substance" means
 398 prescription drugs not prescribed for the parent or not
 399 administered as prescribed and controlled substances as outlined
 400 in Schedule I or Schedule II of s. 893.03.

401 Section 3. For the purpose of incorporating the amendment
 402 made by this act to section 893.03, Florida Statutes, in a
 403 reference thereto, subsection (5) of section 316.193, Florida
 404 Statutes, is reenacted to read:

405 316.193 Driving under the influence; penalties.—

406 (5) The court shall place all offenders convicted of
 407 violating this section on monthly reporting probation and shall
 408 require completion of a substance abuse course conducted by a
 409 DUI program licensed by the department under s. 322.292, which
 410 must include a psychosocial evaluation of the offender. If the
 411 DUI program refers the offender to an authorized substance abuse
 412 treatment provider for substance abuse treatment, in addition to
 413 any sentence or fine imposed under this section, completion of
 414 all such education, evaluation, and treatment is a condition of
 415 reporting probation. The offender shall assume reasonable costs
 416 for such education, evaluation, and treatment. The referral to

417 treatment resulting from a psychosocial evaluation shall not be
418 waived without a supporting independent psychosocial evaluation
419 conducted by an authorized substance abuse treatment provider
420 appointed by the court, which shall have access to the DUI
421 program's psychosocial evaluation before the independent
422 psychosocial evaluation is conducted. The court shall review the
423 results and recommendations of both evaluations before
424 determining the request for waiver. The offender shall bear the
425 full cost of this procedure. The term "substance abuse" means
426 the abuse of alcohol or any substance named or described in
427 Schedules I through V of s. 893.03. If an offender referred to
428 treatment under this subsection fails to report for or complete
429 such treatment or fails to complete the DUI program substance
430 abuse education course and evaluation, the DUI program shall
431 notify the court and the department of the failure. Upon receipt
432 of the notice, the department shall cancel the offender's
433 driving privilege, notwithstanding the terms of the court order
434 or any suspension or revocation of the driving privilege. The
435 department may temporarily reinstate the driving privilege on a
436 restricted basis upon verification from the DUI program that the
437 offender is currently participating in treatment and the DUI
438 education course and evaluation requirement has been completed.
439 If the DUI program notifies the department of the second failure
440 to complete treatment, the department shall reinstate the
441 driving privilege only after notice of completion of treatment
442 from the DUI program. The organization that conducts the

443 substance abuse education and evaluation may not provide
444 required substance abuse treatment unless a waiver has been
445 granted to that organization by the department. A waiver may be
446 granted only if the department determines, in accordance with
447 its rules, that the service provider that conducts the substance
448 abuse education and evaluation is the most appropriate service
449 provider and is licensed under chapter 397 or is exempt from
450 such licensure. A statistical referral report shall be submitted
451 quarterly to the department by each organization authorized to
452 provide services under this section.

453 Section 4. For the purpose of incorporating the amendment
454 made by this act to section 893.03, Florida Statutes, in a
455 reference thereto, paragraph (c) of subsection (2) of section
456 322.2616, Florida Statutes, is reenacted to read:

457 322.2616 Suspension of license; persons under 21 years of
458 age; right to review.—

459 (2)

460 (c) When a driver subject to this section has a blood-
461 alcohol or breath-alcohol level of 0.05 or higher, the
462 suspension shall remain in effect until such time as the driver
463 has completed a substance abuse course offered by a DUI program
464 licensed by the department. The driver shall assume the
465 reasonable costs for the substance abuse course. As part of the
466 substance abuse course, the program shall conduct a substance
467 abuse evaluation of the driver, and notify the parents or legal
468 guardians of drivers under the age of 19 years of the results of

469 the evaluation. The term "substance abuse" means the abuse of
 470 alcohol or any substance named or described in Schedules I
 471 through V of s. 893.03. If a driver fails to complete the
 472 substance abuse education course and evaluation, the driver
 473 license shall not be reinstated by the department.

474 Section 5. For the purpose of incorporating the amendment
 475 made by this act to section 893.03, Florida Statutes, in a
 476 reference thereto, subsection (5) of section 327.35, Florida
 477 Statutes, is reenacted to read:

478 327.35 Boating under the influence; penalties; "designated
 479 drivers."-

480 (5) In addition to any sentence or fine, the court shall
 481 place any offender convicted of violating this section on
 482 monthly reporting probation and shall require attendance at a
 483 substance abuse course specified by the court; and the agency
 484 conducting the course may refer the offender to an authorized
 485 service provider for substance abuse evaluation and treatment,
 486 in addition to any sentence or fine imposed under this section.
 487 The offender shall assume reasonable costs for such education,
 488 evaluation, and treatment, with completion of all such
 489 education, evaluation, and treatment being a condition of
 490 reporting probation. Treatment resulting from a psychosocial
 491 evaluation may not be waived without a supporting psychosocial
 492 evaluation conducted by an agency appointed by the court and
 493 with access to the original evaluation. The offender shall bear
 494 the cost of this procedure. The term "substance abuse" means the

495 | abuse of alcohol or any substance named or described in
 496 | Schedules I-V of s. 893.03.

497 | Section 6. For the purpose of incorporating the amendment
 498 | made by this act to section 893.03, Florida Statutes, in a
 499 | reference thereto, paragraph (b) of subsection (11) of section
 500 | 440.102, Florida Statutes, is reenacted to read:

501 | 440.102 Drug-free workplace program requirements.—The
 502 | following provisions apply to a drug-free workplace program
 503 | implemented pursuant to law or to rules adopted by the Agency
 504 | for Health Care Administration:

505 | (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING OR SPECIAL-RISK
 506 | POSITIONS.—

507 | (b) An employee who is employed by a public employer in a
 508 | special-risk position may be discharged or disciplined by a
 509 | public employer for the first positive confirmed test result if
 510 | the drug confirmed is an illicit drug under s. 893.03. A
 511 | special-risk employee who is participating in an employee
 512 | assistance program or drug rehabilitation program may not be
 513 | allowed to continue to work in any special-risk or mandatory-
 514 | testing position of the public employer, but may be assigned to
 515 | a position other than a mandatory-testing position or placed on
 516 | leave while the employee is participating in the program.
 517 | However, the employee shall be permitted to use any accumulated
 518 | annual leave credits before leave may be ordered without pay.

519 | Section 7. For the purpose of incorporating the amendment
 520 | made by this act to section 893.03, Florida Statutes, in a

521 reference thereto, paragraph (e) of subsection (1) of section
 522 458.3265, Florida Statutes, is reenacted to read:

523 458.3265 Pain-management clinics.—

524 (1) REGISTRATION.—

525 (e) The department shall deny registration to any pain-
 526 management clinic owned by or with any contractual or employment
 527 relationship with a physician:

528 1. Whose Drug Enforcement Administration number has ever
 529 been revoked.

530 2. Whose application for a license to prescribe, dispense,
 531 or administer a controlled substance has been denied by any
 532 jurisdiction.

533 3. Who has been convicted of or pleaded guilty or nolo
 534 contendere to, regardless of adjudication, an offense that
 535 constitutes a felony for receipt of illicit and diverted drugs,
 536 including a controlled substance listed in Schedule I, Schedule
 537 II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in
 538 this state, any other state, or the United States.

539 Section 8. For the purpose of incorporating the amendment
 540 made by this act to section 893.03, Florida Statutes, in a
 541 reference thereto, paragraph (e) of subsection (1) of section
 542 459.0137, Florida Statutes, is reenacted to read:

543 459.0137 Pain-management clinics.—

544 (1) REGISTRATION.—

545 (e) The department shall deny registration to any pain-
 546 management clinic owned by or with any contractual or employment

547 relationship with a physician:

548 1. Whose Drug Enforcement Administration number has ever
549 been revoked.

550 2. Whose application for a license to prescribe, dispense,
551 or administer a controlled substance has been denied by any
552 jurisdiction.

553 3. Who has been convicted of or pleaded guilty or nolo
554 contendere to, regardless of adjudication, an offense that
555 constitutes a felony for receipt of illicit and diverted drugs,
556 including a controlled substance listed in Schedule I, Schedule
557 II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in
558 this state, any other state, or the United States.

559 Section 9. For the purpose of incorporating the amendment
560 made by this act to section 893.03, Florida Statutes, in
561 references thereto, paragraph (a) of subsection (1) and
562 subsection (4) of section 782.04, Florida Statutes, are
563 reenacted to read:

564 782.04 Murder.—

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

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

568 2. When committed by a person engaged in the perpetration
569 of, or in the attempt to perpetrate, any:

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

571 b. Arson,

572 c. Sexual battery,

- 573 d. Robbery,
- 574 e. Burglary,
- 575 f. Kidnapping,
- 576 g. Escape,
- 577 h. Aggravated child abuse,
- 578 i. Aggravated abuse of an elderly person or disabled
- 579 adult,
- 580 j. Aircraft piracy,
- 581 k. Unlawful throwing, placing, or discharging of a
- 582 destructive device or bomb,
- 583 l. Carjacking,
- 584 m. Home-invasion robbery,
- 585 n. Aggravated stalking,
- 586 o. Murder of another human being,
- 587 p. Resisting an officer with violence to his or her
- 588 person,
- 589 q. Aggravated fleeing or eluding with serious bodily
- 590 injury or death,
- 591 r. Felony that is an act of terrorism or is in furtherance
- 592 of an act of terrorism; or
- 593 3. Which resulted from the unlawful distribution of any
- 594 substance controlled under s. 893.03(1), cocaine as described in
- 595 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
- 596 compound, derivative, or preparation of opium, or methadone by a
- 597 person 18 years of age or older, when such drug is proven to be
- 598 the proximate cause of the death of the user,

599
 600 is murder in the first degree and constitutes a capital felony,
 601 punishable as provided in s. 775.082.

602 (4) The unlawful killing of a human being, when
 603 perpetrated without any design to effect death, by a person
 604 engaged in the perpetration of, or in the attempt to perpetrate,
 605 any felony other than any:

- 606 (a) Trafficking offense prohibited by s. 893.135(1),
- 607 (b) Arson,
- 608 (c) Sexual battery,
- 609 (d) Robbery,
- 610 (e) Burglary,
- 611 (f) Kidnapping,
- 612 (g) Escape,
- 613 (h) Aggravated child abuse,
- 614 (i) Aggravated abuse of an elderly person or disabled
 615 adult,
- 616 (j) Aircraft piracy,
- 617 (k) Unlawful throwing, placing, or discharging of a
 618 destructive device or bomb,
- 619 (l) Unlawful distribution of any substance controlled
 620 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,
 621 or opium or any synthetic or natural salt, compound, derivative,
 622 or preparation of opium by a person 18 years of age or older,
 623 when such drug is proven to be the proximate cause of the death
 624 of the user,

HB 897

2015

625 (m) Carjacking,
 626 (n) Home-invasion robbery,
 627 (o) Aggravated stalking,
 628 (p) Murder of another human being,
 629 (q) Aggravated fleeing or eluding with serious bodily
 630 injury or death,
 631 (r) Resisting an officer with violence to his or her
 632 person, or
 633 (s) Felony that is an act of terrorism or is in
 634 furtherance of an act of terrorism,
 635
 636 is murder in the third degree and constitutes a felony of the
 637 second degree, punishable as provided in s. 775.082, s. 775.083,
 638 or s. 775.084.
 639 Section 10. For the purpose of incorporating the amendment
 640 made by this act to section 893.03, Florida Statutes, in
 641 references thereto, paragraph (a) of subsection (2) and
 642 subsection (5) of section 893.0356, Florida Statutes, are
 643 reenacted to read:
 644 893.0356 Control of new substances; findings of fact;
 645 "controlled substance analog" defined.—
 646 (2)(a) As used in this section, "controlled substance
 647 analog" means a substance which, due to its chemical structure
 648 and potential for abuse, meets the following criteria:
 649 1. Is substantially similar to that of a controlled
 650 substance listed in Schedule I or Schedule II of s. 893.03; and

651 2. Has a stimulant, depressant, or hallucinogenic effect
 652 on the central nervous system or is represented or intended to
 653 have a stimulant, depressant, or hallucinogenic effect on the
 654 central nervous system substantially similar to or greater than
 655 that of a controlled substance listed in Schedule I or Schedule
 656 II of s. 893.03.

657 (5) A controlled substance analog shall, for purposes of
 658 drug abuse prevention and control, be treated as a controlled
 659 substance in Schedule I of s. 893.03.

660 Section 11. For the purpose of incorporating the amendment
 661 made by this act to section 893.03, Florida Statutes, in a
 662 reference thereto, subsection (1) of section 893.05, Florida
 663 Statutes, is reenacted to read:

664 893.05 Practitioners and persons administering controlled
 665 substances in their absence.—

666 (1) A practitioner, in good faith and in the course of his
 667 or her professional practice only, may prescribe, administer,
 668 dispense, mix, or otherwise prepare a controlled substance, or
 669 the practitioner may cause the same to be administered by a
 670 licensed nurse or an intern practitioner under his or her
 671 direction and supervision only. A veterinarian may so prescribe,
 672 administer, dispense, mix, or prepare a controlled substance for
 673 use on animals only, and may cause it to be administered by an
 674 assistant or orderly under the veterinarian's direction and
 675 supervision only. A certified optometrist licensed under chapter
 676 463 may not administer or prescribe a controlled substance

677 listed in Schedule I or Schedule II of s. 893.03.

678 Section 12. For the purpose of incorporating the amendment
 679 made by this act to section 893.03, Florida Statutes, in
 680 references thereto, paragraphs (b), (c), and (d) of subsection
 681 (2) of section 893.12, Florida Statutes, are reenacted to read:

682 893.12 Contraband; seizure, forfeiture, sale.—

683 (2)

684 (b) All real property, including any right, title,
 685 leasehold interest, and other interest in the whole of any lot
 686 or tract of land and any appurtenances or improvements, which
 687 real property is used, or intended to be used, in any manner or
 688 part, to commit or to facilitate the commission of, or which
 689 real property is acquired with proceeds obtained as a result of,
 690 a violation of any provision of this chapter related to a
 691 controlled substance described in s. 893.03(1) or (2) may be
 692 seized and forfeited as provided by the Florida Contraband
 693 Forfeiture Act except that no property shall be forfeited under
 694 this paragraph to the extent of an interest of an owner or
 695 lienholder by reason of any act or omission established by that
 696 owner or lienholder to have been committed or omitted without
 697 the knowledge or consent of that owner or lienholder.

698 (c) All moneys, negotiable instruments, securities, and
 699 other things of value furnished or intended to be furnished by
 700 any person in exchange for a controlled substance described in
 701 s. 893.03(1) or (2) or a listed chemical in violation of any
 702 provision of this chapter, all proceeds traceable to such an

703 exchange, and all moneys, negotiable instruments, and securities
 704 used or intended to be used to facilitate any violation of any
 705 provision of this chapter or which are acquired with proceeds
 706 obtained in violation of any provision of this chapter may be
 707 seized and forfeited as provided by the Florida Contraband
 708 Forfeiture Act, except that no property shall be forfeited under
 709 this paragraph to the extent of an interest of an owner or
 710 lienholder by reason of any act or omission established by that
 711 owner or lienholder to have been committed or omitted without
 712 the knowledge or consent of that owner or lienholder.

713 (d) All books, records, and research, including formulas,
 714 microfilm, tapes, and data which are used, or intended for use,
 715 or which are acquired with proceeds obtained, in violation of
 716 any provision of this chapter related to a controlled substance
 717 described in s. 893.03(1) or (2) or a listed chemical may be
 718 seized and forfeited as provided by the Florida Contraband
 719 Forfeiture Act.

720 Section 13. For the purpose of incorporating the amendment
 721 made by this act to section 893.03, Florida Statutes, in
 722 references thereto, paragraphs (a), (c), (d), (e), (f), and (h)
 723 of subsection (1), paragraph (a) of subsection (2), paragraph
 724 (b) of subsection (4), paragraph (b) of subsection (5), and
 725 paragraph (a) of subsection (7) of section 893.13, Florida
 726 Statutes, are reenacted to read:

727 893.13 Prohibited acts; penalties.—

728 (1)(a) Except as authorized by this chapter and chapter

729 499, a person may not sell, manufacture, or deliver, or possess
 730 with intent to sell, manufacture, or deliver, a controlled
 731 substance. A person who violates this provision with respect to:

732 1. A controlled substance named or described in s.
 733 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 734 commits a felony of the second degree, punishable as provided in
 735 s. 775.082, s. 775.083, or s. 775.084.

736 2. A controlled substance named or described in s.
 737 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 738 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 739 the third degree, punishable as provided in s. 775.082, s.
 740 775.083, or s. 775.084.

741 3. A controlled substance named or described in s.
 742 893.03(5) commits a misdemeanor of the first degree, punishable
 743 as provided in s. 775.082 or s. 775.083.

744 (c) Except as authorized by this chapter, a person may not
 745 sell, manufacture, or deliver, or possess with intent to sell,
 746 manufacture, or deliver, a controlled substance in, on, or
 747 within 1,000 feet of the real property comprising a child care
 748 facility as defined in s. 402.302 or a public or private
 749 elementary, middle, or secondary school between the hours of 6
 750 a.m. and 12 midnight, or at any time in, on, or within 1,000
 751 feet of real property comprising a state, county, or municipal
 752 park, a community center, or a publicly owned recreational
 753 facility. As used in this paragraph, the term "community center"
 754 means a facility operated by a nonprofit community-based

755 organization for the provision of recreational, social, or
 756 educational services to the public. A person who violates this
 757 paragraph with respect to:

758 1. A controlled substance named or described in s.
 759 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 760 commits a felony of the first degree, punishable as provided in
 761 s. 775.082, s. 775.083, or s. 775.084. The defendant must be
 762 sentenced to a minimum term of imprisonment of 3 calendar years
 763 unless the offense was committed within 1,000 feet of the real
 764 property comprising a child care facility as defined in s.
 765 402.302.

766 2. A controlled substance named or described in s.
 767 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 768 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 769 the second degree, punishable as provided in s. 775.082, s.
 770 775.083, or s. 775.084.

771 3. Any other controlled substance, except as lawfully
 772 sold, manufactured, or delivered, must be sentenced to pay a
 773 \$500 fine and to serve 100 hours of public service in addition
 774 to any other penalty prescribed by law.

775
 776 This paragraph does not apply to a child care facility unless
 777 the owner or operator of the facility posts a sign that is not
 778 less than 2 square feet in size with a word legend identifying
 779 the facility as a licensed child care facility and that is
 780 posted on the property of the child care facility in a

781 conspicuous place where the sign is reasonably visible to the
782 public.

783 (d) Except as authorized by this chapter, a person may not
784 sell, manufacture, or deliver, or possess with intent to sell,
785 manufacture, or deliver, a controlled substance in, on, or
786 within 1,000 feet of the real property comprising a public or
787 private college, university, or other postsecondary educational
788 institution. A person who violates this paragraph with respect
789 to:

790 1. A controlled substance named or described in s.
791 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
792 commits a felony of the first degree, punishable as provided in
793 s. 775.082, s. 775.083, or s. 775.084.

794 2. A controlled substance named or described in s.
795 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
796 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
797 the second degree, punishable as provided in s. 775.082, s.
798 775.083, or s. 775.084.

799 3. Any other controlled substance, except as lawfully
800 sold, manufactured, or delivered, must be sentenced to pay a
801 \$500 fine and to serve 100 hours of public service in addition
802 to any other penalty prescribed by law.

803 (e) Except as authorized by this chapter, a person may not
804 sell, manufacture, or deliver, or possess with intent to sell,
805 manufacture, or deliver, a controlled substance not authorized
806 by law in, on, or within 1,000 feet of a physical place for

807 | worship at which a church or religious organization regularly
 808 | conducts religious services or within 1,000 feet of a
 809 | convenience business as defined in s. 812.171. A person who
 810 | violates this paragraph with respect to:

811 | 1. A controlled substance named or described in s.
 812 | 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 813 | commits a felony of the first degree, punishable as provided in
 814 | s. 775.082, s. 775.083, or s. 775.084.

815 | 2. A controlled substance named or described in s.
 816 | 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 817 | (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 818 | the second degree, punishable as provided in s. 775.082, s.
 819 | 775.083, or s. 775.084.

820 | 3. Any other controlled substance, except as lawfully
 821 | sold, manufactured, or delivered, must be sentenced to pay a
 822 | \$500 fine and to serve 100 hours of public service in addition
 823 | to any other penalty prescribed by law.

824 | (f) Except as authorized by this chapter, a person may not
 825 | sell, manufacture, or deliver, or possess with intent to sell,
 826 | manufacture, or deliver, a controlled substance in, on, or
 827 | within 1,000 feet of the real property comprising a public
 828 | housing facility at any time. As used in this section, the term
 829 | "real property comprising a public housing facility" means real
 830 | property, as defined in s. 421.03(12), of a public corporation
 831 | created as a housing authority pursuant to part I of chapter
 832 | 421. A person who violates this paragraph with respect to:

833 1. A controlled substance named or described in s.
 834 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 835 commits a felony of the first degree, punishable as provided in
 836 s. 775.082, s. 775.083, or s. 775.084.

837 2. A controlled substance named or described in s.
 838 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 839 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 840 the second degree, punishable as provided in s. 775.082, s.
 841 775.083, or s. 775.084.

842 3. Any other controlled substance, except as lawfully
 843 sold, manufactured, or delivered, must be sentenced to pay a
 844 \$500 fine and to serve 100 hours of public service in addition
 845 to any other penalty prescribed by law.

846 (h) Except as authorized by this chapter, a person may not
 847 sell, manufacture, or deliver, or possess with intent to sell,
 848 manufacture, or deliver, a controlled substance in, on, or
 849 within 1,000 feet of the real property comprising an assisted
 850 living facility, as that term is used in chapter 429. A person
 851 who violates this paragraph with respect to:

852 1. A controlled substance named or described in s.
 853 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 854 commits a felony of the first degree, punishable as provided in
 855 s. 775.082, s. 775.083, or s. 775.084.

856 2. A controlled substance named or described in s.
 857 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 858 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of

859 the second degree, punishable as provided in s. 775.082, s.
 860 775.083, or s. 775.084.

861 (2) (a) Except as authorized by this chapter and chapter
 862 499, a person may not purchase, or possess with intent to
 863 purchase, a controlled substance. A person who violates this
 864 provision with respect to:

865 1. A controlled substance named or described in s.
 866 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 867 commits a felony of the second degree, punishable as provided in
 868 s. 775.082, s. 775.083, or s. 775.084.

869 2. A controlled substance named or described in s.
 870 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 871 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 872 the third degree, punishable as provided in s. 775.082, s.
 873 775.083, or s. 775.084.

874 3. A controlled substance named or described in s.
 875 893.03(5) commits a misdemeanor of the first degree, punishable
 876 as provided in s. 775.082 or s. 775.083.

877 (4) Except as authorized by this chapter, a person 18
 878 years of age or older may not deliver any controlled substance
 879 to a person younger than 18 years of age, use or hire a person
 880 younger than 18 years of age as an agent or employee in the sale
 881 or delivery of such a substance, or use such person to assist in
 882 avoiding detection or apprehension for a violation of this
 883 chapter. A person who violates this provision with respect to:

884 (b) A controlled substance named or described in s.

885 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 886 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 887 the second degree, punishable as provided in s. 775.082, s.
 888 775.083, or s. 775.084.

889
 890 Imposition of sentence may not be suspended or deferred, and the
 891 person so convicted may not be placed on probation.

892 (5) A person may not bring into this state any controlled
 893 substance unless the possession of such controlled substance is
 894 authorized by this chapter or unless such person is licensed to
 895 do so by the appropriate federal agency. A person who violates
 896 this provision with respect to:

897 (b) A controlled substance named or described in s.
 898 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 899 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 900 the third degree, punishable as provided in s. 775.082, s.
 901 775.083, or s. 775.084.

902 (7)(a) A person may not:

903 1. Distribute or dispense a controlled substance in
 904 violation of this chapter.

905 2. Refuse or fail to make, keep, or furnish any record,
 906 notification, order form, statement, invoice, or information
 907 required under this chapter.

908 3. Refuse entry into any premises for any inspection or
 909 refuse to allow any inspection authorized by this chapter.

910 4. Distribute a controlled substance named or described in

911 s. 893.03(1) or (2) except pursuant to an order form as required
 912 by s. 893.06.

913 5. Keep or maintain any store, shop, warehouse, dwelling,
 914 building, vehicle, boat, aircraft, or other structure or place
 915 which is resorted to by persons using controlled substances in
 916 violation of this chapter for the purpose of using these
 917 substances, or which is used for keeping or selling them in
 918 violation of this chapter.

919 6. Use to his or her own personal advantage, or reveal,
 920 any information obtained in enforcement of this chapter except
 921 in a prosecution or administrative hearing for a violation of
 922 this chapter.

923 7. Possess a prescription form unless it has been signed
 924 by the practitioner whose name appears printed thereon and
 925 completed. This subparagraph does not apply if the person in
 926 possession of the form is the practitioner whose name appears
 927 printed thereon, an agent or employee of that practitioner, a
 928 pharmacist, or a supplier of prescription forms who is
 929 authorized by that practitioner to possess those forms.

930 8. Withhold information from a practitioner from whom the
 931 person seeks to obtain a controlled substance or a prescription
 932 for a controlled substance that the person making the request
 933 has received a controlled substance or a prescription for a
 934 controlled substance of like therapeutic use from another
 935 practitioner within the previous 30 days.

936 9. Acquire or obtain, or attempt to acquire or obtain,

937 possession of a controlled substance by misrepresentation,
 938 fraud, forgery, deception, or subterfuge.

939 10. Affix any false or forged label to a package or
 940 receptacle containing a controlled substance.

941 11. Furnish false or fraudulent material information in,
 942 or omit any material information from, any report or other
 943 document required to be kept or filed under this chapter or any
 944 record required to be kept by this chapter.

945 12. Store anhydrous ammonia in a container that is not
 946 approved by the United States Department of Transportation to
 947 hold anhydrous ammonia or is not constructed in accordance with
 948 sound engineering, agricultural, or commercial practices.

949 13. With the intent to obtain a controlled substance or
 950 combination of controlled substances that are not medically
 951 necessary for the person or an amount of a controlled substance
 952 or substances that is not medically necessary for the person,
 953 obtain or attempt to obtain from a practitioner a controlled
 954 substance or a prescription for a controlled substance by
 955 misrepresentation, fraud, forgery, deception, subterfuge, or
 956 concealment of a material fact. For purposes of this
 957 subparagraph, a material fact includes whether the person has an
 958 existing prescription for a controlled substance issued for the
 959 same period of time by another practitioner or as described in
 960 subparagraph 8.

961 Section 14. For the purpose of incorporating the amendment
 962 made by this act to section 893.03, Florida Statutes, in

963 references thereto, paragraphs (k) and (l) of subsection (1) of
 964 section 893.135, Florida Statutes, are reenacted to read:

965 893.135 Trafficking; mandatory sentences; suspension or
 966 reduction of sentences; conspiracy to engage in trafficking.—

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

969 (k)1. A person who knowingly sells, purchases,
 970 manufactures, delivers, or brings into this state, or who is
 971 knowingly in actual or constructive possession of, 10 grams or
 972 more of any of the following substances described in s.

973 893.03(1)(c):

- 974 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 975 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 976 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 977 d. 2,5-Dimethoxyamphetamine;
- 978 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 979 f. N-ethylamphetamine;
- 980 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 981 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 982 i. 4-methoxyamphetamine;
- 983 j. 4-methoxymethamphetamine;
- 984 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 985 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 986 m. 3,4-Methylenedioxyamphetamine;
- 987 n. N,N-dimethylamphetamine;
- 988 o. 3,4,5-Trimethoxyamphetamine;

- 989 p. 3,4-Methylenedioxymethcathinone;
- 990 q. 3,4-Methylenedioxypropylone (MDPV); or
- 991 r. Methylenedioxymethamphetamine,

992
 993 individually or analogs thereto or isomers thereto or in any
 994 combination of or any mixture containing any substance listed in
 995 sub-subparagraphs a.-r., commits a felony of the first degree,
 996 which felony shall be known as "trafficking in Phenethylamines,"
 997 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

998 2. If the quantity involved:

999 a. Is 10 grams or more, but less than 200 grams, such
 1000 person shall be sentenced to a mandatory minimum term of
 1001 imprisonment of 3 years and shall be ordered to pay a fine of
 1002 \$50,000.

1003 b. Is 200 grams or more, but less than 400 grams, such
 1004 person shall be sentenced to a mandatory minimum term of
 1005 imprisonment of 7 years and shall be ordered to pay a fine of
 1006 \$100,000.

1007 c. Is 400 grams or more, such person shall be sentenced to
 1008 a mandatory minimum term of imprisonment of 15 years and shall
 1009 be ordered to pay a fine of \$250,000.

1010 3. A person who knowingly manufactures or brings into this
 1011 state 30 kilograms or more of any of the following substances
 1012 described in s. 893.03(1)(c):

- 1013 a. 3,4-Methylenedioxymethamphetamine (MDMA);
- 1014 b. 4-Bromo-2,5-dimethoxyamphetamine;

- 1015 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 1016 d. 2,5-Dimethoxyamphetamine;
- 1017 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 1018 f. N-ethylamphetamine;
- 1019 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 1020 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 1021 i. 4-methoxyamphetamine;
- 1022 j. 4-methoxymethamphetamine;
- 1023 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 1024 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 1025 m. 3,4-Methylenedioxyamphetamine;
- 1026 n. N,N-dimethylamphetamine;
- 1027 o. 3,4,5-Trimethoxyamphetamine;
- 1028 p. 3,4-Methylenedioxymethcathinone;
- 1029 q. 3,4-Methylenedioxypropylone (MDPV); or
- 1030 r. Methylmethcathinone,

1031

1032 individually or analogs thereto or isomers thereto or in any

1033 combination of or any mixture containing any substance listed in

1034 sub-subparagraphs a.-r., and who knows that the probable result

1035 of such manufacture or importation would be the death of any

1036 person commits capital manufacture or importation of

1037 Phenethylamines, a capital felony punishable as provided in ss.

1038 775.082 and 921.142. A person sentenced for a capital felony

1039 under this paragraph shall also be sentenced to pay the maximum

1040 fine provided under subparagraph 1.

1041 (1)1. Any person who knowingly sells, purchases,
 1042 manufactures, delivers, or brings into this state, or who is
 1043 knowingly in actual or constructive possession of, 1 gram or
 1044 more of lysergic acid diethylamide (LSD) as described in s.
 1045 893.03(1)(c), or of any mixture containing lysergic acid
 1046 diethylamide (LSD), commits a felony of the first degree, which
 1047 felony shall be known as "trafficking in lysergic acid
 1048 diethylamide (LSD)," punishable as provided in s. 775.082, s.
 1049 775.083, or s. 775.084. If the quantity involved:

1050 a. Is 1 gram or more, but less than 5 grams, such person
 1051 shall be sentenced to a mandatory minimum term of imprisonment
 1052 of 3 years, and the defendant shall be ordered to pay a fine of
 1053 \$50,000.

1054 b. Is 5 grams or more, but less than 7 grams, such person
 1055 shall be sentenced to a mandatory minimum term of imprisonment
 1056 of 7 years, and the defendant shall be ordered to pay a fine of
 1057 \$100,000.

1058 c. Is 7 grams or more, such person shall be sentenced to a
 1059 mandatory minimum term of imprisonment of 15 calendar years and
 1060 pay a fine of \$500,000.

1061 2. Any person who knowingly manufactures or brings into
 1062 this state 7 grams or more of lysergic acid diethylamide (LSD)
 1063 as described in s. 893.03(1)(c), or any mixture containing
 1064 lysergic acid diethylamide (LSD), and who knows that the
 1065 probable result of such manufacture or importation would be the
 1066 death of any person commits capital manufacture or importation

1067 of lysergic acid diethylamide (LSD), a capital felony punishable
 1068 as provided in ss. 775.082 and 921.142. Any person sentenced for
 1069 a capital felony under this paragraph shall also be sentenced to
 1070 pay the maximum fine provided under subparagraph 1.

1071 Section 15. For the purpose of incorporating the amendment
 1072 made by this act to section 893.03, Florida Statutes, in
 1073 references thereto, paragraphs (b), (c), and (e) of subsection
 1074 (3) of section 921.0022, Florida Statutes, are reenacted to
 1075 read:

1076 921.0022 Criminal Punishment Code; offense severity
 1077 ranking chart.-

1078 (3) OFFENSE SEVERITY RANKING CHART

1079 (b) LEVEL 2

1080

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

1082

HB 897

2015

1083	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.
1084	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
1085	590.28(1)	3rd	Intentional burning of lands.
1086	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
1087	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
1088			

HB 897

2015

1089	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
1090	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
1091	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
1092	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
1093	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
1093	812.015(7)	3rd	Possession, use, or attempted

			use of an antishoplifting or inventory control device countermeasure.
1094	817.234 (1) (a) 2.	3rd	False statement in support of insurance claim.
1095	817.481 (3) (a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
1096	817.52 (3)	3rd	Failure to redeliver hired vehicle.
1097	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
1098	817.60 (5)	3rd	Dealing in credit cards of another.
1099	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.

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

HB 897

2015

1100	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
1101	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
1102	831.01	3rd	Forgery.
1103	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
1104	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
1105	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
1106	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
1107			

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

HB 897

2015

1108	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
1109	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
1110	843.08	3rd	Falsely impersonating an officer.
1111	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.
1112	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
1113	(c) LEVEL 3		
1114	Florida	Felony	
1115	Statute	Degree	Description

HB 897

2015

1116	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
1117	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
1118	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
1119	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
1120	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
1121	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
	319.33(1)(c)	3rd	Procure or pass title

HB 897

2015

on stolen vehicle.

1122

319.33(4)

3rd

With intent to defraud,
possess, sell, etc., a blank,
forged, or unlawfully obtained
title or registration.

1123

327.35(2)(b)

3rd Felony BUI.

1124

328.05(2)

3rd

Possess, sell, or
counterfeit fictitious,
stolen, or fraudulent titles
or bills of sale of vessels.

1125

328.07(4)

3rd

Manufacture, exchange, or
possess vessel with
counterfeit or wrong ID
number.

1126

376.302(5)

3rd

Fraud related to reimbursement
for cleanup expenses under the
Inland Protection Trust Fund.

1127

379.2431
(1)(e)5.

3rd

Taking, disturbing, mutilating,
destroying, causing to be
destroyed, transferring,

1128	379.2431 (1) (e) 6.	3rd	selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
1129	400.9935 (4)	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
1130	440.1051 (3)	3rd	Operating a clinic without a license or filing false license application or other required information.
1131	501.001 (2) (b)	2nd	False report of workers' compensation fraud or retaliation for making such a report.
			Tampers with a consumer product or the container using materially false/misleading information.

HB 897

2015

1132	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
1133	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
1134	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
1135	697.08	3rd	Equity skimming.
1136	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
1137	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
1138	806.10(2)	3rd	Interferes with or assaults firefighter in performance

HB 897

2015

			of duty.
1139	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
1140	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
1141	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
1142	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
1143	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less

HB 897

2015

1144			than \$20,000.
	817.233	3rd	Burning to defraud insurer.
1145			
	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
1146			
	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
1147			
	817.236	3rd	Filing a false motor vehicle insurance application.
1148			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
1149			
	817.413 (2)	3rd	Sale of used goods as new.
1150			
	817.505 (4)	3rd	Patient brokering.
1151			

HB 897

2015

1152	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
1153	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
1154	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
1155	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
1156	843.19	3rd	Injure, disable, or kill police dog or horse.
1157	860.15 (3)	3rd	Overcharging for repairs and parts.

HB 897

2015

1158	870.01(2)	3rd	Riot; inciting or encouraging.
1159	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).
1160	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.
1160	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.,

1161	893.13(6)(a)	3rd	(2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
1162	893.13(7)(a)8.	3rd	Possession of any controlled substance other than felony possession of cannabis.
1163	893.13(7)(a)9.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
1164	893.13(7)(a)10.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
1165	893.13(7)(a)11.	3rd	Affix false or forged label to package of controlled substance.
			Furnish false or

HB 897

2015

fraudulent material
information on any
document or record
required by chapter
893.

1166

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.

1167

893.13(8)(a)2.

3rd

Employ a trick or scheme in
the practitioner's practice
to assist a patient, other
person, or owner of an
animal in obtaining a
controlled substance.

1168

893.13(8)(a)3.

3rd

Knowingly write a
prescription for a
controlled substance for
a fictitious person.

HB 897

2015

1169	893.13 (8) (a) 4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
1170	918.13 (1) (a)	3rd	Alter, destroy, or conceal investigation evidence.
1171	944.47 (1) (a) 1. & 2.	3rd	Introduce contraband to correctional facility.
1172	944.47 (1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.
1173	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
1174			
1175	(e) LEVEL 5		

HB 897

2015

1176	Florida Statute	Felony Degree	Description
1177	316.027 (2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
1178	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
1179	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
1180	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
1181	379.367 (4)	3rd	Willful molestation of a commercial harvester's

HB 897

2015

1182	379.3671 (2) (c) 3.	3rd	<p>spiny lobster trap, line, or buoy.</p> <p>Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.</p>
1183	381.0041 (11) (b)	3rd	<p>Donate blood, plasma, or organs knowing HIV positive.</p>
1184	440.10 (1) (g)	2nd	<p>Failure to obtain workers' compensation coverage.</p>
1185	440.105 (5)	2nd	<p>Unlawful solicitation for the purpose of making workers' compensation claims.</p>
1186	440.381 (2)	2nd	<p>Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing</p>

1187			workers' compensation premiums.
	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
1188			
	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
1189			
	790.01 (2)	3rd	Carrying a concealed firearm.
1190			
	790.162	2nd	Threat to throw or discharge destructive device.
1191			
	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
1192			
	790.221 (1)	2nd	Possession of short-barreled shotgun or

HB 897

2015

1193			machine gun.
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
1194			
	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
1195			
	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
1196			
	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
1197			
	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
1198			
	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than

HB 897

2015

			\$50,000.
1199	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
1200	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
1201	812.131(2)(b)	3rd	Robbery by sudden snatching.
1202	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
1203	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
1204	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
1205	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false

HB 897

2015

1206	817.568(2)(b)	2nd	<p>entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.</p> <p>Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.</p>
1207	817.625(2)(b)	2nd	<p>Second or subsequent fraudulent use of scanning device or reencoder.</p>
1208	825.1025(4)	3rd	<p>Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.</p>
1209			

HB 897

2015

1210	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1211	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
1212	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.
1213	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
1213	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.

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

HB 897

2015

1214	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
1215	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
1216	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
1217	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
1218	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).
1219	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.

1220

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.

1221

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.,

HB 897

2015

1222	893.13(1)(f)1.	1st	(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.
1223	893.13(4)(b)	2nd	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.
1224	893.1351(1)	3rd	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).
			Ownership, lease, or rental for trafficking in or manufacturing of controlled

HB 897

2015

substance.

1225

1226

Section 16. 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 Ingram offered the following:

4
 5 **Amendment**

6 Remove lines 312-314 and insert:

7 179. Fluoro-AMB: Methyl 2-(1-(fluoropentyl)-1H-indazole-3-
 8 carboxamido)-3-methylbutanoate.

9 180. THJ-2201: [1-(5-Fluoropentyl)-1H-indazol-3-
 10



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Ingram offered the following:

4

5 **Amendment**

6 Remove line 1226 and insert:

7 Section 16. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 201 Diabetes Awareness Training for Law Enforcement Officers
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 746

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

SUMMARY ANALYSIS

The Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement (FDLE), establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers (LEOs). 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.

In order to maintain their certification, LEOs must satisfy the continuing training and education requirements of s. 943.135, F.S. This statute requires LEOs, as a condition of continued employment, to receive periodic CJSTC-approved training or education at the rate of 40 hours every 4 years.

Florida law currently requires CJSTC to establish continued employment training related to specified topics (e.g., topics related to community policing, interpersonal skills relating to diverse populations, and juvenile sexual offender investigations). This training counts toward the 40 hours of required instruction for continued employment.

Florida law does not currently require CJSTC to establish continued employment training related to diabetic emergencies.

The bill creates s. 943.1726, F.S., which requires FDLE to establish an on-line continued employment training component relating to diabetic emergencies. Instruction must include, but is not limited to, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency. The bill specifies that completion of the training component may count toward the 40 hours of required instruction for continued employment or appointment as a LEO.

FDLE reports that the bill will not have a fiscal impact on the Department.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Law Enforcement Officer - Basic Recruit Training Program

The Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement (FDLE), establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers (LEOs). 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.¹

Sections 943.171 through 943.17296, F.S., require CJSTC to include instruction on a number of specific topics into a LEO Basic Recruit Training Program curriculum (e.g., topics related to victim assistance, juvenile sexual offender investigations, elder abuse and neglect, etc.). Although instruction on diabetic emergencies is not currently required by statute, FDLE states that this training is currently being provided.²

Law Enforcement Officer - Continuing Training & Education

In order to maintain their certification, LEOs must also satisfy the continuing training and education requirements of s. 943.135, F.S. This statute requires LEOs, as a condition of continued employment or appointment, to receive periodic CJSTC-approved continuing training or education at the rate of 40 hours every 4 years.³ The employing agency must document that the continuing training or education is job-related and consistent with the needs of the employing agency, and must maintain and submit the documentation to CJSTC.⁴

Similar to the Basic Recruit Training Program, Florida law requires CJSTC to establish continued employment training related to specified topics (e.g., topics related to community policing, interpersonal skills relating to diverse populations, and juvenile sexual offender investigations).⁵ This training counts toward the 40 hours of required instruction for continued employment.⁶

Currently, Florida law does not require CJSTC to establish continued employment training related to diabetic emergencies.

Effect of the Bill

The bill creates s. 943.1726, F.S., which requires FDLE to establish an on-line continued employment training component relating to diabetic emergencies. Instruction must include, but is not limited to, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency. The bill specifies that completion of the training component may count toward the 40 hours of required instruction for continued employment or appointment as a LEO.

B. SECTION DIRECTORY:

Section 1. Cites the act the "Arthur Green, Jr., Act."

¹ s. 943.13, F.S.

² FDLE Analysis of HB 201, January 16, 2015 (on file with the Criminal Justice Subcommittee).

³ s. 943.135(1), F.S.

⁴ *Id.*

⁵ ss. 943.1729, 943.1716, and 943.17295, F.S.

⁶ *Id.*

Section 2. Creates s. 943.1726, F.S., relating to continued employment training relating to diabetic emergencies.

Section 3. Provides an effective date of October 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:

FDLE reports that the bill will not have a fiscal impact on the Department.⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 943.12, F.S., requires CJSTC to adopt rules for the administration of ss. 943.085-943.255, F.S., pursuant to ch. 120, F.S. The bill does not appear to create a need for additional rulemaking or rulemaking authority.

⁷ E-mail from Ron Draa, FDLE's Legislative Affairs Director, March 5, 2015 (on file with the Criminal Justice Subcommittee).
STORAGE NAME: pcs0201.CRJS.DOCX
DATE: 3/9/2015

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to diabetes awareness training for law
 3 enforcement officers; providing a short title;
 4 creating s. 943.1726, F.S.; requiring the Florida
 5 Department of Law Enforcement to establish an on-line
 6 continued employment training component relating to
 7 diabetic emergencies; specifying topics to be included
 8 in the instruction; providing that completion of the
 9 training may count towards continued employment
 10 instruction requirements; providing an effective date.

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

13
 14 Section 1. This act may be cited as the "Arthur Green,
 15 Jr., Act."

16 Section 2. Section 943.1726, Florida Statutes, is created
 17 to read:

18 943.1726 Continued employment training relating to diabetic
 19 emergencies.-- The department shall establish an on-line
 20 continued employment training component relating to diabetic
 21 emergencies. Instruction shall include, but need not be limited
 22 to, recognition of symptoms of such an emergency, distinguishing
 23 such an emergency from alcohol intoxication or drug overdose,
 24 and appropriate first aid for such an emergency. Completion of
 25 the training component may count toward the 40 hours of
 26 instruction for continued employment or appointment as a law

PCS for HB 201

ORIGINAL

2015

27 | enforcement officer required by s. 943.135.

28 | Section 3. This act shall take effect October 1, 2015.