



Criminal Justice Subcommittee

**Tuesday, March 24, 2015
1:00 PM – 3:00 PM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Carlos Trujillo
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, March 24, 2015 01:00 pm
End Date and Time: Tuesday, March 24, 2015 03:00 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 623 Weapons or Firearms by Rouson
HB 667 Service of Process by Cruz
CS/HB 231 Transportation by Highway & Waterway Safety Subcommittee, Passidomo, Fitzenhagen
HB 287 Controlled Substances by Jacobs

Consideration of the following proposed committee bill(s):

PCB CRJS 15-07 -- Corrections

NOTICE FINALIZED on 03/20/2015 15:52 by Denson.Karan

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 231 Transportation

SPONSOR(S): Highway & Waterway Safety Subcommittee; Passidomo; Fitzenhagen and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 908

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee	8 Y, 4 N, As CS	Whittaker	Smith
2) Criminal Justice Subcommittee		Cunningham	Cunningham
3) Appropriations Committee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill amends and creates various sections of Florida Statutes designed to protect bicyclists and vulnerable users of a right of way.

Specifically, the bill:

- Defines "bodily injury" and "vulnerable user of a right of way or vulnerable user;"
- Requires a vehicle to pass at a safe distance of not less than three feet between any part of or attachment to the vehicle, any thing extending from the vehicle, and any trailer or other thing being towed by the vehicle and a vulnerable user;
- Allows a driver to drive on the left side of a roadway in a no passing zone when the driver is required to do so when passing a vulnerable road user in order to provide at least three feet between the vehicle and the vulnerable user;
- Allows a bicyclist to ride in the center of a lane if the lane is less than 14 feet wide and is not adjacent to a bicycle lane that is at least 5 feet wide;
- Prohibits a person operating a vehicle who overtakes and passes a vulnerable user of a public right-of-way proceeding in the same direction from making a right turn at an intersection or into a private road or driveway unless the turn can be made at a safe distance from the vulnerable user with reasonable safety and will not impede the travel of the vulnerable user;
- Makes it a first degree misdemeanor for a person to harass, taunt, or maliciously throw an object at or in the direction of a person riding a bicycle;
- Requires a fine of no more than \$2,000 to be imposed, in addition to any other penalty, if a traffic violation contributed to the bodily injury of a vulnerable user;
- Requires a person cited for specified traffic infractions that contributed to the bodily injury of a vulnerable user to appear before a judge for a hearing;
- Requires a law enforcement officer to note on certain traffic citations if the violation contributed to the bodily injury of a vulnerable user; and
- Provides severability.

The bill has an indeterminate, negative fiscal impact on the Department of Highway Safety and Motor Vehicles. The bill may also increase the need for jail beds because it creates a first degree misdemeanor offense.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Protecting Bicyclists

In Florida, bicyclists are considered vehicle operators and are required to obey the same rules of the road as other vehicle operators, including obeying traffic signs, signals, and lane markings.

In 2013, Florida crash reports show that 7,467 pedestrians, 7,905 motorcyclists, 6,520 bicyclists, and 432 other non-motorists were injured in traffic crashes.¹

In recent years, Colorado, Louisiana, Mississippi and Vermont specifically passed measures to protect bicyclists from aggressive and deviant motorist behavior. All included language restricting throwing an object at bicyclists or taunting or harassing them. Louisiana law, for example, states: "It shall be unlawful to harass, taunt, or maliciously throw objects at or in the direction of any person riding a bicycle. Any person who violates this section shall be fined not less than two hundred dollars or imprisoned for not more than thirty days." Mississippi law contains similar language. Colorado and Vermont also extended such protections to pedestrians.²

In 2014, the Florida passed legislation³ that ranked a "leaving the scene of an accident" offense one level higher in the offense severity ranking chart⁴ if the victim of the offense was a vulnerable road user.⁵ The bill defined a "vulnerable road user" as:

- A pedestrian, including a person actually engaged in work upon a highway, work upon utility facilities along a highway, or the provision of emergency services within the right of way;
- A person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal; or
- A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway:
 - A farm tractor or similar vehicle designed primarily for farm use;
 - A skateboard, roller skates, or in-line skates;
 - A horse-drawn carriage;
 - An electric personal assistive mobility device; or
 - A wheelchair.⁶

Definitions

The bill creates definitions for the terms "bodily injury" and "vulnerable user or vulnerable user of a public right-of-way." These definitions apply to all of ch. 316, F.S.

"Bodily injury" is defined as:

- A cut, abrasion, bruise, burn, or disfigurement;
- Physical pain;
- Illness;

¹ Florida Department of Highway Safety and Motor Vehicles, *Traffic Crash Facts Annual Report 2013*, <http://www.flhsmv.gov/html/safety.html> (last visited March 18, 2015).

² National Conference of State Legislatures, *Bicycle and Pedestrian Safety*, <http://www.ncsl.org/research/transportation/bicycle-and-pedestrian-safety.aspx> (last visited March 18, 2015).

³ Ch. 2014-225, Laws of Florida.

⁴ Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. See ss. 921.0022 and 921.0024, F.S.

⁵ s. 316.027(2)(f), F.S.

⁶ s. 316.027 (1)(b), F.S.

- Impairment of the function of a bodily member, organ, or mental faculty; or
- Any other injury to the body, no matter how temporary.

“Vulnerable user of a public right of way” or “vulnerable user” is defined as:

- A pedestrian, including a person actually engaged in work upon a highway, work upon utility facilities along a highway, or the provision of emergency services within the right-of-way;
- A person operating, or who is a passenger on, a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal; or
- A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway:
 - A farm tractor or similar vehicle designed primarily for farm use;
 - A skateboard, roller skates, or in-line skates;
 - A horse-drawn carriage;
 - An electric personal assistive mobility device; or
 - A wheelchair.

Overtaking and Passing

Section 316.083, F.S., requires a driver of a vehicle overtaking a bicycle (or other non-motorized vehicle) to pass at a safe distance of no less than three feet between the vehicle and the bicycle. A violation is a noncriminal traffic infraction punishable as a moving violation.⁷

Effect of the Bill

The bill expands the requirements of s. 316.083, F.S., to apply to motor vehicles overtaking a vulnerable user of a public right-of-way. The bill requires a vehicle to pass at a safe distance of not less than three feet between any part of or attachment to the vehicle, any thing extending from the vehicle, and any trailer or other thing being towed by the vehicle and the vulnerable user.

Violations remain a noncriminal traffic infraction. However, if the violation contributed to the bodily injury of a vulnerable user, the bill requires the law enforcement officer issuing the citation to make a note of such on the citation.

No Passing Zones

Section 316.0875, F.S., prohibits a driver from driving on the left side of a roadway in a no passing zone.⁸ This prohibition does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.⁹ A violation is a noncriminal traffic infraction, punishable as a moving violation.¹⁰

Effect of the Bill

As noted above, s. 316.0875, F.S., prohibits a driver from driving on the left side of a roadway in a no passing zone. The bill specifies that this prohibition does not apply when the driver of a motor vehicle is required to cross pavement striping indicating a no-passing zone when passing a vulnerable road user in order to provide at least three feet between the vehicle and the vulnerable user.

Careless Driving

Section 316.1925, F.S., requires a person operating a vehicle upon the streets or highways within the state to drive in a careful and prudent manner, having regard for the width, grade, curves, corners,

⁷ s. 316.083(3), F.S.

⁸ Section 316.0875, F.S., authorizes the Department of Transportation and local authorities to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving to the left of the roadway would be especially hazardous. The statute also authorizes these entities to, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones.

⁹ s. 316.0875(3), F.S.

¹⁰ s. 316.0875(4), F.S.

traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. A person's failure to do so is careless driving, citable as a moving violation.¹¹

Effect of the Bill

The bill requires a law enforcement officer issuing a careless driving citation to make a note on the citation if the violation contributed to the bodily injury of a vulnerable user.

Substandard Width Lane

A bicyclist is required to ride in a bike lane or as far right as practicable except as follows:

- When overtaking and passing another bicycle or vehicle proceeding in the same direction.
- When preparing for a left turn at an intersection or into a private road or driveway.
- When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard width lane, which makes it unsafe to continue along the right hand curb or edge or within a bicycle lane.¹²

In current law, "substandard-width lane" is referred to as a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.¹³ As noted above, a bicyclist is exempt from the requirement to ride as close as practicable to the right-hand curb or edge of a roadway on a substandard-width lane and may take the center of the lane.

According to the Florida Department of Transportation, the standard lane width has been 12 feet for decades and the vast majority of the state's highway system has 12 foot lanes with very few lanes that are greater than 12 feet. Variations on the width of travel lanes on both the state system and local roads are 10-11 foot lanes, or smaller. These variations are acceptable based on the American Association of State Highway and Transportation Officials criteria.¹⁴

Effect of the Bill

The bill amends what constitutes a substandard-width lane from "a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane" to a lane that is "less than 14 feet wide which is not adjacent to a bicycle lane that is at least 5 feet wide."

Newly-Created Sections

Right turns when passing vulnerable user

The bill creates s. 316.0833, F.S., which prohibits a person operating a vehicle who overtakes and passes a vulnerable user of a public right-of-way proceeding in the same direction from making a right turn at an intersection or into a private road or driveway unless the turn can be made at a safe distance from the vulnerable user with reasonable safety and will not impede the travel of the vulnerable user. A violation is a noncriminal moving violation. If the violation contributed to the bodily injury of a vulnerable user, the law enforcement officer issuing the citation must make a note of such on the citation.

Harassing or taunting a person riding a bicycle

The bill creates s. 316.1921, F.S., which makes it unlawful to harass, taunt, or maliciously throw an object at or in the direction of a person riding a bicycle. A violation is a first degree misdemeanor, punishable by a fine of at least \$250 or 30 day imprisonment or both.

Infractions contributing to bodily injury of a vulnerable user of a public right-of-way

The bill creates s. 318.142, F.S., which requires a fine of no more than \$2,000 to be imposed, in addition to any other penalty, if a traffic violation contributed to the bodily injury of a vulnerable user.

¹¹ s. 316.1925(2), F.S.

¹² s. 316.2065(5)(a), F.S.

¹³ s. 316.2065(5)(a)3., F.S.

¹⁴ Email from the Florida Department of Transportation on file with the Highway and Waterway Safety Subcommittee.

Mandatory Hearing

Section 318.19, F.S., requires persons cited for the following to appear before a judge for a hearing:

- Any infraction which results in a crash that causes the death of another;
- Any infraction which results in a crash that causes "serious bodily injury" of another;
- Any infraction of s. 316.172(1)(b), F.S. (requiring traffic to stop for a school bus);
- Any infraction of s. 316.520(1) or (2), F.S. (relating to loads on vehicles); or
- Any infraction of ss. 316.183(2), 316.187, or 316.189, F.S. (all relating to speed zones), of exceeding the speed limit by 30 miles per hour or more.

Effect of the Bill

The bill requires a person cited for the any of the following traffic infractions that contributed to the bodily injury of a vulnerable user to appear before a judge for a hearing:

- Any infraction of s. 316.083, F.S. (overtaking or passing);
- Any infraction of s. 316.0833, F.S. (right turns when passing a vulnerable user); or
- Any violation of s. 316.1925, F.S. (careless driving).

B. SECTION DIRECTORY:

Section 1	Amends s. 316.003, F.S., providing definitions.
Section 2	Amends s. 316.083, F.S., revising provisions related to the passing of a vehicle
Section 3	Creates s. 316.0833, F.S., prohibiting passing and turning in front of a vulnerable user in an unsafe manner; providing penalties.
Section 4	Amends s. 316.0875, F.S., revising exceptions to provisions for designated no-passing zones
Section 5	Creates s. 316.1921, F.S., prohibiting harassing, taunting, or throwing object at person riding a bicycle; providing penalties.
Section 6	Amends s. 316.1925, F.S., revising provisions relating to careless driving.
Section 7	Amends s. 316.2065, F.S., revising the definition of the term "substandard-width lane."
Section 8	Creates s. 318.142, F.S., providing penalties for specified infractions contributing to bodily injury of a vulnerable user.
Section 9	Amends s. 318.19, F.S., requiring a hearing for specified offenses.
Section 10	Providing severability
Section 11	Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

The bill has an indeterminate, negative fiscal impact on the Department of Highway Safety and Motor Vehicles. The bill may also have a positive jail bed impact on local governments (i.e., it may increase the need for jail beds) because it creates a new first degree misdemeanor.

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 require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2015, The Highway & Waterway Safety Subcommittee adopted one amendment to HB 231 and reported the bill favorably as a committee substitute. The amendment:

- Specified that in addition to any other penalty imposed, if a traffic violation contributed to the bodily injury of a vulnerable user, a fine of not more than \$2,000 shall be imposed.
- Removes the requirement for traffic education courses to include instruction on traffic laws relating to the rights and safety of vulnerable users.
- Removes the requirement for driver license and commercial driver license examinations to include testing of an applicant's knowledge of traffic laws relating to the rights and safety of vulnerable users.

This analysis is drafted to the committee substitute as reported favorably by the Highway & Waterway Safety Subcommittee.

1 A bill to be entitled
 2 An act relating to transportation; amending s.
 3 316.003, F.S.; providing definitions; amending s.
 4 316.083, F.S.; revising provisions relating to the
 5 passing of a vehicle; creating s. 316.0833, F.S.;
 6 prohibiting passing and turning in front of a
 7 vulnerable user in an unsafe manner; providing
 8 penalties; amending s. 316.0875, F.S.; revising
 9 exceptions to provisions for designated no-passing
 10 zones; creating s. 316.1921, F.S.; prohibiting
 11 harassing, taunting, or throwing object at person
 12 riding a bicycle; providing penalties; amending s.
 13 316.1925, F.S.; revising provisions relating to
 14 careless driving; amending s. 316.2065, F.S.; revising
 15 the definition of the term "substandard-width lane";
 16 creating s. 318.142, F.S.; providing penalties for
 17 specified infractions contributing to bodily injury of
 18 a vulnerable user; amending s. 318.19, F.S.; requiring
 19 a hearing for specified offenses; providing
 20 severability; providing an effective date.

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

23
 24 Section 1. Subsections (94) and (95) are added to section
 25 316.003, Florida Statutes, to read:

26 316.003 Definitions.—The following words and phrases, when

27 | used in this chapter, shall have the meanings respectively
28 | ascribed to them in this section, except where the context
29 | otherwise requires:

30 | (94) BODILY INJURY.—

31 | (a) A cut, abrasion, bruise, burn, or disfigurement;

32 | (b) Physical pain;

33 | (c) Illness;

34 | (d) Impairment of the function of a bodily member, organ,
35 | or mental faculty; or

36 | (e) Any other injury to the body, no matter how temporary.

37 | (95) VULNERABLE USER OF A PUBLIC RIGHT-OF-WAY OR
38 | VULNERABLE USER.—

39 | (a) A pedestrian, including a person actually engaged in
40 | work upon a highway, work upon utility facilities along a
41 | highway, or the provision of emergency services within the
42 | right-of-way;

43 | (b) A person operating, or who is a passenger on, a
44 | bicycle, motorcycle, scooter, or moped lawfully on the roadway;

45 | (c) A person riding an animal; or

46 | (d) A person lawfully operating on a public right-of-way,
47 | crosswalk, or shoulder of the roadway:

48 | 1. A farm tractor or similar vehicle designed primarily
49 | for farm use;

50 | 2. A skateboard, roller skates, or in-line skates;

51 | 3. A horse-drawn carriage;

52 | 4. An electric personal assistive mobility device; or

53 5. A wheelchair.

54 Section 2. Section 316.083, Florida Statutes, is amended
55 to read:

56 316.083 Overtaking and passing a vehicle.—The following
57 provisions ~~rules shall~~ govern the overtaking and passing of
58 vehicles proceeding in the same direction, ~~subject to those~~
59 ~~limitations, exceptions, and special rules hereinafter stated:~~

60 (1) The driver of a vehicle overtaking another vehicle
61 proceeding in the same direction shall give an appropriate
62 signal as provided for in s. 316.156, shall pass to the left
63 thereof at a safe distance, and shall not again drive to the
64 right side of the roadway until safely clear of the overtaken
65 vehicle.

66 (2) The driver of a motor vehicle overtaking a person
67 operating a bicycle or other vulnerable user of a public right-
68 of-way nonmotorized vehicle must pass the person operating the
69 bicycle or other vulnerable user nonmotorized vehicle at a safe
70 distance of not less than 3 feet between any part of or
71 attachment to the motor vehicle, any thing extending from the
72 motor vehicle, and any trailer or other thing being towed by the
73 motor vehicle and the bicycle, the person operating the bicycle,
74 or other vulnerable user nonmotorized vehicle.

75 (3)~~(2)~~ Except when overtaking and passing on the right is
76 permitted, the driver of an overtaken vehicle shall give way to
77 the right in favor of the overtaking vehicle, on audible signal
78 or upon the visible blinking of the headlamps of the overtaking

79 vehicle if such overtaking is being attempted at nighttime, and
 80 shall not increase the speed of his or her vehicle until
 81 completely passed by the overtaking vehicle.

82 ~~(4)(3)~~ A violation of this section is a noncriminal
 83 traffic infraction, punishable as a moving violation as provided
 84 in chapter 318. If a violation of this section contributed to
 85 the bodily injury of a vulnerable user of a public right-of-way,
 86 the law enforcement officer issuing the citation for the
 87 violation shall note such information on the citation.

88 Section 3. Section 316.0833, Florida Statutes, is created
 89 to read:

90 316.0833 Right turn when passing vulnerable user.—

91 (1) A person operating a vehicle who overtakes and passes
 92 a vulnerable user of a public right-of-way proceeding in the
 93 same direction may not make a right turn at an intersection or
 94 into a private road or driveway unless the turn can be made at a
 95 safe distance from the vulnerable user with reasonable safety
 96 and will not impede the travel of the vulnerable user.

97 (2) A violation of subsection (1) is a noncriminal traffic
 98 infraction, punishable as a moving violation as provided in
 99 chapter 318. If a violation of subsection (1) contributed to the
 100 bodily injury of a vulnerable user of a public right-of-way, the
 101 law enforcement officer issuing the citation for the violation
 102 shall note such information on the citation.

103 Section 4. Subsection (3) of section 316.0875, Florida
 104 Statutes, is amended to read:

105 316.0875 No-passing zones.-

106 (3) This section does not apply:

107 (a) When an obstruction exists making it necessary to
 108 drive to the left of the center of the highway; ~~nor~~

109 (b) To the driver of a vehicle turning left into or from
 110 an alley, private road, or driveway; or

111 (c) When the driver of a motor vehicle is required to
 112 cross pavement striping indicating a no-passing zone when
 113 passing a vulnerable user of a public right-of-way in order to
 114 provide at least 3 feet between the motor vehicle and the
 115 vulnerable user.

116 Section 5. Section 316.1921, Florida Statutes, is created
 117 to read:

118 316.1921 Harassing, taunting, or throwing object at person
 119 riding a bicycle.-It is unlawful to harass, taunt, or
 120 maliciously throw an object at or in the direction of a person
 121 riding a bicycle. A person who violates this section commits a
 122 misdemeanor of the first degree, punishable by a fine of at
 123 least \$250 or by imprisonment of not more than 30 days, or both.

124 Section 6. Section 316.1925, Florida Statutes, is amended
 125 to read:

126 316.1925 Careless driving.-

127 (1) A ~~Any~~ person operating a vehicle upon the streets or
 128 highways within the state shall drive the same in a careful and
 129 prudent manner, having regard for the width, grade, curves,
 130 corners, traffic, and all other attendant circumstances, so as

131 not to endanger the life, limb, or property of any person. A
 132 person who fails ~~Failure~~ to drive in such manner commits ~~shall~~
 133 ~~constitute~~ careless driving and ~~a violation of this section.~~

134 ~~(2) Any person who violates this section~~ shall be cited
 135 for a moving violation, punishable as provided in chapter 318.

136 (2) If a violation under this section contributed to the
 137 bodily injury of a vulnerable user of a public right-of-way, the
 138 law enforcement officer issuing the citation for the violation
 139 shall note such information on the citation.

140 Section 7. Paragraph (a) of subsection (5) of section
 141 316.2065, Florida Statutes, is amended to read:

142 316.2065 Bicycle regulations.—

143 (5) (a) Any person operating a bicycle upon a roadway at
 144 less than the normal speed of traffic at the time and place and
 145 under the conditions then existing shall ride in the lane marked
 146 for bicycle use or, if no lane is marked for bicycle use, as
 147 close as practicable to the right-hand curb or edge of the
 148 roadway except under any of the following situations:

149 1. When overtaking and passing another bicycle or vehicle
 150 proceeding in the same direction.

151 2. When preparing for a left turn at an intersection or
 152 into a private road or driveway.

153 3. When reasonably necessary to avoid any condition or
 154 potential conflict, including, but not limited to, a fixed or
 155 moving object, parked or moving vehicle, bicycle, pedestrian,
 156 animal, surface hazard, turn lane, or substandard-width lane,

157 | which makes it unsafe to continue along the right-hand curb or
 158 | edge or within a bicycle lane. For the purposes of this
 159 | subsection, a "substandard-width lane" is a lane that is less
 160 | than 14 feet wide which is not adjacent to a bicycle lane that
 161 | is at least 5 feet wide ~~too narrow for a bicycle and another~~
 162 | ~~vehicle to travel safely side by side within the lane.~~

163 | Section 8. Section 318.142, Florida Statutes, is created
 164 | to read:

165 | 318.142 Infractions contributing to bodily injury of a
 166 | vulnerable user of a public right-of-way.—In addition to any
 167 | other penalty imposed for a violation under s. 316.083, s.
 168 | 316.0833, or s. 316.1925, if the violation contributed to the
 169 | bodily injury of a vulnerable user of a public right-of-way as
 170 | defined in s. 316.003, the designated official shall impose a
 171 | fine of not more than \$2,000.

172 | Section 9. Section 318.19, Florida Statutes, is amended to
 173 | read:

174 | 318.19 Infractions requiring a mandatory hearing.—Any
 175 | person cited for the infractions listed in this section shall
 176 | not have the provisions of s. 318.14(2), (4), and (9) available
 177 | to him or her but must appear before the designated official at
 178 | the time and location of the scheduled hearing:

179 | (1) Any infraction which results in a crash that causes
 180 | the death of another;

181 | (2) Any infraction which results in a crash that causes
 182 | "serious bodily injury" of another as defined in s. 316.1933(1);

- 183 (3) Any infraction of s. 316.172(1)(b);
 184 (4) Any infraction of s. 316.520(1) or (2); ~~or~~
 185 (5) Any infraction of s. 316.183(2), s. 316.187, or s.
 186 316.189 of exceeding the speed limit by 30 m.p.h. or more; or
 187 (6) Any infraction of s. 316.083, s. 316.0833, or s.
 188 316.1925 which contributes to bodily injury of a vulnerable user
 189 of a public right-of-way as defined in s. 316.003.

190 Section 10. If any provision of this act or its
 191 application to any person or circumstance is held invalid, the
 192 invalidity does not affect other provisions or applications of
 193 this act which can be given effect without the invalid provision
 194 or application, and, to this end, the provisions of this act are
 195 severable.

196 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 Passidomo offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (94) and (95) are added to section
8 316.003, Florida Statutes, to read:

9 316.003 Definitions.—The following words and phrases, when
10 used in this chapter, shall have the meanings respectively
11 ascribed to them in this section, except where the context
12 otherwise requires:

13 (94) BODILY INJURY.—

14 (a) A cut, abrasion, bruise, burn, or disfigurement;

15 (b) Physical pain;

16 (c) Illness;

17 (d) Impairment of the function of a bodily member, organ,



Amendment No. 1

18 or mental faculty; or

19 (e) Any other injury to the body, no matter how temporary.

20 (95) VULNERABLE USER OF A PUBLIC ROADWAY OR VULNERABLE

21 USER.-

22 (a) A pedestrian, including a person actually engaged in
23 work upon a highway, work upon utility facilities along a
24 highway, or the provision of emergency services within the
25 right-of-way;

26 (b) A person operating, or who is a passenger on, a
27 bicycle, motorcycle, scooter, or moped lawfully on the roadway;

28 (c) A person riding an animal; or

29 (d) A person lawfully operating on a public roadway,
30 crosswalk, or shoulder of the roadway:

31 1. A farm tractor or similar vehicle designed primarily
32 for farm use;

33 2. A horse-drawn carriage;

34 3. An electric personal assistive mobility device; or

35 4. A wheelchair.

36 Section 2. Section 316.083, Florida Statutes, is amended
37 to read:

38 316.083 Overtaking and passing a vehicle.—The following
39 provisions ~~rules shall~~ govern the overtaking and passing of
40 vehicles proceeding in the same direction, ~~subject to those~~
41 ~~limitations, exceptions, and special rules hereinafter stated:~~

42 (1) The driver of a vehicle overtaking another vehicle
43 proceeding in the same direction shall give an appropriate



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44 | signal as provided for in s. 316.156, shall pass to the left
45 | thereof at a safe distance, and shall not again drive to the
46 | right side of the roadway until safely clear of the overtaken
47 | vehicle.

48 | (2) The driver of a motor vehicle overtaking a person
49 | operating a bicycle or other vulnerable user of a public roadway
50 | ~~nonmotorized vehicle~~ must pass the person operating the bicycle
51 | or other vulnerable user ~~nonmotorized vehicle~~ at a safe distance
52 | of not less than 3 feet between any part of or attachment to the
53 | motor vehicle, any thing extending from the motor vehicle, and
54 | any trailer or other thing being towed by the motor vehicle and
55 | the bicycle, the person operating the bicycle, or other
56 | vulnerable user ~~nonmotorized vehicle~~.

57 | (3)(2) Except when overtaking and passing on the right is
58 | permitted, the driver of an overtaken vehicle shall give way to
59 | the right in favor of the overtaking vehicle, on audible signal
60 | or upon the visible blinking of the headlamps of the overtaking
61 | vehicle if such overtaking is being attempted at nighttime, and
62 | shall not increase the speed of his or her vehicle until
63 | completely passed by the overtaking vehicle.

64 | (4)(3) A violation of this section is a noncriminal
65 | traffic infraction, punishable as a moving violation as provided
66 | in chapter 318. If a violation of this section contributed to
67 | the bodily injury of a vulnerable user of a public roadway, the
68 | law enforcement officer issuing the citation for the violation
69 | shall note such information on the citation.

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70 Section 3. Section 316.0833, Florida Statutes, is created
71 to read:

72 316.0833 Turning when passing vulnerable user.-

73 (1) A person operating a vehicle who overtakes and passes
74 a vulnerable user of a public roadway proceeding in the same
75 direction may not make a right or left turn at an intersection
76 or into a private road or driveway unless the turn can be made
77 at a safe distance from the vulnerable user with reasonable
78 safety and will not impede the travel of the vulnerable user.

79 (2) A violation of subsection (1) is a noncriminal traffic
80 infraction, punishable as a moving violation as provided in
81 chapter 318. If a violation of subsection (1) contributed to the
82 bodily injury of a vulnerable user of a public roadway, the law
83 enforcement officer issuing the citation for the violation shall
84 note such information on the citation.

85 Section 4. Subsection (3) of section 316.0875, Florida
86 Statutes, is amended to read:

87 316.0875 No-passing zones.-

88 (3) This section does not apply:

89 (a) When an obstruction exists making it necessary to
90 drive to the left of the center of the highway; ~~nor~~

91 (b) To the driver of a vehicle turning left into or from
92 an alley, private road, or driveway; or

93 (c) When the driver of a motor vehicle is required to
94 cross pavement striping indicating a no-passing zone when
95 passing a vulnerable user of a public roadway in order to

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96 provide at least 3 feet between the motor vehicle and the
97 vulnerable user.

98 Section 5. Section 316.1921, Florida Statutes, is created
99 to read:

100 316.1921 Harassing, taunting, or throwing object at person
101 riding a bicycle.-It is unlawful to harass, taunt, or
102 maliciously throw an object at or in the direction of a person
103 riding a bicycle. A person who violates this section commits a
104 misdemeanor of the first degree, punishable by a fine of at
105 least \$250 or by imprisonment of not more than 30 days, or both.

106 Section 6. Section 316.1925, Florida Statutes, is amended
107 to read:

108 316.1925 Careless driving.-

109 (1) A ~~Any~~ person operating a vehicle upon the streets or
110 highways within the state shall drive the same in a careful and
111 prudent manner, having regard for the width, grade, curves,
112 corners, traffic, and all other attendant circumstances, so as
113 not to endanger the life, limb, or property of any person. A
114 person who fails ~~Failure~~ to drive in such manner commits ~~shall~~
115 ~~constitute~~ careless driving and ~~a violation of this section.~~

116 ~~(2) Any person who violates this section shall be cited~~
117 ~~for a moving violation, punishable as provided in chapter 318.~~

118 (2) If a violation under this section contributed to the
119 bodily injury of a vulnerable user of a public roadway, the law
120 enforcement officer issuing the citation for the violation shall
121 note such information on the citation.



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122 Section 7. Section 318.142, Florida Statutes, is created
123 to read:

124 318.142 Infractions contributing to bodily injury of a
125 vulnerable user of a public roadway.—In addition to any other
126 penalty imposed for a violation under s. 316.083, s. 316.0833,
127 or s. 316.1925, if the violation contributed to the bodily
128 injury of a vulnerable user of a public roadway as defined in s.
129 316.003, the designated official shall impose a fine of not more
130 than \$2,000.

131 Section 8. Section 318.19, Florida Statutes, is amended to
132 read:

133 318.19 Infractions requiring a mandatory hearing.—Any
134 person cited for the infractions listed in this section shall
135 not have the provisions of s. 318.14(2), (4), and (9) available
136 to him or her but must appear before the designated official at
137 the time and location of the scheduled hearing:

138 (1) Any infraction which results in a crash that causes
139 the death of another;

140 (2) Any infraction which results in a crash that causes
141 "serious bodily injury" of another as defined in s. 316.1933(1);

142 (3) Any infraction of s. 316.172(1)(b);

143 (4) Any infraction of s. 316.520(1) or (2); ~~or~~

144 (5) Any infraction of s. 316.183(2), s. 316.187, or s.
145 316.189 of exceeding the speed limit by 30 m.p.h. or more; or

146 (6) Any infraction of s. 316.083, s. 316.0833, or s.
147 316.1925 which contributes to bodily injury of a vulnerable user



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148 of a public roadway as defined in s. 316.003.

149 Section 9. If any provision of this act or its application
150 to any person or circumstance is held invalid, the invalidity
151 does not affect other provisions or applications of this act
152 which can be given effect without the invalid provision or
153 application, and, to this end, the provisions of this act are
154 severable.

155 Section 10. This act shall take effect July 1, 2015.

156

157

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

159 Remove everything before the enacting clause and insert:
160 An act relating to transportation; amending s. 316.003, F.S.;
161 providing definitions; amending s. 316.083, F.S.; revising
162 provisions relating to the passing of a vehicle; creating s.
163 316.0833, F.S.; prohibiting passing and turning in front of a
164 vulnerable user in an unsafe manner; providing penalties;
165 amending s. 316.0875, F.S.; revising exceptions to provisions
166 for designated no-passing zones; creating s. 316.1921, F.S.;
167 prohibiting harassing, taunting, or throwing object at person
168 riding a bicycle; providing penalties; amending s. 316.1925,
169 F.S.; revising provisions relating to careless driving; creating
170 s. 318.142, F.S.; providing penalties for specified infractions
171 contributing to bodily injury of a vulnerable user; amending s.
172 318.19, F.S.; requiring a hearing for specified offenses;
173 providing severability; providing an effective date.



Amendment No. 1a

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 McBurney offered the following:

4
5 **Amendment to Amendment (419383) by Representative Passidomo**
6 **(with title amendment)**

7 Between lines 35 and 36 of the amendment, insert:
8 Section 2. Section 316.0275, Florida Statutes, is created
9 to read:

10 316.0275 Noncriminal traffic infractions leading to
11 serious bodily injury or death; reclassification.-

12 (1) Notwithstanding any other provision of law, if an
13 individual commits a noncriminal traffic infraction under this
14 chapter which causes serious bodily injury or death to a person
15 and within 5 years after that violation, commits another
16 noncriminal traffic infraction under this chapter which causes



Amendment No. 1a

17 serious bodily injury or death to a person, the second such
18 violation shall be reclassified as a misdemeanor of the first
19 degree, punishable as provided in s. 775.082 or s. 775.083, and
20 have their license revoked under s. 322.26(10).

21 (2) As used in this section, the term "serious bodily
22 injury" means an injury to a person, excluding the at fault
23 driver, which consists of a physical condition that creates a
24 substantial risk of death, serious personal disfigurement, or
25 protracted loss or impairment of the function of any bodily
26 member or organ.

27 Section 3. Subsection (10) is added to section 322.26,
28 Florida Statutes, to read:

29 322.26 Mandatory revocation of license by department.—The
30 department shall forthwith revoke the license or driving
31 privilege of any person upon receiving a record of such person's
32 conviction of any of the following offenses:

33 (10) A violation of s. 316.0275.

34
35 -----

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

36 Remove line 161 of the amendment and insert:
37 providing definitions; creating s. 316.0275, F.S.; providing
38 criminal penalties for certain noncriminal traffic infractions
39 that cause serious bodily injury or death to a person; amending
40



Amendment No. 1a

41 s. 322.26, F.S.; providing mandatory revocation of license for
42 conviction of s. 316.0275; amending s. 316.083, F.S.; revising

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 287 Controlled Substances
SPONSOR(S): Jacobs and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 764

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

SUMMARY ANALYSIS

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

Chapter 893, F.S., also contains a variety of provisions criminalizing behavior related to controlled substances.

Mitragyna speciosa korth, also known as "Kratom," is a tropical tree indigenous to Thailand, Malaysia, Myanmar, and other areas of Southeast Asia. The Drug Enforcement Administration (DEA) states that there is no legitimate medical use for Kratom in the United States, but anecdotal reports claim that it provides general pain relief, alleviates the symptoms of PMS and depression, lowers blood pressure, decreases anxiety, provides diarrhea relief, and increases mental acuity.

Kratom abuse is not currently monitored by any national drug abuse surveys and it is not scheduled under the Controlled Substances Act.

The bill amends s. 893.03(1)(c), F.S., adding mitragyna speciosa, the substance known as Kratom, to Schedule I of Florida's controlled substances schedules. As a result, the criminal penalties of s. 893.13, F.S., relating to the possession, sale, manufacture, and delivery of Schedule I controlled substances, will apply to this substance.

On March 11, 2015, the Criminal Justice Impact Conference determined that the bill will have a positive insignificant impact on prison beds (i.e. an increase of 10 or fewer prison beds).

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 893, F.S.

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act (Controlled Substance Act) and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”¹ of the substance 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 drugs.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 substance involved in a crime, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

Prohibited Acts Relating to Schedule I Substances

Section 893.13, F.S., in part, prohibits a variety of acts relating to substances listed in Schedule I, category (c). For example, it is:

- A third degree felony⁶ for a person to:
 - Sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver such substances;⁷ or
 - Purchase, or possess with intent to purchase, such substances;⁸
 - Bring into Florida such substances unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency;⁹
- A second degree felony¹⁰ for a person to sell, manufacture, etc., such substances in, on, or within 1,000 feet of:
 - The real property comprising a child care facility or a public or private elementary, middle, or secondary school between specified hours;¹¹
 - The real property comprising a park, a community center, or a publicly owned recreational facility at any time;¹²
 - The real property comprising a public or private college, university, or other postsecondary educational institution;¹³

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

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 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.

⁷ s. 893.13(1)(a)2., F.S.,

⁸ s. 893.13(2)(a)2., F.S.

⁹ s. 893.13(5)(b), F.S.

¹⁰ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

¹¹ s. 893.13(1)(c)2., F.S.

¹² *Id.*

- A physical place for worship at which a church or religious organization regularly conducts religious services;¹⁴
- A convenience business as defined in s. 812.171, F.S.;¹⁵
- The real property comprising a public housing facility at any time;¹⁶ or
- The real property comprising an assisted living facility;¹⁷ and
- A second degree felony for a person 18 years of age or older to deliver such a substance to a person younger than 18 years of age, use or hire a person younger than 18 years of age as an agent or employee in the sale or delivery of such a substance, or use such person to assist in avoiding detection or apprehension for a violation of ch. 893, F.S.¹⁸

Kratom

In recent years, synthetic drugs have emerged in Florida. One of the newest substances that has emerged in Florida is known as “Kratom.”

Kratom, also known as *mitragyna speciosa korth*, is a tropical tree indigenous to Thailand, Malaysia, Myanmar, and other areas of Southeast Asia.¹⁹ Kratom is primarily used orally as a tea or by chewing the leaves,²⁰ and has been used as an herbal drug in Southeast Asia for decades, most notably as a stimulant or a substitute for opium.²¹ It has also been used to manage opioid withdrawal symptoms by chronic opioid users.²² It has recently become very prevalent in the United States.

The Drug Enforcement Administration (DEA) states that there is no legitimate medical use for Kratom in the United States.²³ However, anecdotal reports claim that it provides general pain relief, alleviates the symptoms of PMS and depression, lowers blood pressure, decreases anxiety, provides diarrhea relief, and increases mental acuity.²⁴

Kratom has been described to have both sedative and stimulant effects.²⁵ At low doses, it is reported to increase alertness, physical energy, talkativeness, and social behavior.²⁶ At high doses, opiate, sedative, and euphoric effects, such as pain relief and relaxation, are produced.²⁷ The effects occur within five to ten minutes after ingestion and last for two to five hours.²⁸ The DEA states that acute side effects include nausea, itching, sweating, dry mouth, constipation, increased urination, and loss of appetite.²⁹

¹³ s. 893.13(1)(d)2., F.S.

¹⁴ s. 893.13(1)(e)2., F.S.

¹⁵ *Id.*

¹⁶ s. 893.13(1)(f), F.S.

¹⁷ s. 893.13(1)(h)2., F.S.

¹⁸ s. 893.13(4)(b), F.S.

¹⁹ *Kratom*, Drug Enforcement Administration, Office of Divison Control, Drug and Chemical Evaluation section, p. 1 (on file with the Criminal Justice Subcommittee)(hereinafter cited as “DEA Report”).

²⁰ DEA Report, p. 1 and *What is Kratom and is it Dangerous?*, <http://www.promises.com/articles/abused-drugs/what-is-kratom-and-is-it-dangerous/> (last visited March 19, 2015).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Kratom under attack in Florida legislature and Palm Beach County*, <http://www.examiner.com/article/kratom-under-attack-florida-legislature-and-palm-beach-county> (last visited March 19, 2015).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

There are some reports of deaths associated with Kratom, but often the victims also had other psychiatric drugs in their system or the person was taking a mixture of the drug with a known opioid compound.³⁰

Kratom abuse is not currently monitored by any national drug abuse surveys and is not scheduled under the Controlled Substances Act.³¹

Recent Efforts to Ban Kratom

Several Florida counties have attempted to ban Kratom, including Broward, Palm Beach, and Sarasota counties. Sarasota County does currently regulate the distribution of Kratom.³² Both Palm Beach County and Broward County failed to pass ordinances that banning the substance during recent county commission meetings.³³ Many of the commissioners in both counties stated that there was a need for more research before moving forward on a ban of Kratom.³⁴

Kratom has been banned by the U.S. Army and Navy and has been placed on a watch list by DEA.³⁵

Effect of the Bill

The bill amends s. 893.03(1)(c), F.S., adding *mitragyna speciosa*, the substance known as Kratom, to Schedule I, category (c) of Florida's controlled substances schedules.

As a result, the above-described criminal penalties of s. 893.13, F.S., relating to the possession, sale, manufacture, and delivery of Schedule I, category (c) controlled substances will apply to this substance.

The bill reenacts ss. 893.12 and 921.0022, F.S., for purposes of incorporating the changes made by the act.

B. SECTION DIRECTORY:

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

Section 2. Reenacts s. 893.12, F.S., relating to contraband; seizure, forfeiture, sale.

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

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

³⁰ *What is kratom and is it dangerous?*, <http://www.promises.com/articles/abused-drugs/what-is-kratom-and-is-it-dangerous/> (last visited March 19, 2015).

³¹ DEA Report, p. 1.

³² *Sarasota County bans sale of synthetic marijuana*, <http://www.heraldtribune.com/article/20140212/ARTICLE/140219895/0/search> (last visited March 19, 2015). The Sarasota County ordinance regulates the marketing and packaging of the substance

³³ *Broward opts not to ban kratom – for now*, <http://www.sun-sentinel.com/local/broward/fl-kratom-ban-broward-20141028-story.html> (last visited March 19, 2015).

³⁴ *Id.*

³⁵ *Id.*

2. Expenditures:

On March 11, 2015, the Criminal Justice Impact Conference determined that the bill will have a positive insignificant impact on prison beds (i.e. an increase of 10 or fewer prison beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

27 Anabolic Steroid Products."

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

33 (c) Unless specifically excepted or unless listed in
 34 another schedule, any material, compound, mixture, or
 35 preparation that contains any quantity of the following
 36 hallucinogenic substances or that contains any of their salts,
 37 isomers, including optical, positional, or geometric isomers,
 38 and salts of isomers, if the existence of such salts, isomers,
 39 and salts of isomers is possible within the specific chemical
 40 designation:

- 41 1. Alpha-ethyltryptamine.
- 42 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-
 43 methylaminorex).
- 44 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
- 45 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 46 5. 4-Bromo-2,5-dimethoxyphenethylamine.
- 47 6. Bufotenine.
- 48 7. Cannabis.
- 49 8. Cathinone.
- 50 9. Diethyltryptamine.
- 51 10. 2,5-Dimethoxyamphetamine.
- 52 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).

- 53 | 12. Dimethyltryptamine.
- 54 | 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
- 55 | analog of phencyclidine).
- 56 | 14. N-Ethyl-3-piperidyl benzilate.
- 57 | 15. N-ethylamphetamine.
- 58 | 16. Fenethylamine.
- 59 | 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
- 60 | 18. Ibogaine.
- 61 | 19. Lysergic acid diethylamide (LSD).
- 62 | 20. Mescaline.
- 63 | 21. Methcathinone.
- 64 | 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 65 | 23. 4-methoxyamphetamine.
- 66 | 24. 4-methoxymethamphetamine.
- 67 | 25. 4-Methyl-2,5-dimethoxyamphetamine.
- 68 | 26. 3,4-Methylenedioxy-N-ethylamphetamine.
- 69 | 27. 3,4-Methylenedioxyamphetamine.
- 70 | 28. N-Methyl-3-piperidyl benzilate.
- 71 | 29. N,N-dimethylamphetamine.
- 72 | 30. Parahexyl.
- 73 | 31. Peyote.
- 74 | 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine
- 75 | analog of phencyclidine).
- 76 | 33. Psilocybin.
- 77 | 34. Psilocyn.
- 78 | 35. Salvia divinorum, except for any drug product approved

79 | by the United States Food and Drug Administration which contains
 80 | Salvia divinorum or its isomers, esters, ethers, salts, and
 81 | salts of isomers, esters, and ethers, if the existence of such
 82 | isomers, esters, ethers, and salts is possible within the
 83 | specific chemical designation.

84 | 36. Salvinorin A, except for any drug product approved by
 85 | the United States Food and Drug Administration which contains
 86 | Salvinorin A or its isomers, esters, ethers, salts, and salts of
 87 | isomers, esters, and ethers, if the existence of such isomers,
 88 | esters, ethers, and salts is possible within the specific
 89 | chemical designation.

90 | 37. Tetrahydrocannabinols.

91 | 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
 92 | (Thiophene analog of phencyclidine).

93 | 39. 3,4,5-Trimethoxyamphetamine.

94 | 40. 3,4-Methylenedioxymethcathinone.

95 | 41. 3,4-Methylenedioxypyrovalerone (MDPV).

96 | 42. Methylenedioxymethcathinone.

97 | 43. Methoxymethcathinone.

98 | 44. Fluoromethcathinone.

99 | 45. Methylethcathinone.

100 | 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
 101 | yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
 102 | homologue.

103 | 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
 104 | methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,

- 105 | also known as HU-210.
- 106 | 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.
- 107 | 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.
- 108 | 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole,
- 109 | also known as JWH-200.
- 110 | 51. BZP (Benzylpiperazine).
- 111 | 52. Fluorophenylpiperazine.
- 112 | 53. Methylphenylpiperazine.
- 113 | 54. Chlorophenylpiperazine.
- 114 | 55. Methoxyphenylpiperazine.
- 115 | 56. DBZP (1,4-dibenzylpiperazine).
- 116 | 57. TFMPP (3-Trifluoromethylphenylpiperazine).
- 117 | 58. MBDB (Methylbenzodioxolylbutanamine).
- 118 | 59. 5-Hydroxy-alpha-methyltryptamine.
- 119 | 60. 5-Hydroxy-N-methyltryptamine.
- 120 | 61. 5-Methoxy-N-methyl-N-isopropyltryptamine.
- 121 | 62. 5-Methoxy-alpha-methyltryptamine.
- 122 | 63. Methyltryptamine.
- 123 | 64. 5-Methoxy-N,N-dimethyltryptamine.
- 124 | 65. 5-Methyl-N,N-dimethyltryptamine.
- 125 | 66. Tyramine (4-Hydroxyphenethylamine).
- 126 | 67. 5-Methoxy-N,N-Diisopropyltryptamine.
- 127 | 68. DiPT (N,N-Diisopropyltryptamine).
- 128 | 69. DPT (N,N-Dipropyltryptamine).
- 129 | 70. 4-Hydroxy-N,N-diisopropyltryptamine.
- 130 | 71. N,N-Diallyl-5-Methoxytryptamine.

- 131 | 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 132 | 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 133 | 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 134 | 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
- 135 | 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 136 | 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
- 137 | 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
- 138 | 79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).
- 139 | 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 140 | 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).
- 141 | 82. Ethcathinone.
- 142 | 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
- 143 | 84. Naphyrone (naphthylpyrovalerone).
- 144 | 85. N-N-Dimethyl-3,4-methylenedioxcathinone.
- 145 | 86. N-N-Diethyl-3,4-methylenedioxcathinone.
- 146 | 87. 3,4-methylenedioxy-propiofenone.
- 147 | 88. 2-Bromo-3,4-Methylenedioxypropiofenone.
- 148 | 89. 3,4-methylenedioxy-propiofenone-2-oxime.
- 149 | 90. N-Acetyl-3,4-methylenedioxcathinone.
- 150 | 91. N-Acetyl-N-Methyl-3,4-Methylenedioxcathinone.
- 151 | 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone.
- 152 | 93. Bromomethcathinone.
- 153 | 94. Buphedrone (alpha-methylamino-butyrophenone).
- 154 | 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
- 155 | 96. Dimethylcathinone.
- 156 | 97. Dimethylmethcathinone.

- 157 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
- 158 99. (MDPPP) 3,4-Methylenedioxy-alpha-
- 159 pyrrolidinopropiophenone.
- 160 100. (MDPBP) 3,4-Methylenedioxy-alpha-
- 161 pyrrolidinobutiophenone.
- 162 101. Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).
- 163 102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).
- 164 103. Benocyclidine (BCP) or
- 165 benzothiophenylcyclohexylpiperidine (BTCP).
- 166 104. Fluoromethylaminobutyrophenone (F-MABP).
- 167 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
- 168 106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).
- 169 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
- 170 108. Methylethylaminobutyrophenone (Me-EABP).
- 171 109. Methylamino-butyrophenone (MABP).
- 172 110. Pyrrolidinopropiophenone (PPP).
- 173 111. Pyrrolidinobutiophenone (PBP).
- 174 112. Pyrrolidinovalerophenone (PVP).
- 175 113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).
- 176 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
- 177 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
- 178 naphthalenylmethanone).
- 179 116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-
- 180 yl)methanone).
- 181 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
- 182 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-

- 183 yl)methanone).
- 184 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
- 185 yl)methanone).
- 186 120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).
- 187 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-
- 188 6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
- 189 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-
- 190 indole).
- 191 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
- 192 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-
- 193 yl)ethanone).
- 194 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-
- 195 yl)methanone).
- 196 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-
- 197 yl)ethanone).
- 198 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-
- 199 yl)ethanone).
- 200 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
- 201 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
- 202 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
- 203 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
- 204 ol).
- 205 131. HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-
- 206 methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-
- 207 enyl] methanol).
- 208 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-

209 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
 210 1,4-dione).

211 133. CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-
 212 yl)methanone).

213 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
 214 undecanamide).

215 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
 216 undecanamide).

217 136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-
 218 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).

219 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-2-
 220 iodophenyl)methanone).

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

223 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-
 224 yl)methanone).

225 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-
 226 methoxyphenylethanone).

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

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

233 143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).

234 144. Fluoroamphetamine.

- 235 | 145. Fluoromethamphetamine.
- 236 | 146. Methoxetamine.
- 237 | 147. Methiopropamine.
- 238 | 148. 4-Methylbuphedrone (2-Methylamino-1-(4-
- 239 | methylphenyl)butan-1-one).
- 240 | 149. APB ((2-aminopropyl)benzofuran).
- 241 | 150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).
- 242 | 151. UR-144 ((1-pentyl-1H-indol-3-yl)(2,2,3,3-
- 243 | tetramethylcyclopropyl)methanone).
- 244 | 152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-
- 245 | tetramethylcyclopropyl)methanone).
- 246 | 153. (1-(5-chloropentyl)-1H-indol-3-yl)(2,2,3,3-
- 247 | tetramethylcyclopropyl)methanone.
- 248 | 154. AKB48 (1-pentyl-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-
- 249 | indazole-3-carboxamide).
- 250 | 155. AM-2233((2-iodophenyl)[1-[(1-methyl-2-
- 251 | piperidinyl)methyl]-1H-indol-3-yl]-methanone).
- 252 | 156. STS-135 (1-(5-fluoropentyl)-N-
- 253 | tricyclo[3.3.1.13,7]dec-1-yl-1H-indole-3-carboxamide).
- 254 | 157. URB-597 ((3'-(aminocarbonyl)[1,1'-biphenyl]-3-yl)-
- 255 | cyclohexylcarbamate).
- 256 | 158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid,
- 257 | cyclohexyl ester).
- 258 | 159. URB-754 (6-methyl-2-[(4-methylphenyl)amino]-1-
- 259 | benzoxazin-4-one).
- 260 | 160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).

- 261 161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).
- 262 162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).
- 263 163. 2C-P (2-(2,5-Dimethoxy-4-(n)-
- 264 propylphenyl)ethanamine).
- 265 164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-
- 266 methoxyphenyl)methyl]-benzeneethanamine).
- 267 165. 3,4-Methylenedioxymethamphetamine (MDMA).
- 268 166. PB-22 (1-pentyl-8-quinolinyl ester-1H-indole-3-
- 269 carboxylic acid).
- 270 167. 5-Fluoro PB-22 (8-quinolinyl ester-1-(5-
- 271 fluoropentyl)-1H-indole-3-carboxylic acid).
- 272 168. BB-22 (1-(cyclohexylmethyl)-8-quinolinyl ester-1H-
- 273 indole-3-carboxylic acid).
- 274 169. 5-Fluoro AKB48 (N-((3s,5s,7s)-adamantan-1-yl)-1-(5-
- 275 fluoropentyl)-1H-indazole-3-carboxamide).
- 276 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
- 277 pentyl-1H-indazole-3-carboxamide).
- 278 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
- 279 (4-fluorobenzyl)-1H-indazole-3-carboxamide).
- 280 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-
- 281 1-pentyl-1H-indazole-3-carboxamide).
- 282 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
- 283 yl)-1-(fluoropentyl)-1H-indole-3-carboxamide).
- 284 174. 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-
- 285 methoxyphenyl)methyl]-benzeneethanamine).
- 286 175. 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-

287 | methoxyphenyl)methyl]-benzeneethanamine).

288 | 176. Kratom (mitragyna speciosa).

289 | Section 2. For the purpose of incorporating the amendment
290 | made by this act to section 893.03, Florida Statutes, in
291 | references thereto, paragraphs (b), (c), and (d) of subsection
292 | (2) of section 893.12, Florida Statutes, are reenacted to read:

293 | 893.12 Contraband; seizure, forfeiture, sale.-

294 | (2)

295 | (b) All real property, including any right, title,
296 | leasehold interest, and other interest in the whole of any lot
297 | or tract of land and any appurtenances or improvements, which
298 | real property is used, or intended to be used, in any manner or
299 | part, to commit or to facilitate the commission of, or which
300 | real property is acquired with proceeds obtained as a result of,
301 | a violation of any provision of this chapter related to a
302 | controlled substance described in s. 893.03(1) or (2) may be
303 | seized and forfeited as provided by the Florida Contraband
304 | Forfeiture Act except that no property shall be forfeited under
305 | this paragraph to the extent of an interest of an owner or
306 | lienholder by reason of any act or omission established by that
307 | owner or lienholder to have been committed or omitted without
308 | the knowledge or consent of that owner or lienholder.

309 | (c) All moneys, negotiable instruments, securities, and
310 | other things of value furnished or intended to be furnished by
311 | any person in exchange for a controlled substance described in
312 | s. 893.03(1) or (2) or a listed chemical in violation of any

313 provision of this chapter, all proceeds traceable to such an
 314 exchange, and all moneys, negotiable instruments, and securities
 315 used or intended to be used to facilitate any violation of any
 316 provision of this chapter or which are acquired with proceeds
 317 obtained in violation of any provision of this chapter may be
 318 seized and forfeited as provided by the Florida Contraband
 319 Forfeiture Act, except that no property shall be forfeited under
 320 this paragraph to the extent of an interest of an owner or
 321 lienholder by reason of any act or omission established by that
 322 owner or lienholder to have been committed or omitted without
 323 the knowledge or consent of that owner or lienholder.

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

331 Section 3. For the purpose of incorporating the amendment
 332 made by this act to section 893.03, Florida Statutes, in
 333 references thereto, paragraphs (b) through (e) of subsection (3)
 334 of section 921.0022, Florida Statutes, are reenacted to read:

335 921.0022 Criminal Punishment Code; offense severity
 336 ranking chart.—

337 (3) OFFENSE SEVERITY RANKING CHART

338 (b) LEVEL 2

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339
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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.
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.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.

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346	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
347	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
348	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
349	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
350	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
351	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.

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352	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
353	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
354	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
355	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
356	817.52(3)	3rd	Failure to redeliver hired vehicle.
357	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.

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358	817.60 (5)	3rd	Dealing in credit cards of another.
359	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
360	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
361	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
362	831.01	3rd	Forgery.
363	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
364	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or

			drafts.
365	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
366	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
367	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
368	843.08	3rd	Falsely impersonating an officer.
369	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.
370	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
371			

372	(c) LEVEL 3		
373			
	Florida Statute	Felony Degree	Description
374	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
375	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
376	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
377	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
378	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
379	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or

			mobile home.
380	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
381	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
382	327.35(2)(b)	3rd	Felony BUI.
383	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
384	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
385	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
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379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
387 379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
388 400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
389 440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
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391	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
392	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
393	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
394	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
395	697.08	3rd	Equity skimming.
396	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
397	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.

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398	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
399	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
400	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
401	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
402	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
403	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
404	817.233	3rd	Burning to defraud insurer.

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405	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
406	817.234(11) (a)	3rd	Insurance fraud; property value less than \$20,000.
407	817.236	3rd	Filing a false motor vehicle insurance application.
408	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
409	817.413(2)	3rd	Sale of used goods as new.
410	817.505(4)	3rd	Patient brokering.
411	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
	831.28(2) (a)	3rd	Counterfeiting a payment

			instrument with intent to defraud or possessing a counterfeit payment instrument.
412	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
413	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
414	843.19	3rd	Injure, disable, or kill police dog or horse.
415	860.15(3)	3rd	Overcharging for repairs and parts.
416	870.01(2)	3rd	Riot; inciting or encouraging.
417	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).
418			

419	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.
420	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
421	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
422	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

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423	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
424	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
425	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
426	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.
	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.
427	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
428	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.
429	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
430	944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
431	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional

432			institution.
	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
433			
434	(d)	LEVEL 4	
435			
	Florida	Felony	
	Statute	Degree	Description
436			
	316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
437			
	499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
438			
	499.0051(2)	3rd	Failure to authenticate pedigree papers.
439			

440	499.0051 (6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
441	517.07 (1)	3rd	Failure to register securities.
442	517.12 (1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
443	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
444	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
445	784.075	3rd	Battery on detention or commitment facility staff.
446	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
447	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.

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448	784.081(3)	3rd	Battery on specified official or employee.
449	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
450	784.083(3)	3rd	Battery on code inspector.
451	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
452	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
453	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at

			custody hearing or delivering to designated person.
454	787.07	3rd	Human smuggling.
455	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
456	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
457	790.115(2)(c)	3rd	Possessing firearm on school property.
458	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
459	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
460	810.02(4)(b)	3rd	Burglary, or attempted

			burglary, of an unoccupied conveyance; unarmed; no assault or battery.
461	810.06	3rd	Burglary; possession of tools.
462	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
463	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
464	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
465	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
466	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
467			

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468	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
469	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
470	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
471	837.02(1)	3rd	Perjury in official proceedings.
472	837.021(1)	3rd	Make contradictory statements in official proceedings.
473	838.022	3rd	Official misconduct.
474	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
	839.13(2)(c)	3rd	Falsifying records of the Department of Children and

			Families.
475	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
476	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
477	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
478	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
479	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
480	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d),

			(2) (a), (2) (b), or (2) (c) 4. drugs).
481	914.14 (2)	3rd	Witnesses accepting bribes.
482	914.22 (1)	3rd	Force, threaten, etc., witness, victim, or informant.
483	914.23 (2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
484	918.12	3rd	Tampering with jurors.
485	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
486			
487	(e)	LEVEL 5	
488			
	Florida	Felony	
	Statute	Degree	Description
489	316.027 (2) (a)	3rd	Accidents involving personal injuries other than serious

			bodily injury, failure to stop; leaving scene.
490	316.1935(4) (a)	2nd	Aggravated fleeing or eluding.
491	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
492	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
493	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
494	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
495	381.0041(11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
496			

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497	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
498	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
499	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
500	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
501	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
502	790.01(2)	3rd	Carrying a concealed firearm.
503	790.162	2nd	Threat to throw or discharge destructive device.

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504	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
505	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
506	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
507	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
508	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
509	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or

			property.
510	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
511	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
512	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
513	812.131(2)(b)	3rd	Robbery by sudden snatching.
514	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
515	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
516	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
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518	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
519	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
520	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
521	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

522	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
523	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
524	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.
525	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
526	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.

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527	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
528	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
529	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
530	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
531	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).
	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.

532

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.

533

893.13(1)(e)2. 2nd Sell, manufacture, or deliver
 cannabis or other drug
 prohibited under s.
 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3., (2)(c)5.,
 (2)(c)6., (2)(c)7., (2)(c)8.,
 (2)(c)9., (3), or (4) within
 1,000 feet of property used for

534	893.13(1)(f)1.	1st	religious services or a specified business site.
535	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.
536	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).
537	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.		
538	Section 4. This act shall take effect October 1, 2015.		



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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 Jacobs offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. (1) The Legislature directs the Florida
8 Department of Law Enforcement, in collaboration with the
9 Department of Children and Families' Substance Abuse and Mental
10 Health Program Office and the Attorney General's Office, to
11 gather information on mitragyna speciosa korth, and any compound
12 or derivative thereof, and make a determination on whether the
13 Legislature or Office of the Attorney General should place
14 mitragyna speciosa korth in a controlled substance schedule
15 within the State of Florida.



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16 (a) In making this determination, the Florida Department
17 of Law Enforcement shall consult and gather information from the
18 following:

- 19 1. Substance abuse treatment providers;
- 20 2. Local law enforcement agencies;
- 21 3. Local governments, including those who have banned the
22 substance;
- 23 4. The Department of Children and Families;
- 24 5. The Attorney General's Office;
- 25 6. Research from medically accepted journals; and
- 26 7. Medical doctors specializing in addiction medicine or
27 currently researching the effects of mitragyna speciosa korth.

28 (b) The Florida Department of Law Enforcement shall gather
29 data on mitragyna speciosa korth and any compound or derivatives
30 thereof, including:

- 31 1. Whether the substance has an actual or relative
32 potential for abuse;
- 33 2. Any scientific evidence of the substance's
34 pharmacological effect;
- 35 3. The current scientific knowledge related to the
36 substance's psychological or physical dependence;
- 37 4. The substance's history and current pattern of abuse;
- 38 5. The scope, duration, and significance of abuse; and
- 39 6. What, if any, risk there is to the public health.

40 (2) The Florida Department of Law Enforcement shall
41 prepare a summary of its findings and present it to the



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42 | President of the Senate and Speaker of the House no later than
43 | December 31, 2015.

44 | Section 2. This act shall take effect upon becoming law.

45 |

46 | -----

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

48 | Remove everything before the enacting clause and insert:
49 | An act relating to controlled substances; providing legislative
50 | findings; requiring the Florida Department of Law Enforcement;
51 | Department of Children and Families, Substance Abuse and Mental
52 | Health Program Office; and the Attorney General's Office to
53 | collect data regarding mitragyna speciosa korth, also known as
54 | "Kratom;" providing parameters for the data collection;
55 | requiring results be reported to the Legislature; providing an
56 | effective date.

57 |

58 | WHEREAS, the Legislature finds that substance abuse is a
59 | major health problem that affects multiple service systems and
60 | leads to such profoundly disturbing consequences as serious
61 | impairment, chronic addiction, criminal behavior, vehicular
62 | casualties, spiraling health care costs, AIDS, and business
63 | losses, and significantly affects the culture, socialization,
64 | and learning ability of children within our schools and
65 | educational systems, and



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66 WHEREAS, the threat of Designer Drugs and Misbranded
67 Consumer Commodities is significant and presents a threat to the
68 public health, safety, and welfare of Floridians, and

69 WHEREAS, there is no currently accepted medicinal use of
70 mitragyna speciosa korth, and any compound or derivative
71 thereof, also known as "Kratom," and

72 WHEREAS, in the absence of FDA testing and regulation and
73 with a lack of knowledge regarding the long term health effects
74 and addictive properties of mitragyna speciosa korth, and any
75 compound or derivative thereof, there is a need for further
76 research into this substance, NOW, THEREFORE,

77

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 623 Weapons or Firearms
SPONSOR(S): Rouson
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham <i>gla</i>
2) Local Government Affairs Subcommittee		<i>SW</i>	
3) Local & Federal Affairs Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Section 790.15, F.S., makes it a first degree misdemeanor for a person to recklessly or negligently discharge a firearm outdoors on any property used primarily as the site of a dwelling or zoned exclusively for residential use. Florida's Standard Jury Instructions for Criminal Cases defines the term "recklessly" as "with a conscious and intentional indifference to consequences." The term "negligently" is defined as "failing to use reasonable care under the circumstances."

The bill amends s. 790.15, F.S., to remove the requirement that the person discharge the firearm "recklessly" or "negligently," as well as the requirement that the discharge occur "outdoors." As such, it will be a first degree misdemeanor for a person to discharge a firearm on any property used primarily as the site of a dwelling or zoned exclusively for residential use.

The bill may have a positive jail bed impact (i.e., increase the need for jail beds) because it expands a misdemeanor offense.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The term “sport shooting range” is defined similarly in two sections of statute as “an area that has been designed, or operated for the use of, firearms, rifles, shotguns, pistols, silhouettes, skeet, trap, black power, BB guns, airguns, or similar devices, or any other type of sport or training shooting.”¹ The Legislature has preempted the regulation of firearms and ammunition use at sport shooting ranges.² As such, local governments are not permitted to enact ordinances regulating how firearms can be used at sport shooting ranges. However, local governments may regulate the location and construction of sport shooting ranges.³

In recent months, there have been reports of persons constructing “gun ranges” in their backyards.⁴ Many of these individuals live in residential neighborhoods, which cause their neighbors concern. It is unclear whether such “gun ranges” meet the definition of a “sport shooting range.”

A person discharging a firearm on any property used primarily as the site of a dwelling or zoned exclusively for residential use is subject to s. 790.15, F.S. This statute applies to the discharge of a firearm for any reason (e.g., individual target practice, group firearm training, etc.).

Section 790.15, F.S., makes it a first degree misdemeanor⁵ for a person to recklessly or negligently discharge a firearm⁶ outdoors on any property used primarily as the site of a dwelling⁷ or zoned exclusively for residential use.⁸ The penalty does not apply to a person:

- Lawfully defending life or property;
- Performing official duties requiring the discharge of a firearm; or
- Discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Florida Forest Service.

Florida’s Standard Jury Instructions for Criminal Cases defines the term “recklessly” as “with a conscious and intentional indifference to consequences.”⁹ The term “negligently” is defined as “failing to use reasonable care under the circumstances.”¹⁰

¹ ss. 790.333 and 823.16, F.S.

² s. 790.333(8), F.S.

³ s. 823.16(7), F.S.

⁴ See, e.g., *Backyard gun range concerns St. Pete neighbors*, <http://www.wtsp.com/story/news/local/2015/02/02/man-builds-gun-range-in-his-yard-neighbors-concerned/22777421/> (last visited March 20, 2015), and *Fla. law allows backyard shooting ranges*, <http://www.heraldtribune.com/article/20140201/WIRE/140209997> (last visited March 20, 2015).

⁵ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁶ Section 790.001(6), F.S., defines “firearm” as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.

⁷ The term “dwelling” is defined in accordance with s. 776.013, F.S., as a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

⁸ Section 790.15, F.S., also makes it a first degree misdemeanor for a person to:

- Knowingly discharge a firearm in any public place or on the right-of-way of any paved public road, highway, or street; or
- Knowingly discharge a firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises.

⁹ FLA. STD. JURY INSTR. (Crim.) 10.6.

¹⁰ *Id.*

Effect of the Bill

The bill amends s. 790.15, F.S., to remove the requirement that the person discharge the firearm “recklessly” or “negligently,” as well as the requirement that the discharge occur “outdoors.” As such, it will be a first degree misdemeanor for a person to discharge a firearm on any property used primarily as the site of a dwelling or zoned exclusively for residential use.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.15, F.S., relating to discharging firearm in public or on residential property.

Section 2. 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 bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may have a positive jail bed impact (i.e., increase the need for jail beds) because it expands a misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to weapons or firearms; amending s.
 3 790.15, F.S.; prohibiting any discharge of a firearm
 4 on residential property, regardless of whether the
 5 discharge occurs outdoors or in a reckless or
 6 negligent manner; providing criminal penalties;
 7 providing an effective date.

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

10
 11 Section 1. Subsection (1) of section 790.15, Florida
 12 Statutes, is amended to read:

13 790.15 Discharging firearm in public or on residential
 14 property.—

15 (1) Except as provided in subsection (2) or subsection
 16 (3), any person who knowingly discharges a firearm in any public
 17 place or on the right-of-way of any paved public road, highway,
 18 or street, who knowingly discharges any firearm over the right-
 19 of-way of any paved public road, highway, or street or over any
 20 occupied premises, or who ~~recklessly or negligently~~ discharges a
 21 firearm ~~outdoors~~ on any property used primarily as the site of a
 22 dwelling as defined in s. 776.013 or zoned exclusively for
 23 residential use commits a misdemeanor of the first degree,
 24 punishable as provided in s. 775.082 or s. 775.083. This section
 25 does not apply to a person lawfully defending life or property
 26 or performing official duties requiring the discharge of a

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27 | firearm or to a person discharging a firearm on public roads or
28 | properties expressly approved for hunting by the Fish and
29 | Wildlife Conservation Commission or Florida Forest Service.

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



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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 Rouson offered the following:
 4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 790.15, Florida Statutes, is amended to
 8 read:

9 790.15 Discharging firearm in public or on residential
 10 property.-

11 (1) Except as provided in subsection (2), ~~or~~ subsection
 12 (3), or subsection (4), a ~~any~~ person who knowingly discharges a
 13 firearm in any public place or on the right-of-way of any paved
 14 public road, highway, or street, who knowingly discharges any
 15 firearm over the right-of-way of any paved public road, highway,
 16 or street or over any occupied premises, or who recklessly or
 17 negligently discharges a firearm outdoors on any property used



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18 primarily as the site of a dwelling as defined in s. 776.013 or
19 zoned exclusively for residential use commits a misdemeanor of
20 the first degree, punishable as provided in s. 775.082 or s.
21 775.083. For purposes of this subsection, the discharge of a
22 firearm is presumed to be reckless or negligent if, as a result
23 of the discharge, the projectile crosses the real property of
24 another, regardless of whether the projectile harms a person or
25 property. This section does not apply to a person lawfully
26 defending life or property or performing official duties
27 requiring the discharge of a firearm or to a person discharging
28 a firearm on public roads or properties expressly approved for
29 hunting by the Fish and Wildlife Conservation Commission or
30 Florida Forest Service.

31 (2) A person who discharges a firearm for target practice
32 or recreational purposes within 1,000 feet of a person or
33 developed real property, other than at an authorized sport
34 shooting range that meets the standards of the National Rifle
35 Association for gun safety and shooting ranges as provided in
36 the 2012 edition of the NRA Range Source Book or on a property
37 expressly approved for hunting by the Fish and Wildlife
38 Conservation Commission, commits a misdemeanor of the first
39 degree, punishable as provided in s. 775.082 or s. 775.083.

40 (3)-(2) An Any occupant of any vehicle who knowingly and
41 willfully discharges any firearm from the vehicle within 1,000
42 feet of any person commits a felony of the second degree,
43 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.



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44 (4)~~(3)~~ Any driver or owner of any vehicle, whether or not
45 the owner of the vehicle is occupying the vehicle, who knowingly
46 directs any other person to discharge any firearm from the
47 vehicle commits a felony of the third degree, punishable as
48 provided in s. 775.082, s. 775.083, or s. 775.084.

49 (5) This section does not apply to a person:

50 (a) Lawfully defending life or property;

51 (b) Performing official duties requiring the discharge of
52 a firearm; or

53 (c) Discharging a firearm on public roads or properties
54 expressly approved for hunting by the Fish and Wildlife
55 Conservation Commission or Florida Forest Service.

56 Section 2. Paragraph (c) of subsection (3) of section
57 921.0022, Florida Statutes, is amended to read:

58 921.0022 Criminal Punishment Code; offense severity
59 ranking chart.—

60 (3) OFFENSE SEVERITY RANKING CHART

61 (c) LEVEL 3

62

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

63

64



Amendment No. 1

65	316.066 (3) (b) - (d)	3rd	Unlawfully obtaining or using confidential crash reports.
66	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
67	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
68	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
69	319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
70	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
71	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.



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72	327.35(2)(b)	3rd	Felony BUI.
	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
73			
	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
74			
	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
75			
	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
76			
	379.2431	3rd	Soliciting to commit or

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Amendment No. 1

77	(1) (e) 6.		conspiring to commit a violation of the Marine Turtle Protection Act.
	400.9935 (4)	3rd	Operating a clinic without a license or filing false license application or other required information.
78	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
79	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
80	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
81	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.



Amendment No. 1

82 626.902(1)(a) & 3rd Representing an unauthorized
(b) insurer.

83 697.08 3rd Equity skimming.

84 790.15(4) 3rd Person directs another to
~~790.15(3)~~ discharge firearm from a
vehicle.

85 806.10(1) 3rd Maliciously injure, destroy, or
interfere with vehicles or
equipment used in firefighting.

86 806.10(2) 3rd Interferes with or assaults
firefighter in performance of
duty.

87 810.09(2)(c) 3rd Trespass on property other than
structure or conveyance armed
with firearm or dangerous
weapon.

88 812.014(2)(c)2. 3rd Grand theft; \$5,000 or more but
less than \$10,000.

89



Amendment No. 1

90	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
91	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
92	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
93	817.233	3rd	Burning to defraud insurer.
94	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
95	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
96	817.236	3rd	Filing a false motor vehicle insurance application.
	817.2361	3rd	Creating, marketing, or presenting a false or



Amendment No. 1

fraudulent motor vehicle
insurance card.

97

817.413(2) 3rd Sale of used goods as new.

98

817.505(4) 3rd Patient brokering.

99

828.12(2) 3rd Tortures any animal with intent
to inflict intense pain,
serious physical injury, or
death.

100

831.28(2)(a) 3rd Counterfeiting a payment
instrument with intent to
defraud or possessing a
counterfeit payment instrument.

101

831.29 2nd Possession of instruments for
counterfeiting driver licenses
or identification cards.

102

838.021(3)(b) 3rd Threatens unlawful harm to
public servant.

103

843.19 3rd Injure, disable, or kill police
dog or horse.

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Amendment No. 1

104

860.15(3) 3rd Overcharging for repairs and parts.

105

870.01(2) 3rd Riot; inciting or encouraging.

106

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).

107

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.

108

893.13(1)(f)2. 2nd Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs



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within 1,000 feet of public
housing facility.

109

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

110

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

111

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

112

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

113

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

114



Amendment No. 1

- 115 893.13(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.
- 116 893.13(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.
- 117 893.13(8)(a)3. 3rd Knowingly write a prescription
for a controlled substance for
a fictitious person.
- 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



Amendment No. 1

practitioner.

118

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

119

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

120

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

121

985.721 3rd Escapes from a juvenile facility (secure detention or residential commitment facility).

122

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

123

124

125

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

126

Remove everything before the enacting clause and insert:

127

A bill to be entitled

128

An act relating to weapons or firearms; amending s.

129

790.15, F.S.; providing that the discharge of a

130

firearm is presumed to be reckless or negligent if, as

131

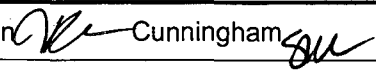


Amendment No. 1

132 a result of the discharge, the projectile crosses the
133 real property of another, regardless of whether the
134 projectile harms a person or property; prohibiting the
135 discharge of a firearm for target practice or
136 recreational purposes within a specified distance of
137 persons or developed property; providing criminal
138 penalties; providing exceptions; amending s. 921.0022,
139 F.S.; correcting a cross-reference; providing an
140 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 667 Service of Process
SPONSOR(S): Cruz
TIED BILLS: None **IDEN./SIM. BILLS:** SB 672

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

SUMMARY ANALYSIS

Witness subpoenas for criminal cases in Florida may be served by the sheriff of the county where the witness is found, by special process servers appointed by the sheriff, or by certified process servers. Process servers may charge reasonable fees, including fees for each attempted service. Sheriffs may charge a statutory fee for each criminal witness to be served, but they may not charge additional fees for multiple attempts to serve a witness, and may not charge anything at all in criminal cases with an insolvent defendant.

Failing to obey a subpoena can be considered contempt of court when the witness does not have a sufficient excuse for the failure. Criminal contempt of court may be punished by up to one year in jail and a \$500.00 fine.

Currently, Florida law permits a copy of a witness subpoena in a criminal case to be served on the witness by a sheriff or process server in the following ways:

- Hand delivery to the witness, or hand delivery to a qualifying person at the witness's usual place of abode;
- Mailing the subpoena to the witness via the United States Postal Service (USPS) at the witness's last known address, in specified criminal cases;
- Hand delivery to a designated supervisor or administrative employee at the witness's place of employment, for specified witnesses; and
- Posting the subpoena at the witness's residence after 3 attempts on different days and at different times have failed.

The bill amends s. 48.031(3)(b), F.S., to permit a criminal witness subpoena for a *deposition* to be served by posting it to the witness's residence after one attempt to serve the subpoena by another method has failed.

The bill may reduce state and local government expenditures because agencies and sheriffs attempting to serve process will be spared the expense of repeat service. However, the change to service of process made by the bill may increase the number of hearings to show cause, thereby increasing related expenses to circuit and county courts.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Service of Process

Witness subpoenas for criminal cases may be served by the sheriff of the county where the witness is found, by a special process server appointed by the sheriff, or by a certified process server.¹ Special and certified process servers are permitted to charge a reasonable fee for serving subpoenas,² but there is no statutory limit on the amount of the fee. They may also charge for each attempt to serve a subpoena. Florida sheriffs are permitted to charge a fee of \$40.00 for service of subpoenas; however, they cannot charge any fee in connection with insolvent criminal defendants, and they may not charge any additional fees for attempting to serve a witness multiple times.³

Failure to Appear

A witness who fails to obey a valid subpoena can be held in contempt of court when the witness does not have a sufficient excuse for the failure.⁴ If a witness disobeys a subpoena, a judge may issue an order to show cause, requiring the witness to appear before the judge to answer to the charge.⁵ Criminal contempt of court can be punished by up to one year in jail and a \$500.00 fine.⁶

If a witness claims that the service of the subpoena was not valid, the party seeking to invoke the court's jurisdiction over the witness (i.e., the party that subpoenaed the witness to appear) is responsible for proving the validity of the service of process.⁷ If the service of the subpoena is found to be invalid, the court cannot exercise personal jurisdiction over the witness.⁸

Serving Witness Subpoenas

Florida law currently provides multiple options for serving a witness subpoena in a criminal case. For example, a copy of the witness subpoena may be hand delivered to the witness, or it may be hand delivered to a qualifying person⁹ at the witness's usual place of abode.¹⁰

A witness subpoena in a criminal case may be also be served upon the witness by mailing the subpoena to the witness via the United States Postal Service (USPS) to the witness's last known address in the following types of cases:

- A criminal traffic case;
- A misdemeanor case; or
- A second or third degree felony case.¹¹

¹ ss. 48.021(1) and 48.29, F.S.

² ss. 48.021(3) and 48.29(8), F.S.

³ s. 30.231(1)(c), F.S.; 63-101 Fla. Op. Att'y Gen. 2 (1963).

⁴ FLA. R. CRIM. P. 3.220(h); *See Ex parte Crews*, 173 So. 275, 278 (Fla. 1937).

⁵ FLA. R. CRIM. P. 3.840(a).

⁶ *Schaab v. Florida*, 33 So. 3d 763, 765 (Fla. 4th DCA 2010) (citing to s. 775.02, F.S., *Moorman v. Bentley*, 490 So. 2d 186, 187 (Fla. 2d DCA 1986).); *see also Giordano v. Florida*, 32 So. 3d 96, 98 (Fla. 2d DCA 2009); *Johnson v. Florida*, 584 So. 2d 95, 98 n.3 (Fla. 1st DCA 1991).

⁷ *Thompson v. Fla., Dep't of Revenue*, 867 So. 2d 603, 605 (Fla. 1st DCA 2004); *Torres v. Arnco Constr., Inc.*, 867 So. 2d 583 (Fla. 5th DCA 2004).

⁸ *Thompson v. Fla., Dep't of Revenue*, 867 So. 2d 603 (Fla. 1st DCA 2004).

⁹ A qualifying person is any person who is at the witness's usual place of abode at the time of service, is 15 years of age or older, and resides at that location. s. 48.031(1)(a), F.S.

¹⁰ The "usual place of abode" is the place where the witness is actually living at the time of service. *Stettner v. Richardson*, 143 So. 2d 987, 990 (Fla. 3d DCA 2014); *Johnson v. Hudlett*, 32 So. 3d 700, 704-05 (Fla. 4th DCA 2010); *Heck v. Bank Liberty*, 86 So. 3d 1281, 1283 (Fla. 1st DCA 2012).

¹¹ s. 48.031(3)(a), F.S.

When serving a witness by USPS, the serving party must use certified mail in order for a court to hold the witness in contempt for failure to appear.¹² Additionally, subpoenas served by USPS must be mailed at least seven days prior to the date when appearance is required.¹³

Additional options are provided for serving criminal witness subpoenas on law enforcement officers, or federal, state or municipal employees who are called to testify in an official capacity. While a witness subpoena for these witnesses may be served by the methods explained above, it may also be hand delivered to a designated supervisor or administrative employee at the witness's place of employment.¹⁴

Florida law currently allows a criminal witness subpoena to be served by posting it at the witness's residence,¹⁵ but only after the sheriff or process server makes three separate attempts on different dates and at different times to serve the subpoena.¹⁶ The subpoena must be posted to the residence at least five days in advance of the witness's required appearance.¹⁷ These requirements apply to witness subpoenas for both depositions and court appearances in criminal cases.¹⁸

Effect of the Bill

The bill amends s. 48.031(3)(b), F.S., to permit a criminal witness subpoena *for a deposition* to be served by posting it to the witness's residence after one attempt to serve the subpoena by another method has failed.¹⁹

The bill reenacts s. 48.196(2), F.S., and 409.257(5), F.S., to incorporate the changes made to service of process requirements in s. 48.031, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 48.031, F.S., relating to service of process generally; service of witness subpoenas.

Section 2. Reenacts s. 48.196, F.S., relating to service of process in connection with actions under the Florida International Commercial Arbitration Act.

Section 3. Reenacts s. 409.257, F.S., relating to service of process.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹² s. 48.031(3)(a), F.S.

¹³ *Id.*

¹⁴ s. 48.031(4)(a), F.S. The subpoena may only be delivered to a supervisor or administrative employee who has been designated to accept service for the witness by the agency head or the highest ranking official at the witness's place of employment.

¹⁵ If a witness has more than one residence, the witness must be served at the residence in which he or she is actually living at the time the subpoena is served. *Heck v. Bank Liberty*, 86 So. 3d 1281, 1283 (Fla. 1st DCA 2012).

¹⁶ s. 48.031(3)(b), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ The bill does not change the process for serving any other type of criminal witness subpoena.

2. Expenditures:

The bill may reduce state government expenditures because state entities attempting to serve process will be spared the expense of repeat service. However, the change to service of process made by the bill may increase the number of hearings to show cause, thereby increasing related expenses to circuit courts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may reduce local government expenditures because local government entities attempting to serve process will be spared the expense of repeat service. However, the change to service of process made by the bill may increase the number of hearings to show cause, thereby increasing related expenses to county courts.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce litigation expenses for private individuals in criminal cases because it spares such parties the expense of repeat service.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to service of process; amending s.
 3 48.031, F.S.; authorizing a criminal witness subpoena
 4 commanding a witness to appear for a deposition to be
 5 posted at the witness's residence by an authorized
 6 person if one attempt to serve the subpoena has
 7 failed; reenacting ss. 48.196(2) and 409.257(5), F.S.,
 8 relating to service of process in actions under the
 9 Florida International Commercial Arbitration Act and
 10 of witness subpoenas served by the Department of
 11 Children and Families in paternity or child support
 12 proceedings, respectively, to incorporate the
 13 amendment made to s. 48.031, F.S., in references
 14 thereto; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Paragraph (b) of subsection (3) of section
 19 48.031, Florida Statutes, is amended to read:

20 48.031 Service of process generally; service of witness
 21 subpoenas.—

22 (3)

23 (b) A criminal witness subpoena commanding the witness to
 24 appear for a court appearance may be posted by a person
 25 authorized to serve process at the witness's residence if three
 26 attempts to serve the subpoena, made at different times of the

27 | day or night on different dates, have failed. A criminal witness
 28 | subpoena commanding the witness to appear for a deposition may
 29 | be posted by a person authorized to serve process at the
 30 | witness's residence if one attempt to serve the subpoena has
 31 | failed. The subpoena must be posted at least 5 days before ~~prior~~
 32 | ~~to~~ the date of the witness's required appearance.

33 | Section 2. For the purpose of incorporating the amendment
 34 | made by this act to section 48.031, Florida Statutes, in a
 35 | reference thereto, subsection (2) of section 48.196, Florida
 36 | Statutes, is reenacted to read:

37 | 48.196 Service of process in connection with actions under
 38 | the Florida International Commercial Arbitration Act.—

39 | (2) The process served under subsection (1) shall include
 40 | a copy of the application to the court together with all
 41 | attachments thereto and shall be served in the following manner:

42 | (a) In any manner agreed upon, whether service occurs
 43 | within or without this state;

44 | (b) If service is within this state:

45 | 1. In the manner provided in ss. 48.021 and 48.031, or

46 | 2. If applicable under their terms, in the manner provided
 47 | in ss. 48.161, 48.183, 48.23, or chapter 49; or



48 | (c) If service is outside this state:

49 | 1. By personal service by any person authorized to serve
 50 | process in the jurisdiction where service is being made or by
 51 | any person appointed to do so by any competent court in that
 52 | jurisdiction;

53 2. In any other manner prescribed by the laws of the
54 jurisdiction where service is being made for service in an
55 action before a local court of competent jurisdiction;
56 3. In the manner provided in any applicable treaty to
57 which the United States is a party;
58 4. In the manner prescribed by order of the court;
59 5. By any form of mail requiring a signed receipt, to be
60 addressed and dispatched by the clerk of the court to the person
61 being served; or
62 6. If applicable, in the manner provided in chapter 49.
63 Section 3. For the purpose of incorporating the amendment
64 made by this act to section 48.031, Florida Statutes, in a
65 reference thereto, subsection (5) of section 409.257, Florida
66 Statutes, is reenacted to read:
67 409.257 Service of process.—
68 (5) Witness subpoenas shall be served by the department by
69 United States mail as provided for in s. 48.031(3).
70 Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 15-07 Corrections
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 7020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Keegan 	Cunningham 

SUMMARY ANALYSIS

The bill makes a number of changes related to the Department of Corrections (Department) that affect data analysis, sentencing requirements, gain-time, and the duties of the Department. Specifically, the bill:

- Requires CJEC to develop projections of prison admissions and populations for elderly felony offenders;
- Allows victim injury points to be assessed for sexual contact or sexual penetration caused by a Department employee or a private correctional facility employee who commits sexual misconduct with an inmate or offender;
- Allows the Department to award educational gain-time to an inmate who earns a GED or vocational certificate, even if the inmate committed their offense on or after October 1, 1995, so long as the award does not reduce an inmate's tentative release date below the 85 percent minimum service date of the sentence;
- Includes "safety" as part of the Department's responsibilities in operating correctional institutions and facilities, and expands the required responsibilities of the Department's security review committee;
- Expands the types of facilities that should be given priority for physical inspections;
- Expands the scope of security audits, and to gives priority to institutions with a high level of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse;
- Requires audits to identify a number of specified areas of safety and security concern;
- Expands the required items in the Department's legislative budget request to include a prioritized summary of critical safety and security deficiencies;
- Requires the Department to maintain a *written* Memorandum of Understanding with the Florida Department of Law Enforcement, and provide copies to the Governor, the President of the Senate, and the Speaker of the House of Representatives; and
- Requires the Inspector General and the inspectors who conduct sexual abuse investigations in confinement settings to receive specialized training in conducting such investigations.

The Criminal Justice Impact Conference (CJIC) has not met to determine the fiscal impact of this bill. However, during the 2015 Legislative Session, CJIC determined that CS/SB 7020, which is similar to this bill, would have a positive insignificant prison bed impact (i.e., an increase of 10 or fewer prison beds) on the Department.

The bill may increase Department expenditures because the bill expands the required duties of the security review committee and creates additional training requirements for specified inspectors, which may increase administrative costs.

The bill may increase CJEC expenditures because the bill requires CJEC to gather and report on additional data.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Criminal Justice Estimating Conference

The “consensus estimating conference” was established as a part of the Legislative Branch to provide data, estimates, and other information for the purpose of state budgeting and planning functions.¹ The Criminal Justice Estimating Conference (CJEC) is a subpart of the estimating conference that is primarily responsible for compiling and analyzing data related to the criminal justice system.² Section 216.136(5), F.S., currently requires CJEC to develop official information³ relating to the:

- Criminal justice system, including forecasts of prison admissions and population and of supervised felony offender admissions and population;
- Number of eligible discharges and the projected number of civil commitments for determining space needs pursuant to involuntary civil commitment of sexually violent predators; and
- Number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring.⁴

Effect of the Bill

The bill amends s. 216.136(5) to require CJEC to develop projections of prison admissions and populations for elderly felony offenders.

Victim Injury Sentencing Points

Criminal offenses are ranked in the “offense severity ranking chart” from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense.⁵ A defendant’s sentence is calculated based on points assigned for a variety of factors (e.g., the offense for which the defendant is being sentenced; victim injury, additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record, etc.). The points are added in order to determine the “lowest permissible sentence” for the offense.⁶

As noted above additional points may be assessed by the court for “victim injury”⁷ directly caused by any offense that is before a court for sentencing.⁸ If there was “sexual contact,” an additional 40 victim injury points may be assessed. If there was “sexual penetration,” an additional 80 victim injury points may be assessed.⁹

Currently, s. 921.0021(7)(c), F.S., prohibits victim injury points from being assessed for sexual contact or sexual penetration caused by a Department of Corrections (Department) employee or a private correctional facility employee who commits sexual misconduct with an inmate or offender in violation of s. 944.35(3)(b)2., F.S.¹⁰

¹ s. 216.133, F.S.; Office of Economic & Demographic Research, *Consensus Estimating Conferences*, <http://edr.state.fl.us/Content/conferences/index.cfm> (last visited March 19, 2015).

² s. 216.136, F.S.

³ Section 216.133(2), F.S., defines “official information” as the data, forecasts, estimates, analyses, studies, and other information which the principals of a consensus estimating conference unanimously adopt for purposes of the state planning and budgeting system.

⁴ s. 216.136(5), F.S.

⁵ s. 921.0022, F.S.

⁶ s. 921.0024, F.S.

⁷ Section 921.0021(7)(a), F.S., defines “victim injury” as the physical injury or death suffered by a person as a direct result of the primary offense, or any additional offense, for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense.

⁸ FLA. R. CRIM. P. 702(d)(5) and 703(d)(9).

⁹ s. 921.0024(1)(a), F.S.

¹⁰ s. 921.0021(7)(c), F.S.; Section 944.35(3)(b)2., F.S., prohibits any Department employee or employee of a private correctional facility as defined in s. 944.710, F.S., from engaging in sexual misconduct with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery.

Effect of the Bill

The bill amends s. 921.0021(7)(c), F.S., so that victim injury points may be assessed for sexual contact or sexual penetration caused by a Department employee or a private correctional facility employee who commits sexual misconduct with an inmate or offender.

Gain-Time

Currently, the Department may grant inmates incentive gain-time for each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities.¹¹ For offenses committed on or after October 1, 1995, the Department is authorized to grant up to 10 days per month of incentive gain-time, but the total amount of incentive gain-time cannot result in release of an inmate before he or she serves a minimum of 85 percent of his or her sentence.¹² Inmates sentenced to life imprisonment or sentenced pursuant to certain statutes¹³ are not entitled to gain-time.¹⁴ When an inmate is found guilty of a violation of the laws of the state or Department rules, gain-time may be forfeited.¹⁵

Section 944.275(4)(d), F.S., specifies that an inmate who earns a GED or vocational certificate may be awarded a one-time grant for 60 days of incentive gain-time (educational gain-time). However, this award may not be granted to inmates who committed their offense on or after October 1, 1995.¹⁶

Effect of the Bill

The bill amends s. 944.275(4)(d), F.S., to allow the Department to award educational gain-time to an inmate who earns a GED or vocational certificate, even if the inmate committed their offense on or after October 1, 1995. Educational gain-time may not be awarded where it would reduce an inmate's tentative release date below the 85 percent minimum service date of the sentence.

The bill prohibits educational gain-time from being awarded if the inmate is or has previously been convicted of specified sexual offenses¹⁷ or a forcible felony offense specified in s. 776.08, F.S., except burglary as specified in s. 810.02(4), F.S.

Safety and Security

Florida law contains a variety of provisions relating to the security of correctional facilities under the Department's control.¹⁸ For example, s. 944.151, F.S., requires the Secretary of the Department (Secretary) to appoint a security review committee, which must:

- Include, at a minimum, the inspector general, the statewide security coordinator, the regional security coordinators, and three wardens and one correctional officer;
- Establish a schedule for physical inspections of the buildings and structures of correctional institutions, giving priority to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts;
- Conduct or cause to be conducted announced and unannounced security audits of correctional institutions;
- Adopt and enforce minimum standards and policies;
- Make annual written prioritized budget recommendations to the Secretary that identify critical security deficiencies at major correctional institutions;

¹¹ Section 944.275(4)(b), F.S.

¹² Section 944.275(4)(b)3., F.S.

¹³ For example, inmates sentenced to a mandatory minimum term of imprisonment as a dangerous sexual felony offender are not eligible to receive gain-time. Section 794.0115(7), F.S.

¹⁴ Section 944.275(4)(b)3., F.S.

¹⁵ Section 944.275(5), F.S.

¹⁶ s. 944.275(4)(b)3. and (d), F.S.

¹⁷ These offenses include ss. 794.011, 794.05, former 796.03, former 796.035, 800.04, 825.1025, 827.03, 827.071, 847.0133, 847.0135, 847.0137, 847.0138, 847.0145, and 985.701(1), F.S.

¹⁸ The majority of these provisions are contained in ch. 944, F.S.

- Investigate and evaluate the usefulness and dependability of existing security technology at institutions and the new technology available;
- Contract with security experts the committee deems necessary for security audits and consultation; and
- Establish a periodic schedule to conduct announced and unannounced escape simulation drills.¹⁹

The statute also requires the Secretary to produce quarterly reports of escape statistics and to adopt, enforce, and evaluate emergency response procedures for escapes. The Secretary must include in the annual legislative budget request a prioritized summary of critical security repair and renovation needs.²⁰

Effect of the Bill

The bill amends s. 944.151, F.S., to include “safety” as part of the Department’s responsibilities in operating correctional institutions and facilities, and expands the required responsibilities of the security review committee to include:

- Evaluating new safety and security technology;
- Reviewing and discussing issues impacting correctional facilities;
- Reviewing and discussing current issues impacting correctional facilities; and
- Reviewing and discussing other issues as requested by management.

The bill expands the types of facilities that should be given priority for physical inspections to include institutions with a high level of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse.

The bill expands the scope of announced and unannounced security audits to include safety concerns, and to give priority to institutions with a high level of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse. Audits must also identify a number of specified areas of safety and security concern (e.g., identification of blind spots or areas where staff or inmates may be isolated).

The bill also expands the required items in the Department’s legislative budget request to include a prioritized summary of critical safety and security deficiencies.

Inspector General

Section 944.31, F.S., requires the Department’s Office of Inspector General to be responsible for prison inspection and investigation, internal affairs investigations, and management reviews.²¹ The Inspector General has specific duties relating to inspections and investigations and must ensure compliance with Department rules and regulations.²² The Inspector General must maintain a Memorandum of Understanding (MOU) with the Florida Department of Law Enforcement (FDLE) for notification and investigation of suspicious deaths, organized criminal activity, and any other mutually-agreed upon events.

The Inspector General is authorized to employ inspectors to carry out its inspection and investigation duties, but is not currently required to provide any specific training to the inspectors to prepare them for their duties.²³ The Secretary is also authorized to designate personnel within its office as law enforcement officers who are empowered to conduct criminal investigations and make arrests.²⁴ Unlike inspectors, a person designated as a law enforcement officer must be a certified pursuant to s.

¹⁹ s. 944.151(1), F.S.

²⁰ s. 944.151(2) - (4), F.S.

²¹ s. 944.31, F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

943.1395, F.S., which includes law enforcement officer training, and must have a minimum of three years of experience as a Department inspector.²⁵

Effect of the Bill

The bill amends s. 944.31, F.S., to require the Department to maintain a *written* MOU with FDLE, and provide timely copies of the active MOU to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill also requires the Inspector General and the inspectors who conduct sexual abuse investigations in confinement settings to receive specialized training in conducting such investigations. Such training must be provided by the Department and must include, at a minimum:

- Techniques for interviewing sexual abuse victims;
- Proper use of Miranda and Garrity warnings;
- Sexual abuse evidence collection in confinement settings; and
- The criteria and evidence needed to substantiate a case for administrative action or criminal prosecution.

B. SECTION DIRECTORY:

Section 1. Amends s. 216.136, F.S., relating to consensus estimating conferences; duties and principals.

Section 2. Amends s. 921.0021, F.S., relating to definitions.

Section 3. Amends s. 944.151, F.S., relating to security of correctional institutions and facilities.

Section 4. Amends s. 944.275, F.S., relating to gain-time.

Section 5. Amends s. 944.31, F.S., relating to inspector general; inspectors; power and duties.

Section 6. 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 Criminal Justice Impact Conference (CJIC) has not met to determine the fiscal impact of this bill. However, during the 2015 Legislative Session, CJIC determined that CS/SB 7020, which is similar to this bill, would have a positive insignificant prison bed impact (i.e., an increase of 10 or fewer prison beds) on the Department.

The bill may increase Department expenditures because the bill expands the required duties of the security review committee and creates additional training requirements for specified inspectors, which may increase administrative costs.

The bill may increase CJEC expenditures because the bill requires CJEC to develop projections of prison admissions for elderly felony offenders.

²⁵ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditures 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 944.09, F.S., authorizes the Department to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement its statutory authority. The bill does not appear to create a need for additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to corrections; amending s. 216.136,
 3 F.S.; requiring the Criminal Justice Estimating
 4 Conference to develop projections of prison admissions
 5 and populations for elderly felony offenders; amending
 6 s. 921.0021, F.S.; revising the definition of "victim
 7 injury" by removing a prohibition on assessing certain
 8 victim injury sentence points for sexual misconduct by
 9 an employee of the Department of Corrections or a
 10 private correctional facility with an inmate or an
 11 offender supervised by the department; conforming a
 12 provision to changes made by the act; amending s.
 13 944.151, F.S.; expanding the department's security
 14 review committee functions; ensuring physical
 15 inspections of state and private buildings and
 16 structures and prioritizing institutions for
 17 inspection that meet certain criteria; amending s.
 18 944.275, F.S.; prohibiting an inmate from receiving
 19 incentive gain-time credits for completing the
 20 requirements for and receiving a general educational
 21 development certificate or vocational certificate if
 22 the inmate was convicted of a specified offense on or
 23 after a specified date; amending s. 944.31, F.S.;
 24 requiring that a copy of a written memorandum of
 25 understanding for notification and investigation of
 26 certain events between the Department of Corrections

27 and the Department of Law Enforcement be provided in a
 28 timely manner to the Governor, the President of the
 29 Senate, and the Speaker of the House of
 30 Representatives; requiring specialized training in
 31 certain circumstances; providing an effective dates.
 32

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

35 Section 1. Paragraph (d) is added to subsection (5) of
 36 section 216.136, Florida Statutes, to read:

37 216.136 Consensus estimating conferences; duties and
 38 principals.—

39 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.—The Criminal
 40 Justice Estimating Conference shall:

41 (d) Develop projections of prison admissions and
 42 populations for elderly felony offenders.

43 Section 2. Subsection (7) of section 921.0021, Florida
 44 Statutes, is amended to read:

45 921.0021 Definitions.—As used in this chapter, for any
 46 felony offense, except any capital felony, committed on or after
 47 October 1, 1998, the term:

48 (7)(a) "Victim injury" means the physical injury or death
 49 suffered by a person as a direct result of the primary offense,
 50 or any additional offense, for which an offender is convicted
 51 and which is pending before the court for sentencing at the time
 52 of the primary offense.

53 (b) Except as provided in paragraph (c) ~~or paragraph (d)~~,
 54 1. If the conviction is for an offense involving sexual
 55 contact that includes sexual penetration, the sexual penetration
 56 must be scored in accordance with the sentence points provided
 57 under s. 921.0024 for sexual penetration, regardless of whether
 58 there is evidence of any physical injury.

59 2. If the conviction is for an offense involving sexual
 60 contact that does not include sexual penetration, the sexual
 61 contact must be scored in accordance with the sentence points
 62 provided under s. 921.0024 for sexual contact, regardless of
 63 whether there is evidence of any physical injury.

64
 65 If the victim of an offense involving sexual contact suffers any
 66 physical injury as a direct result of the primary offense or any
 67 additional offense committed by the offender resulting in
 68 conviction, such physical injury must be scored separately and
 69 in addition to the points scored for the sexual contact or the
 70 sexual penetration.

71 ~~(e) The sentence points provided under s. 921.0024 for~~
 72 ~~sexual contact or sexual penetration may not be assessed for a~~
 73 ~~violation of s. 944.35(3)(b)2.~~

74 (c) ~~(d)~~ If the conviction is for the offense described in
 75 s. 872.06, the sentence points provided under s. 921.0024 for
 76 sexual contact or sexual penetration may not be assessed.

77 (d) ~~(e)~~ Notwithstanding paragraph (a), if the conviction is
 78 for an offense described in s. 316.027 and the court finds that

79 the offender caused victim injury, sentence points for victim
80 injury may be assessed against the offender.

81 Section 3. Section 944.151, Florida Statutes, is amended
82 to read:

83 944.151 Safety and security of correctional institutions
84 and facilities.—It is the intent of the Legislature that the
85 Department of Corrections shall be responsible for the safe
86 operation and security of the correctional institutions and
87 facilities. The safe operation and security of the state's
88 correctional institutions and facilities is critical to ensure
89 public safety and the safety of department employees and
90 offenders and to contain violent and chronic offenders until
91 offenders are otherwise released from the department's custody
92 pursuant to law. The Secretary of Corrections shall, at a
93 minimum:

94 (1) Appoint and designate select staff to the a safety and
95 security review committee ~~which shall, at a minimum, be composed~~
96 ~~of: the inspector general, the statewide security coordinator,~~
97 ~~the regional security coordinators, and three wardens and one~~
98 ~~correctional officer.~~ The safety and security review committee
99 shall evaluate new safety and security technology; review and
100 discuss issues impacting correctional facilities; review and
101 discuss current issues impacting correctional facilities; and
102 review and discuss other issues as requested by management.†

103 ~~(a) Establish a periodic schedule for the physical~~
104 ~~inspection of buildings and structures of each state and private~~

105 ~~correctional institution to determine security deficiencies. In~~
 106 ~~scheduling the inspections, priority shall be given to older~~
 107 ~~institutions, institutions that house a large proportion of~~
 108 ~~violent offenders, and institutions that have experienced a~~
 109 ~~significant number of escapes or escape attempts in the past.~~

110 (2) Ensure that appropriate staff establishes a periodic
 111 schedule for the physical inspection of buildings and structures
 112 of each state and private correctional institution and facility
 113 to determine safety and security deficiencies. In scheduling the
 114 inspections, priority shall be given to older institutions,
 115 institutions that house a large proportion of violent offenders,
 116 institutions with a high level of inappropriate incidents of use
 117 of force on inmates, assaults on employees, or inmate sexual
 118 abuse, and institutions that have experienced a significant
 119 number of escapes or escape attempts in the past.

120 (3)(b) Ensure that appropriate staff conducts ~~Conduct~~ or
 121 causes ~~cause~~ to be conducted announced and unannounced
 122 comprehensive safety and security audits of all state and
 123 private correctional institutions. In conducting the security
 124 audits, priority shall be given to older institutions,
 125 institutions that house a large proportion of violent offenders,
 126 institutions with a high level of inappropriate incidents of use
 127 of force on inmates, assaults on employees, or inmate sexual
 128 abuse, and institutions that have experienced a history of
 129 escapes or escape attempts. At a minimum, the audit shall
 130 include an evaluation of the physical plant, which shall include

131 the identification of blind spots or areas where staff or
 132 inmates may be isolated and the deployment of audio and video
 133 monitoring systems and other monitoring technologies in such
 134 areas, landscaping, fencing, security alarms and perimeter
 135 lighting, confinement, arsenal, key and lock, and entrance/exit
 136 ~~and inmate classification and staffing~~ policies. Each
 137 correctional institution shall be audited at least annually. ~~The~~
 138 ~~secretary shall~~

139 (4) Report the general survey findings annually to the
 140 Governor and the Legislature.

141 (5) Ensure appropriate staff investigates and evaluates
 142 the usefulness and dependability of existing safety and security
 143 technology at the institutions and new technology and video
 144 monitoring systems available and make periodic written
 145 recommendations to the secretary on the discontinuation or
 146 purchase of various safety and security devices.

147 (6) Contract, if deemed necessary, with security
 148 personnel, consulting engineers, architects, or other safety and
 149 security experts the department deems necessary for safety and
 150 security consultant services.

151 (7) Ensure appropriate staff, in conjunction with the
 152 regional offices, establishes a periodic schedule for conducting
 153 announced and unannounced escape simulation drills.

154 (8) Adopt, enforce, and annually cause the evaluation of
 155 the emergency escape response procedures, which shall at a
 156 minimum include the immediate notification and inclusion of

157 | local and state law enforcement through mutual aid agreements.

158 | (9) Ensure appropriate staff reviews staffing policies,
 159 | classification, and practices as needed.

160 | (10)(e) Adopt and enforce minimum safety and security
 161 | standards and policies that include, but are not limited to:

162 | (a)1. Random monitoring of outgoing telephone calls by
 163 | inmates.

164 | (b)2. Maintenance of current photographs of all inmates.

165 | (c)3. Daily inmate counts at varied intervals.

166 | (d)4. Use of canine units, where appropriate.

167 | (e)5. Use of escape alarms and perimeter lighting.

168 | (f)6. Florida Crime Information Center/National Crime
 169 | Information Center capabilities.

170 | (g)7. Employment background investigations.

171 | ~~(d) Annually make written prioritized budget~~
 172 | ~~recommendations to the secretary that identify critical security~~
 173 | ~~deficiencies at major correctional institutions.~~

174 | ~~(e) Investigate and evaluate the usefulness and~~
 175 | ~~dependability of existing security technology at the~~
 176 | ~~institutions and new technology available and make periodic~~
 177 | ~~written recommendations to the secretary on the discontinuation~~
 178 | ~~or purchase of various security devices.~~

179 | ~~(f) Contract, if deemed necessary, with security~~
 180 | ~~personnel, consulting engineers, architects, or other security~~
 181 | ~~experts the committee deems necessary for security audits and~~
 182 | ~~security consultant services.~~

183 ~~(g) Establish a periodic schedule for conducting announced~~
 184 ~~and unannounced escape simulation drills.~~

185 (11)(2) Direct staff to maintain and produce quarterly
 186 reports with accurate escape statistics. For the purposes of
 187 these reports, "escape" includes all possible types of escape,
 188 regardless of prosecution by the state attorney, and including
 189 offenders who walk away from nonsecure community facilities.

190 ~~(3) Adopt, enforce, and annually evaluate the emergency~~
 191 ~~escape response procedures, which shall at a minimum include the~~
 192 ~~immediate notification and inclusion of local and state law~~
 193 ~~enforcement through a mutual aid agreement.~~

194 (12)(4) Direct staff to submit in the annual legislative
 195 budget request a prioritized summary of critical safety and
 196 security deficiencies, and repair and renovation security needs.

197 Section 4. Paragraphs (d) and (e) of subsection (4) of
 198 section 944.275, Florida Statutes, are amended to read:

199 944.275 Gain-time.—

200 (4)

201 (d) Notwithstanding paragraph (b) ~~subparagraphs (b)1. and~~
 202 ~~2.~~, the education program manager shall recommend, and the
 203 Department of Corrections may grant, a one-time award of 60
 204 additional days of incentive gain-time to an inmate who is
 205 otherwise eligible and who successfully completes requirements
 206 for and is awarded a high school equivalency diploma or
 207 vocational certificate. This incentive gain-time award may be
 208 granted to reduce any sentence for an offense committed on or

209 after October 1, 1995. However, this gain-time may not be
 210 granted to reduce any sentence for an offense committed on or
 211 after October 1, 1995, if the inmate is, or has previously been,
 212 convicted of a violation of s. 794.011, s. 794.05, former s.
 213 796.03, former s. 796.035, s. 800.04, s. 825.1025, s. 827.03, s.
 214 827.071, s. 847.0133, s. 847.0135, s. 847.0137, s. 847.0138, s.
 215 847.0145, or s. 985.701(1), or a forcible felony offense that is
 216 specified in s. 776.08, except burglary as specified in s.
 217 810.02(4). An inmate subject to the 85 percent minimum service
 218 requirement pursuant to subparagraph (b)3. may not accumulate
 219 gain-time awards at any point when the tentative release date is
 220 the same as the 85 percent minimum service date of the sentence
 221 imposed. Under no circumstances may an inmate receive more than
 222 60 days for educational attainment pursuant to this section.

223 (e) Notwithstanding subparagraph (b)3. and paragraph (d),
 224 for sentences imposed for offenses committed on or after October
 225 1, 2014, the department may not grant incentive gain-time if the
 226 offense is a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2.
 227 or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s.
 228 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

229 Section 5. Section 944.31, Florida Statutes, is amended to
 230 read:

231 944.31 Inspector general; inspectors; power and duties.—

232 (1) The inspector general shall be responsible for prison
 233 inspection and investigation, internal affairs investigations,
 234 and management reviews. The office of the inspector general

235 shall be charged with the duty of inspecting the penal and
 236 correctional systems of the state. The office of the inspector
 237 general shall inspect each correctional institution or any place
 238 in which state prisoners are housed, worked, or kept within the
 239 state, with reference to its physical conditions, cleanliness,
 240 sanitation, safety, and comfort; the quality and supply of all
 241 bedding; the quality, quantity, and diversity of food served and
 242 the manner in which it is served; the number and condition of
 243 the prisoners confined therein; and the general conditions of
 244 each institution. The office of inspector general shall see that
 245 all the rules and regulations issued by the department are
 246 strictly observed and followed by all persons connected with the
 247 correctional systems of the state. The office of the inspector
 248 general shall coordinate and supervise the work of inspectors
 249 throughout the state. The inspector general and inspectors may
 250 enter any place where prisoners in this state are kept and shall
 251 be immediately admitted to such place as they desire and may
 252 consult and confer with any prisoner privately and without
 253 molestation. The inspector general and inspectors shall be
 254 responsible for criminal and administrative investigation of
 255 matters relating to the Department of Corrections. The secretary
 256 may designate persons within the office of the inspector general
 257 as law enforcement officers to conduct any criminal
 258 investigation that occurs on property owned or leased by the
 259 department or involves matters over which the department has
 260 jurisdiction. A person designated as a law enforcement officer

261 must be certified pursuant to s. 943.1395 and must have a
 262 minimum of 3 years' experience as an inspector in the inspector
 263 general's office or as a law enforcement officer.

264 (2) The department shall maintain a written memorandum of
 265 understanding with the Department of Law Enforcement for the
 266 notification and investigation of mutually agreed-upon predicate
 267 events that shall include, but are not limited to, suspicious
 268 deaths and organized criminal activity. A copy of an active
 269 memorandum of understanding shall be provided in a timely manner
 270 to the Governor, the President of the Senate, and the Speaker of
 271 the House of Representatives.

272 (3) During investigations, the inspector general and
 273 inspectors may consult and confer with any prisoner or staff
 274 member privately and without molestation and persons designated
 275 as law enforcement officers under this section shall have the
 276 authority to arrest, with or without a warrant, any prisoner of
 277 or visitor to a state correctional institution for a violation
 278 of the criminal laws of the state involving an offense
 279 classified as a felony that occurs on property owned or leased
 280 by the department and may arrest offenders who have escaped or
 281 absconded from custody. Persons designated as law enforcement
 282 officers have the authority to arrest with or without a warrant
 283 a staff member of the department, including any contract
 284 employee, for a violation of the criminal laws of the state
 285 involving an offense classified as a felony under this chapter
 286 or chapter 893 on property owned or leased by the department. A

287 person designated as a law enforcement officer under this
 288 section may make arrests of persons against whom arrest warrants
 289 have been issued, including arrests of offenders who have
 290 escaped or absconded from custody. The arrested person shall be
 291 surrendered without delay to the sheriff of the county in which
 292 the arrest is made, with a formal complaint subsequently made
 293 against her or him in accordance with law.

294 (4) The inspector general, and inspectors who conduct
 295 sexual abuse investigations in confinement settings, shall
 296 receive specialized training in conducting such investigations.
 297 The department shall be responsible for providing the
 298 specialized training. Specialized training shall include, but
 299 need not be limited to, techniques for interviewing sexual abuse
 300 victims, proper use of Miranda and Garrity warnings, sexual
 301 abuse evidence collection in confinement settings, and the
 302 criteria and evidence required to substantiate a case for
 303 administrative action or prosecution.

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