



Criminal Justice Subcommittee

**Wednesday November 4, 2015
10:30 AM – 11:30 AM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Carlos Trujillo
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Wednesday, November 04, 2015 10:30 am
End Date and Time: Wednesday, November 04, 2015 11:30 am
Location: Sumner Hall (404 HOB)
Duration: 1.00 hrs

Consideration of the following bill(s):

HB 75 Electronic Monitoring Devices by Torres
HB 93 Law Enforcement Officer Body Cameras by Jones, S., Williams, A.
HB 101 Violation of an Injunction for Protection by Rodríguez, J.
HB 105 Offenses Involving Electronic Benefits Transfer Cards by Smith
HB 217 Care for Retired Law Enforcement Dogs by Kerner
HB 253 Highway Safety by Passidomo



Consideration of the following proposed committee substitute(s):

PCS for HB 47 -- Offenses Against Brokers, Broker Associates, or Sales Associates
PCS for HB 135 -- Mandatory Minimum Sentences

NOTICE FINALIZED on 10/28/2015 4:06PM by Denson.Karan

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 75 Electronic Monitoring Devices
SPONSOR(S): Torres, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** None

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

SUMMARY ANALYSIS

Electronic monitoring devices (EMDs) are used to keep track of the location of arrestees, criminal defendants, and offenders who have been placed on probation, community control, or conditional release (community supervision).

A criminal defendant who tampers with or circumvents an EMD that was ordered as a condition of pretrial release may be detained while awaiting trial for the duration of his or her criminal case. Similarly, an offender who has been sentenced to use an EMD as a condition of community supervision can have his or her community supervision revoked for tampering or interfering with the EMD. Pursuant to s. 948.11(7), F.S., it is a third degree felony for a person to intentionally alter, tamper with, damage, or destroy any electronic monitoring equipment pursuant to court or commission order, unless that person is the owner of the equipment or an agent of the owner, and is performing ordinary maintenance and repairs.

The bill repeals s. 948.11(7), F.S., and moves its provisions into newly-created s. 843.23, F.S. This section makes it a third degree felony for a person to intentionally and without authority, remove, destroy, alter, tamper with, damage, or circumvent the operation of specified EMDs, or to solicit another person to do so.

The bill amends s. 948.11(1), F.S., to clarify that the Department of Corrections (hereafter "Department") may electronically monitor offenders sentenced to community control only when the court has imposed electronic monitoring as a condition of community control.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department (i.e., an increase of ten or fewer beds).

The bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Electronic monitoring devices (EMDs) are used to keep track of the location of arrestees, criminal defendants, and people who have been placed on probation, community control,¹ or conditional release² (community supervision). The use of EMDs is a common practice throughout the nation, with over five million offenders being monitored in some form in the United States.³ Likewise, Florida has used EMDs to monitor the location of released felons for years. As of July 31, 2015, there were 4,318 offenders in Florida using EMDs while being monitored on community supervision by the Department of Corrections (hereafter "Department").⁴

Judges generally have discretion to require criminal defendants and offenders on community supervision to wear an EMD.⁵ Additionally, judges are required to impose electronic monitoring in certain instances (e.g., judges are required to impose electronic monitoring on offenders placed on community supervision for specified sexual offenses).⁶ The Commission on Offender Review (the "Commission") is given the authority to determine the conditions of release, including ordering an offender to use an EMD, when an offender is released on conditional release, control release, parole, or conditional medical release.⁷

Aside from the authority given to the courts and the Commission, the Department is authorized by s. 948.11(1), F.S., to order electronic monitoring of offenders serving a community control sentence. However, the Department does not exercise such authority because courts have held that an offender's community control may not be revoked for noncompliance with electronic monitoring when such monitoring was ordered by the Department instead of a judge.⁸

A criminal defendant who tampers with or circumvents an EMD that was ordered as a condition of pretrial release may be detained while awaiting trial for the duration of his or her criminal case.⁹ Similarly, an offender who has been sentenced to use an EMD as a condition of community supervision can have his or her community supervision revoked for tampering or interfering with the EMD.¹⁰

In 2005, the Florida Legislature made it a crime to interfere with an EMD.¹¹ Section 948.11(7), F.S., makes it a third degree felony¹² for a person to intentionally alter, tamper with, damage or destroy any

¹ Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. s. 948.001(1), F.S.

² Conditional release requires mandatory postrelease supervision for specified inmates. The conditions of supervision for conditional releasees are established by the Florida Commission on Offender Review. Conditional releasees are supervised by DOC probation officers. s. 947.1405, F.S.

³ United States Department of Justice, *Electronic Monitoring Reduces Recidivism*, NATIONAL INSTITUTE OF JUSTICE (Sept. 2011), <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAAahUKEwjc9O6m-NbIAhXGSiYKHfQwDPU&url=https%3A%2F%2Fwww.ncjrs.gov%2Fpdffiles1%2Fnij%2F234460.pdf&usg=AFQjCNFE0xJWIVamllbSaotGfkGOT4SIRA&sig2=qiNkzbUrRBTZ-wZ4CaZ9Sw&bvm=bv.105814755,d.eWE> (last visited Oct. 22, 2015).

⁴ Department of Corrections, Agency Analysis of 2016 House Bill 75, p. 3 (Sept. 24, 2015).

⁵ See, e.g., ss. 907.041, 947.1405, 948.101, and 948.30, F.S.

⁶ s. 948.30(2)(e), F.S.

⁷ s. 947.13, F.S.

⁸ *Carson v. State*, 531 So. 2d 1069 (Fla. 4th DCA 1988); *Anthony v. State*, 854 So. 2d 744, 747 (Fla. 2d DCA 2003).

⁹ s. 907.041(4)(c)7., F.S.

¹⁰ s. 948.06, F.S.; *Lawson v. State*, 969 So. 2d 222 (Fla. 2007); *State v. Meeks*, 789 So. 2d 982 (Fla. 2001).

¹¹ Ch. 2005-28, Laws of Florida.

¹² A third degree felony is punishable by up to five years in prison and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

electronic monitoring equipment pursuant to court or commission order, unless that person is:

- The owner of the equipment or an agent of the owner; and
- Performing ordinary maintenance and repairs.¹³

A close read of s. 948.11(7), F.S., reveals that it is not a crime under current law to *circumvent* an EMD unless the circumvention involves altering, tampering, damaging or destroying the EMD. It is also not a crime to *solicit another person* to remove, destroy, alter, tamper with, damage, or circumvent an EMD.

Effect of the Bill

The bill repeals s. 948.11(7), F.S., and moves its provisions into newly-created s. 843.23, F.S. This section makes it a third degree felony for a person to intentionally and without authority, remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD that is being used or worn pursuant to a court order or an order of the Commission on Offender Review.

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD that is being used or worn as described above.

The bill defines "'electronic monitoring device" to include any device that is used to track the location of a person.

The bill amends s. 948.11(1), F.S., to clarify that the Department of Corrections may electronically monitor offenders sentenced to community control when the court has imposed electronic monitoring as a condition of community control.

B. SECTION DIRECTORY:

Section 1. Creates s. 843.23, F.S., relating to tampering with an electronic monitoring device.

Section 2. Amends s. 948.11, F.S., relating to electronic monitoring devices.

Section 3. Provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department (i.e., an increase of ten or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

¹³ s. 948.11(7), F.S.
STORAGE NAME: h0075.CRJS.DOCX
DATE: 10/28/2015

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The language of the bill appears to limit the criminal prohibition to apply strictly to an individual who is circumventing or otherwise interfering with an EMD that the same individual is ordered to use. Should a court take this interpretation of the language, it would prevent prosecution of an individual who interferes with an EMD that was court-ordered for someone else.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to electronic monitoring devices;
 3 creating s. 843.23, F.S.; defining the term
 4 "electronic monitoring device"; prohibiting a person
 5 from removing, destroying, altering, tampering with,
 6 damaging, or circumventing the operation of an
 7 electronic monitoring device being worn or used
 8 pursuant to any court order or an order by the
 9 Commission on Offender Review; prohibiting the request
 10 or solicitation of a person to perform such an act;
 11 providing criminal penalties; amending s. 948.11,
 12 F.S.; specifying that the Department of Corrections
 13 may electronically monitor an offender sentenced to
 14 community control when the court has imposed
 15 electronic monitoring as a condition of community
 16 control; deleting a provision imposing criminal
 17 penalties on persons who intentionally alter, tamper
 18 with, damage, or destroy electronic monitoring
 19 equipment; providing an effective date.

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

22
 23 Section 1. Section 843.23, Florida Statutes, is created to
 24 read:

25 843.23 Tampering with an electronic monitoring device.-
 26 (1) As used in this section, the term "electronic

27 monitoring device" includes any device that is used to track the
 28 location of a person.

29 (2) It is unlawful for a person to intentionally and
 30 without authority:

31 (a) Remove, destroy, alter, tamper with, damage, or
 32 circumvent the operation of an electronic monitoring device that
 33 the person is required to wear or use pursuant to any court
 34 order or pursuant to an order by the Commission on Offender
 35 Review; or

36 (b) Request or solicit any individual to remove, destroy,
 37 alter, tamper with, damage, or circumvent the operation of an
 38 electronic monitoring device required to be worn or used
 39 pursuant to any court order or pursuant to an order by the
 40 Commission on Offender Review.

41 (3) A person who violates this section commits a felony of
 42 the third degree, punishable as provided in s. 775.082, s.
 43 775.083, or s. 775.084.

44 Section 2. Subsections (1) and (7) of section 948.11,
 45 Florida Statutes, are amended to read:

46 948.11 Electronic monitoring devices.—

47 (1) The Department of Corrections may, ~~at its discretion,~~
 48 electronically monitor an offender sentenced to community
 49 control when the court has imposed electronic monitoring as a
 50 condition of community control.

51 ~~(7) A person who intentionally alters, tampers with,~~
 52 ~~damages, or destroys any electronic monitoring equipment~~

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53 ~~pursuant to court or commission order, unless such person is the~~
54 ~~owner of the equipment, or an agent of the owner, performing~~
55 ~~ordinary maintenance and repairs, commits a felony of the third~~
56 ~~degree, punishable as provided in s. 775.082, s. 775.083, or s.~~
57 ~~775.084.~~

58 Section 3. This act shall take effect October 1, 2016.



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 Torres offered the following:



4
 5 **Amendment**

6 Remove lines 33-39 and insert:
 7 must be worn or used by that person or another person pursuant
 8 to a court order or pursuant to an order by the Commission on
 9 Offender Review; or

10 (b) Request or solicit an individual to remove, destroy,
 11 alter, tamper with, damage, or circumvent the operation of an
 12 electronic monitoring device required to be worn or used
 13 pursuant to a court order or pursuant to an order by the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 93 Law Enforcement Officer Body Cameras
SPONSOR(S): Jones, S.; Williams, A. and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 418

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

SUMMARY ANALYSIS

A body camera is a portable electronic device, typically worn on the outside of a vest or a portion of clothing, which records audio and video data. Approximately one-third of local police departments throughout the nation have opted to use body cameras. Preliminary studies on the effects of using body cameras on law enforcement officers indicated a reduction of citizen complaints against officers who wore the cameras while on duty.

Similar to the national trend, only a small number of Florida law enforcement agencies have elected to use body cameras. Currently, Florida law does not require such agencies to have policies in place that govern the use of such technology.

The bill requires law enforcement agencies that permit law enforcement officers to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on law enforcement-related encounters in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The bill requires law enforcement agencies to provide policies and procedures training to all personnel who use, maintain, store, or release body camera recording data, and to retain body camera recording data in compliance with s. 119.021, F.S. Agencies must perform periodic reviews of agency practices to ensure compliance with agency policies and procedures. The bill also exempts body camera recordings from the requirements of ch. 934, F.S. This allows law enforcement officers to wear body cameras during their patrol duties without having to inform each individual they make contact with that they are being recorded.

The bill may have a minimal positive impact on state and local government expenditures because the bill creates a new requirement for law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Law Enforcement Body Cameras

A body camera is a portable electronic device, typically worn on the outside of a vest or a portion of clothing, which records audio and video data. The Bureau of Justice Statistics published the results of a 2013 survey of local police departments in the United States¹ conducted by the Law Enforcement Management and Administrative Statistics (LEMAS)² Survey. As of 2013, an estimated 32 percent of local police departments³ throughout the nation equip at least some of their patrol officers with body cameras.⁴

A limited number of studies have been conducted in the United States to determine the positive and negative effects of using body cameras on law enforcement officers.⁵ Most empirical studies in the United States have focused on the effects of using body cameras in the Rialto Police Department (California),⁶ the Mesa Police Department (Arizona),⁷ the Phoenix Police Department (Arizona),⁸ and the Orlando Police Department (Florida).⁹ While the relative lack of peer-reviewed research makes it difficult to accurately identify the benefits and drawbacks of requiring the use of body cameras, the findings of all four studies indicated a significant reduction of citizen complaints against officers who wore the cameras while on duty.¹⁰

More extensive studies have been conducted on the effects of using in-car cameras, commonly referred to as “dash cams,” in law enforcement patrol vehicles. The International Association of Chiefs of Police (hereinafter “IACP”) published findings in 2003 from an extensive study of the effects of using cameras in patrol vehicles.¹¹ The IACP study surveyed forty-seven agencies that owned a total of

¹ Reaves, Brian A., *Local Police Departments, 2013: Equipment and Technology*, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, July, 2015, at 1-2 (available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5321>) (last visited Oct. 23, 2015).

² LEMAS has been periodically collecting data on U.S. law enforcement agencies for the Bureau of Justice Statistics since 1987. BUREAU OF JUSTICE STATISTICS, *Data Collection: Law Enforcement Management and Administrative Statistics (LEMAS)*, <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=248> (last visited Oct. 23, 2015).

³ The 2013 LEMAS sample design called for responses from 2,353 local police departments and 983 other types of law enforcement agencies. The term “local police department” does not include sheriff’s offices or state law enforcement agencies. Reaves, *supra* note 1, at 8; Bureau of Justice Statistics, *supra* note 2.

⁴ Reaves, *supra* note 1, at 3-4.

⁵ White, Michael D., *Police Officer Body-Worn Cameras: Assessing the Evidence*, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, 2014.

⁶ Ramirez, Eugene P., *A Report on Body Worn Cameras*, MANNING & KASS, ELLROD, RAMIREZ, TRESTER LLP (available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=0CDgQFjAEahUKEwixzY_7s8_I AhVDLB4KHZuIDI0&url=https%3A%2F%2Fwww.bja.gov%2Fbwc%2Fpdfs%2F14-005_Report_BODY_WORN_CAMERAS.pdf&usq=AFQjCNGjYEMhjJb_WKQOWPiVoN1YVR0_pg&sig2=nybYo3pMAfVWu-MoRzExPw) (last visited Oct. 19, 2015); White, *supra* note 5.

⁷ Roy, Allyson, *On-Officer Video Cameras: Examining the Effects of Police Department Policy and Assignment on Camera Use and Activation*, ARIZONA STATE UNIVERSITY, 2014 (available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB0QFjAAahUKEwjLkPuGts_IA hWLLB4KHxbBAJk&url=http%3A%2F%2Furbanillinois.us%2Fsites%2Fdefault%2Ffiles%2Fattachments%2Fofficer-video-cameras-roy.pdf&usq=AFQjCNGJ3vrpVhYmSGKuRtTrFS1MO976jA&sig2=hAkkZIYPZN6zNxBgROLGg) (last visited Oct. 19, 2015).

⁸ Katz et al., *Evaluating the Impact of Officer Worn Body Cameras in the Phoenix Police Department*, Phoenix, AZ: Center for Violence Prevention & Community Safety, ARIZONA STATE UNIVERSITY, 2014.

⁹ Jennings, Lynch, & Lorie A. Fridell, *Executive Summary: Evaluating the Impact of Police Officer Body-Worn Cameras: The Orlando Police Department Experience*, UNIVERSITY OF SOUTH FLORIDA, 2015 (available at <http://www.cityoforlando.net/police/opdusf-body-camera-study-complete/>) (last visited Oct. 19, 2015).

¹⁰ Jennings, *supra* note 9, at 2-4; Katz, *supra* note 8, at 3; Ramirez, *supra* note 6, at 7; Roy, *supra* note 7, at 11.

¹¹ Int’l Ass’n of Chiefs of Police, *The Impact of Video Evidence on Modern Policing: Research and Best Practices from the IACP Study on In-Car Cameras*, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, 2003.

31,498 patrol vehicles and 17,500 camera systems.¹² The study found that the presence of a camera had a small impact on perceptions of officer safety.¹³ Only 33 percent of the officers surveyed reported increased personal safety on patrol due to the presence of a camera, while 64 percent reported no change in officer safety.¹⁴ Conversely, findings indicated that the presence of in-car cameras had a significant impact on resolving citizen complaints and internal affairs investigations.¹⁵ The outcomes of citizen complaints involving incidents that were videotaped resulted in exonerations for the officers in 93 percent of recorded incidents.¹⁶ The immediate supervisors of patrol officers also reported that in at least half of complaints, when the complainant learned the incident was videotaped, the complaint was subsequently withdrawn.¹⁷

Similar to the national trend, only a small number of Florida law enforcement agencies have elected to use body cameras. Out of 301 police departments in Florida,¹⁸ eighteen agencies use body cameras, and another ten agencies have pilot body camera programs in place.¹⁹ Florida law does not currently require agencies to have policies in place that govern the use of such technology.

Privacy

Chapter 934, F.S., governs the security of various types of communications in the State, and limits the ability to intercept, monitor, and record such communications. The chapter provides for criminal penalties²⁰ and civil remedies²¹ in circumstances where communications are intercepted unlawfully. Additionally, s. 934.03(2)(d), F.S., creates the “two party consent rule,” which requires that in circumstances justifying an expectation of privacy, all parties to a communication or conversation must consent to having it recorded before it can be done so legally.²² Chapter 934, F.S., provides a limited exception for law enforcement-related recordings when “such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.”²³

Public Records

Chapter 119, F.S., the Public Records Act, governs the maintenance and availability of state, county, and municipal records.²⁴ While the intent of the Act is to make most records available for anyone to copy or inspect them, the public records laws in Florida exempt certain records from public view.²⁵

During the 2015 Legislative session, SB 248 was passed and signed into law, making audio or video data recorded by a law enforcement body camera confidential and exempt.²⁶ Such a body camera recording is confidential and exempt if it is taken within the interior of a private residence; within the interior of a facility that offers health care, mental health care, or social services; or in a place that a reasonable person would expect to be private.²⁷ The public record exemption provides specific circumstances in which a law enforcement agency may disclose a confidential and exempt body

¹² *Id.* at 10.

¹³ *Id.* at 13.

¹⁴ *Id.*

¹⁵ *Id.* at 15.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ There are 262 police departments in Florida, as well as an additional thirty-nine law enforcement agencies that serve university and college campuses and airports. Email from Bernadette Howard, Government Affairs Coordinator, The Florida Police Chiefs Association, Body Cam Data (Oct. 26, 2015) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

¹⁹ *Id.*

²⁰ ss. 934.04, 934.21, 934.215, 934.31, and 934.43, F.S.

²¹ s. 934.05, F.S.;

²² *State v. Inciarrano*, 473 So. 2d 1272, 1275 (Fla. 1985); *State v. Walls*, 356 So. 2d 294 (Fla. 1978).

²³ s. 934.03(2)(c), F.S.

²⁴ s. 119.01, F.S.

²⁵ ss. 119.071-119.0713, F.S.; see also *Alice P. v. Miami Daily News, Inc.*, 440 So. 2d 1300 (Fla. 3d DCA 1983); *Patterson v. Tribune Co.*, 146 So. 2d 623 (Fla. 2d DCA 1962).

²⁶ s. 119.071(2)(l), F.S.

²⁷ s. 119.071(2)(l)2., F.S.

camera recording,²⁸ and additional circumstances in which a law enforcement agency must disclose such a recording.²⁹

There are several additional public record exemptions that may apply to law enforcement body camera recordings. One such exemption relates to criminal investigation records pursuant to s. 119.071(2)(c), F.S. This section exempts records related to active criminal intelligence information and active criminal investigations, as well as documentation of public records requests made by law enforcement agencies.³⁰ A similar exemption applies to information revealing surveillance techniques, procedures, or personnel.³¹ Additionally, exemptions exist to protect private and personal information, such as certain personal identifying information³² or victim information.³³ Data recorded by body cameras will have to be screened for exempt or confidential and exempt data before being released pursuant to a public record request.

The General Records Schedule, issued by the Florida Department of State, Division of Library and Information Services, establishes the requirements and timelines for agencies to maintain public records.³⁴ General Records Schedule GS2 governs the records maintenance and retention requirements for law enforcement, correctional facilities, and district medical examiners.³⁵ Schedule GS2 does not currently specify a retention requirement for video or audio recordings from body cameras.³⁶ However, a recording from a body camera could fall under existing areas of the retention schedule, depending on what is recorded.

For example, if a body camera records a criminal incident, retention of the recording for most offenses is governed by Item # 129, Criminal Investigative Records, in the Retention Schedule, and must be retained for four anniversary years after the offense is committed.³⁷ If the recording documents a criminal incident that constitutes a capital or life felony, Item # 31, Criminal Investigative Records: Capital/Life Felony, requires that the recording be retained for one hundred anniversary years after the incident.³⁸

Effect of the Bill

The bill requires law enforcement agencies that permit law enforcement officers to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on law-enforcement-related encounters in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The bill requires law enforcement agencies that permit law enforcement officers to wear body cameras to provide policies and procedures training to all personnel who use, maintain, store, or release body cameras or recording data. The bill also requires law enforcement agencies to retain body camera recording data in compliance with s. 119.021, F.S., and to perform periodic reviews of agency practices to ensure compliance with the agency's policies and procedures.

²⁸ s. 119.071(2)(1)3., F.S.

²⁹ s. 119.071(2)(1)4., F.S.

³⁰ s. 119.071(2)(c), F.S.

³¹ s. 119.071(2)(d), F.S.

³² s. 501.171, F.S.

³³ s. 119.071(j), F.S.

³⁴ Rule 1B-24.003, F.A.C.

³⁵ Florida Dep't of State, Div. of Library & Info. Servs., GENERAL RECORDS SCHEDULE GS2 (2010).

³⁶ *Id.*

³⁷ *Id.* at page 7.

³⁸ *Id.*

The bill specifies that ch. 934, F.S., does not apply to body camera recordings. This allows law enforcement officers to wear body cameras during their patrol duties without having to inform each individual they make contact with that they are being recorded.

The bill also creates the following definitions:

- "Body camera" means a portable electronic recording device that is worn on a law enforcement officer's person which records audio and video data of the officer's law-enforcement-related encounters and activities;
- "Law enforcement agency" means an agency that has a primary mission of preventing and detecting crime and the enforcement of the penal, criminal, traffic, or highway laws of the state and that in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10, F.S.; and
- "Law enforcement officer" has the same meaning as provided in s. 943.10, F.S.³⁹

B. SECTION DIRECTORY:

Section 1. Creates s. 943.1718, F.S., relating to body cameras; policies and procedures.

Section 2. Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

According to 2014 Criminal Justice Agency Profile Survey, no state law enforcement agency reported using body cameras during the 2014 calendar year. If an agency chooses to use body cameras, the bill may have a minimal impact on state expenditures because the bill creates a new requirement for state law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may have a minimal impact on local expenditures because the bill creates a new requirement for local law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

³⁹ Section 943.10(1), F.S., defines "law enforcement officer" to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

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 county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill requires county and municipal governments to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data, and train agency personnel accordingly. This may result in an indeterminate negative fiscal impact; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to law enforcement officer body
 3 cameras; creating s. 943.1718, F.S.; providing
 4 definitions; requiring a law enforcement agency that
 5 permits its law enforcement officers to wear body
 6 cameras to establish policies and procedures
 7 addressing the proper use, maintenance, and storage of
 8 body cameras and the data recorded by body cameras;
 9 requiring such policies and procedures to include
 10 specified information; requiring such a law
 11 enforcement agency to ensure that specified personnel
 12 are trained in the law enforcement agency's policies
 13 and procedures; requiring that data recorded by body
 14 cameras be retained in accordance with specified
 15 requirements; requiring a periodic review of agency
 16 body camera practices to ensure conformity with the
 17 agency's policies and procedures; exempting the
 18 recordings from specified provisions relating to the
 19 interception of wire, electronic, and oral
 20 communications; providing an effective date.

21
 22 WHEREAS, advancements in technology allow body cameras to
 23 be affordable and practical tools for law enforcement use, and

24 WHEREAS, body cameras can provide a valuable source of
 25 information to both law enforcement and the general public, and

26 WHEREAS, the audio and video recording of police and

27 citizen interactions allows law enforcement agencies to improve
 28 efforts to reduce crime and properly address citizen complaints,
 29 and

30 WHEREAS, establishing uniform procedural requirements for
 31 the use of body cameras by law enforcement will provide
 32 consistency and reliability throughout the state, and

33 WHEREAS, there are currently no statewide mandatory and
 34 uniform standards or guidelines that apply to use of body
 35 cameras by law enforcement officers, NOW, THEREFORE,

36
 37 Be It Enacted by the Legislature of the State of Florida:

38
 39 Section 1. Section 943.1718, Florida Statutes, is created
 40 to read:

41 943.1718 Body cameras; policies and procedures.-

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

43 (a) "Body camera" means a portable electronic recording
 44 device that is worn on a law enforcement officer's person that
 45 records audio and video data of the officer's law-enforcement-
 46 related encounters and activities.

47 (b) "Law enforcement agency" means an agency that has a
 48 primary mission of preventing and detecting crime and enforcing
 49 the penal, criminal, traffic, and motor vehicle laws of the
 50 state and in furtherance of that primary mission employs law
 51 enforcement officers as defined in s. 943.10.

52 (c) "Law enforcement officer" has the same meaning as

53 provided in s. 943.10.

54 (2) A law enforcement agency that permits its law
 55 enforcement officers to wear body cameras shall establish
 56 policies and procedures addressing the proper use, maintenance,
 57 and storage of body cameras and the data recorded by body
 58 cameras. The policies and procedures must include:

59 (a) General guidelines for the proper use, maintenance,
 60 and storage of body cameras.

61 (b) Any limitations on which law enforcement officers are
 62 permitted to wear body cameras.

63 (c) Any limitations on law-enforcement-related encounters
 64 and activities in which law enforcement officers are permitted
 65 to wear body cameras.

66 (d) General guidelines for the proper storage, retention,
 67 and release of audio and video data recorded by body cameras.

68 (3) A law enforcement agency that permits its law
 69 enforcement officers to wear body cameras shall:

70 (a) Ensure that all personnel who wear, use, maintain, or
 71 store body cameras are trained in the law enforcement agency's
 72 policies and procedures concerning them.

73 (b) Ensure that all personnel who use, maintain, store, or
 74 release audio or video data recorded by body cameras are trained
 75 in the law enforcement agency's policies and procedures.

76 (c) Retain audio and video data recorded by body cameras
 77 in accordance with the requirements of s. 119.021, except as
 78 otherwise provided by law.

79 (d) Perform a periodic review of actual agency body camera
 80 practices to ensure conformity with the agency's policies and
 81 procedures.

82 (4) Chapter 934 does not apply to body camera recordings
 83 made by law enforcement agencies that elect to use body cameras.

84 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 101 Violation of an Injunction for Protection
SPONSOR(S): Rodríguez, J.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 380

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

SUMMARY ANALYSIS

Victims of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking may obtain an injunction for protection if certain requirements are met. An injunction is either temporary, lasting a maximum of 15 days, or final, lasting until dissolved by the court. A respondent violates the terms of an injunction for protection if the respondent willfully commits specified prohibited acts against the petitioner. The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first degree misdemeanor.

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.

The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., increasing the penalty for third or subsequent violations of an injunction for protection to a third degree felony.

The Criminal Justice Impact Conference has not yet met to determine the fiscal impact of this bill. However, because the bill increases the penalty for third or subsequent violations of an injunction for protection from a first degree misdemeanor to a third degree felony, it will likely have a negative prison bed impact on the Department of Corrections. Because the bill reduces the number of persons subject to misdemeanor penalties for third or subsequent violations of such injunctions for protection, the bill may have a positive jail bed impact on local governments.

The bill is effective on October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Injunctions for Protection against Specified Acts of Violence

Domestic Violence

Any person who is the victim of domestic violence¹ or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.² The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.³ A hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.⁴ At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.⁵

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction *ex parte*.^{6,7} Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.⁸ The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.⁹

Repeat, Dating, and Sexual Violence

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,¹⁰ dating violence,¹¹ and sexual violence.¹² This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

¹ Section 741.28, F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

² s. 741.30(1), F.S.

³ s. 741.30(3), F.S.

⁴ s. 741.30(4), F.S.

⁵ s. 741.30(6), F.S. Either party may move the court to modify or dissolve an injunction at any time. s. 741.30(6)(c) and (10), F.S.

⁶ The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan. s. 741.30(5), F.S.

⁷ The only evidence admissible in the *ex parte* hearing is verified pleadings or affidavits, unless the respondent appears at the hearing or has received reasonable notice of the hearing. s. 741.30(5)(b), F.S.

⁸ s. 741.30(5)(c), F.S.

⁹ The court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance. s. 741.30(5)(c), F.S.

¹⁰ Section 784.046(1)(b), F.S., defines “repeat violence” to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member. Section 784.046(1)(a), F.S., defines “violence” to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

¹¹ Section 784.046(1)(d), F.S., defines “dating violence” to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:

- A dating relationship must have existed within the past six months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and

Stalking and Cyberstalking

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

Violation of an Injunction against Specified Acts of Violence

A respondent violates the terms of an injunction against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking¹³ if the respondent willfully:

- Refuses to vacate the dwelling that the parties share;¹⁴
- Goes to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Commits an act of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking against the petitioner;
- Commits any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephones, contacts, or otherwise communicates with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally comes within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defaces or destroys the petitioner's personal property, including the petitioner's car; or
- Refuses to surrender firearms or ammunition if ordered to do so by the court.¹⁵

A court can enforce a violation of an injunction for protection through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.^{16,17}

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.

Effect of the Bill

The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., making the penalty for an offense of violating an injunction for protection a third degree felony if a person has two or more prior convictions for the same offense.

The bill defines "conviction" to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

B. SECTION DIRECTORY:

Section 1. Amends s. 741.31, F.S., relating to violation of an injunction for protection against domestic violence.

Section 2. Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violators.

-
- The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.

¹² Section 784.046(1)(c), F.S., defines "sexual violence" to mean any one incident of: sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted. For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

¹³ Sections 741.31(4)(a), 784.047, and 784.0487(4), F.S., provide that this includes foreign protection orders that are accorded full and faith credit pursuant to s. 741.315, F.S.

¹⁴ This provision does not apply to injunctions for protection against stalking or cyberstalking. s. 784.0487, F.S.

¹⁵ ss. 741.31(4)(a), 784.047, and 784.0487, F.S.

¹⁶ 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.

¹⁷ ss. 741.30(9), 784.046(9), and 784.0485(9), F.S.

Section 3. Amends s. 784.0487, F.S., relating to violation of an injunction for protection against stalking or cyberstalking.

Section 4. Provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

On October 28, 2015, the Criminal Justice Impact Conference (CJIC) determined that SB 380, which is identical to this bill, will have a positive indeterminate fiscal impact on state prison beds (i.e. unquantifiable increase of prison beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Because the bill reduces the number of persons subject to misdemeanor penalties for third or subsequent violations of injunctions for protection, the bill may have a positive jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to violation of an injunction for
 3 protection; amending ss. 741.31, 784.047, and
 4 784.0487, F.S.; providing enhanced criminal penalties
 5 for a third or subsequent violation of an injunction
 6 for protection against specified acts of violence or a
 7 foreign protection order issued under specified
 8 provisions; providing an effective date.

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

11
 12 Section 1. Subsection (4) of section 741.31, Florida
 13 Statutes, is amended to read:

14 741.31 Violation of an injunction for protection against
 15 domestic violence.—

16 (4) (a) A person who willfully violates an injunction for
 17 protection against domestic violence issued pursuant to s.
 18 741.30, or a foreign protection order accorded full faith and
 19 credit pursuant to s. 741.315, by:

- 20 1. Refusing to vacate the dwelling that the parties share;
- 21 2. Going to, or being within 500 feet of, the petitioner's
- 22 residence, school, place of employment, or a specified place
- 23 frequented regularly by the petitioner and any named family or
- 24 household member;
- 25 3. Committing an act of domestic violence against the
- 26 petitioner;

27 4. Committing any other violation of the injunction
 28 through an intentional unlawful threat, word, or act to do
 29 violence to the petitioner;

30 5. Telephoning, contacting, or otherwise communicating
 31 with the petitioner directly or indirectly, unless the
 32 injunction specifically allows indirect contact through a third
 33 party;

34 6. Knowingly and intentionally coming within 100 feet of
 35 the petitioner's motor vehicle, whether or not that vehicle is
 36 occupied;

37 7. Defacing or destroying the petitioner's personal
 38 property, including the petitioner's motor vehicle; or

39 8. Refusing to surrender firearms or ammunition if ordered
 40 to do so by the court

41

42 commits a misdemeanor of the first degree, punishable as
 43 provided in s. 775.082 or s. 775.083, except as provided in
 44 paragraph (c).

45 (b)1. It is a violation of s. 790.233, and a misdemeanor
 46 of the first degree, punishable as provided in s. 775.082 or s.
 47 775.083, for a person to violate a final injunction for
 48 protection against domestic violence by having in his or her
 49 care, custody, possession, or control any firearm or ammunition.

50 2. It is the intent of the Legislature that the
 51 disabilities regarding possession of firearms and ammunition are
 52 consistent with federal law. Accordingly, this paragraph shall

53 | not apply to a state or local officer as defined in s.
 54 | 943.10(14), holding an active certification, who receives or
 55 | possesses a firearm or ammunition for use in performing official
 56 | duties on behalf of the officer's employing agency, unless
 57 | otherwise prohibited by the employing agency.

58 | (c) A person who has two or more prior convictions for
 59 | violation of an injunction and who commits any third or
 60 | subsequent violation commits a felony of the third degree,
 61 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 62 | For purposes of this paragraph, the term "conviction" means a
 63 | determination of guilt that is the result of a plea or a trial,
 64 | regardless of whether adjudication is withheld or a plea of nolo
 65 | contendere is entered.

66 | Section 2. Section 784.047, Florida Statutes, is amended
 67 | to read:

68 | 784.047 Penalties for violating protective injunction
 69 | against violators.—

70 | (1) A person who willfully violates an injunction for
 71 | protection against repeat violence, sexual violence, or dating
 72 | violence, issued pursuant to s. 784.046, or a foreign protection
 73 | order accorded full faith and credit pursuant to s. 741.315 by:

74 | (a)~~(1)~~ Refusing to vacate the dwelling that the parties
 75 | share;

76 | (b)~~(2)~~ Going to, or being within 500 feet of, the
 77 | petitioner's residence, school, place of employment, or a
 78 | specified place frequented regularly by the petitioner and any

79 | named family or household member;

80 | ~~(c)(3)~~ Committing an act of repeat violence, sexual
81 | violence, or dating violence against the petitioner;

82 | ~~(d)(4)~~ Committing any other violation of the injunction
83 | through an intentional unlawful threat, word, or act to do
84 | violence to the petitioner;

85 | ~~(e)(5)~~ Telephoning, contacting, or otherwise communicating
86 | with the petitioner directly or indirectly, unless the
87 | injunction specifically allows indirect contact through a third
88 | party;

89 | ~~(f)(6)~~ Knowingly and intentionally coming within 100 feet
90 | of the petitioner's motor vehicle, whether or not that vehicle
91 | is occupied;

92 | ~~(g)(7)~~ Defacing or destroying the petitioner's personal
93 | property, including the petitioner's motor vehicle; or

94 | ~~(h)(8)~~ Refusing to surrender firearms or ammunition if
95 | ordered to do so by the court,

96 |

97 | commits a misdemeanor of the first degree, punishable as
98 | provided in s. 775.082 or s. 775.083, except as provided in
99 | subsection (2).

100 | (2) A person who has two or more prior convictions for
101 | violation of an injunction and who commits any third or
102 | subsequent violation commits a felony of the third degree,
103 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
104 | For purposes of this subsection, the term "conviction" means a

105 determination of guilt that is the result of a plea or a trial,
 106 regardless of whether adjudication is withheld or a plea of nolo
 107 contendere is entered.

108 Section 3. Subsection (4) of section 784.0487, Florida
 109 Statutes, is amended to read:

110 784.0487 Violation of an injunction for protection against
 111 stalking or cyberstalking.—

112 (4) (a) A person who willfully violates an injunction for
 113 protection against stalking or cyberstalking issued pursuant to
 114 s. 784.0485, or a foreign protection order accorded full faith
 115 and credit pursuant to s. 741.315, by:

116 1.(a) Going to, or being within 500 feet of, the
 117 petitioner's residence, school, place of employment, or a
 118 specified place frequented regularly by the petitioner and any
 119 named family members or individuals closely associated with the
 120 petitioner;

121 2.(b) Committing an act of stalking against the
 122 petitioner;

123 3.(e) Committing any other violation of the injunction
 124 through an intentional unlawful threat, word, or act to do
 125 violence to the petitioner;

126 4.(d) Telephoning, contacting, or otherwise communicating
 127 with the petitioner, directly or indirectly, unless the
 128 injunction specifically allows indirect contact through a third
 129 party;

130 5.(e) Knowingly and intentionally coming within 100 feet

131 of the petitioner's motor vehicle, whether or not that vehicle
 132 is occupied;

133 ~~6.(f)~~ Defacing or destroying the petitioner's personal
 134 property, including the petitioner's motor vehicle; or

135 ~~7.(g)~~ Refusing to surrender firearms or ammunition if
 136 ordered to do so by the court,

137

138 commits a misdemeanor of the first degree, punishable as
 139 provided in s. 775.082 or s. 775.083, except as provided in
 140 paragraph (b).

141 (b) A person who has two or more prior convictions for
 142 violation of an injunction and who commits any third or
 143 subsequent violation commits a felony of the third degree,
 144 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 145 For purposes of this paragraph, the term "conviction" means a
 146 determination of guilt that is the result of a plea or a trial,
 147 regardless of whether adjudication is withheld or a plea of nolo
 148 contendere is entered.

149 Section 4. This act shall take effect October 1, 2016.



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 Rodríguez, J. offered the following:

Amendment (with title amendment)

Between lines 148 and 149, insert:

Section 4. For the purpose of incorporating the amendment made by this act to section 741.31, Florida Statutes, in references thereto, subsection (9) of section 741.30, Florida Statutes, is reenacted to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.-

(9) (a) The court may enforce a violation of an injunction for protection against domestic violence through a civil or criminal contempt proceeding, or the state attorney may



Amendment No. 1

18 prosecute it as a criminal violation under s. 741.31. The court
19 may enforce the respondent's compliance with the injunction
20 through any appropriate civil and criminal remedies, including,
21 but not limited to, a monetary assessment or a fine. The clerk
22 of the court shall collect and receive such assessments or
23 fines. On a monthly basis, the clerk shall transfer the moneys
24 collected pursuant to this paragraph to the State Treasury for
25 deposit in the Domestic Violence Trust Fund established in s.
26 741.01.

27 (b) If the respondent is arrested by a law enforcement
28 officer under s. 901.15(6) or for a violation of s. 741.31, the
29 respondent shall be held in custody until brought before the
30 court as expeditiously as possible for the purpose of enforcing
31 the injunction and for admittance to bail in accordance with
32 chapter 903 and the applicable rules of criminal procedure,
33 pending a hearing.

34 Section 5. For the purpose of incorporating the amendment
35 made by this act to sections 741.31, 784.047, and 784.0487,
36 Florida Statutes, in references thereto, subsection (2) of
37 section 741.315, Florida Statutes, is reenacted to read:

38 741.315 Recognition of foreign protection orders.—

39 (2) Pursuant to 18 U.S.C. s. 2265, an injunction for
40 protection against domestic violence issued by a court of a
41 foreign state must be accorded full faith and credit by the
42 courts of this state and enforced by a law enforcement agency as
43 if it were the order of a Florida court issued under s. 741.30,



Amendment No. 1

44 s. 741.31, s. 784.046, s. 784.047, s. 784.0485, or s. 784.0487,
45 and provided that the court had jurisdiction over the parties
46 and the matter and that reasonable notice and opportunity to be
47 heard was given to the person against whom the order is sought
48 sufficient to protect that person's right to due process. Ex
49 parte foreign injunctions for protection are not eligible for
50 enforcement under this section unless notice and opportunity to
51 be heard have been provided within the time required by the
52 foreign state or tribal law, and in any event within a
53 reasonable time after the order is issued, sufficient to protect
54 the respondent's due process rights.

55 Section 6. For the purpose of incorporating the amendment
56 made by this act to section 784.0487, Florida Statutes, in
57 references thereto, subsection (9) of section 784.0485, Florida
58 Statutes, is reenacted to read:

59 784.0485 Stalking; injunction; powers and duties of court
60 and clerk; petition; notice and hearing; temporary injunction;
61 issuance of injunction; statewide verification system;
62 enforcement.—

63 (9)(a) The court may enforce a violation of an injunction
64 for protection against stalking through a civil or criminal
65 contempt proceeding, or the state attorney may prosecute it as a
66 criminal violation under s. 784.0487. Any assessments or fines
67 ordered by the court enforcing such an injunction shall be
68 collected by the clerk of the court and transferred on a monthly



Amendment No. 1

69 basis to the State Treasury for deposit into the Domestic
70 Violence Trust Fund.

71 (b) If the respondent is arrested by a law enforcement
72 officer under s. 901.15(6) or for a violation of s. 784.0487,
73 the respondent shall be held in custody until brought before the
74 court as expeditiously as possible for the purpose of enforcing
75 the injunction and for admittance to bail in accordance with
76 chapter 903 and the applicable rules of criminal procedure,
77 pending a hearing.

78 Section 7. For the purpose of incorporating the amendment
79 made by this act to sections 741.31 and 784.047, Florida
80 Statutes, in references thereto, subsections (6) and (7) of
81 section 901.15, Florida Statutes, are reenacted to read:

82 901.15 When arrest by officer without warrant is lawful.—A
83 law enforcement officer may arrest a person without a warrant
84 when:

85 (6) There is probable cause to believe that the person has
86 committed a criminal act according to s. 790.233 or according to
87 s. 741.31 or s. 784.047 which violates an injunction for
88 protection entered pursuant to s. 741.30 or s. 784.046, or a
89 foreign protection order accorded full faith and credit pursuant
90 to s. 741.315, over the objection of the petitioner, if
91 necessary.

92 (7) There is probable cause to believe that the person has
93 committed an act of domestic violence, as defined in s. 741.28,
94 or dating violence, as provided in s. 784.046. The decision to



Amendment No. 1

95 | arrest shall not require consent of the victim or consideration
96 | of the relationship of the parties. It is the public policy of
97 | this state to strongly discourage arrest and charges of both
98 | parties for domestic violence or dating violence on each other
99 | and to encourage training of law enforcement and prosecutors in
100 | these areas. A law enforcement officer who acts in good faith
101 | and exercises due care in making an arrest under this
102 | subsection, under s. 741.31(4) or s. 784.047, or pursuant to a
103 | foreign order of protection accorded full faith and credit
104 | pursuant to s. 741.315, is immune from civil liability that
105 | otherwise might result by reason of his or her action.
106 |

107 | -----
108 | **T I T L E A M E N D M E N T**

109 | Remove line 8 and insert:

110 | provisions; reenacting s. 741.30(9), F.S., relating to
111 | injunctions for protection against domestic violence, to
112 | incorporate the amendment made by the act to s. 741.31, F.S., in
113 | references thereto; reenacting s. 741.315(2), F.S., relating to
114 | recognition of foreign protection orders, to incorporate the
115 | amendments made by the act to ss. 741.31, 784.047, and 784.0487,
116 | F.S., in references thereto; reenacting s. 784.0485(9), F.S.,
117 | relating to injunctions for protection against stalking, to
118 | incorporate the amendment made by the act to s. 784.0487, F.S.,
119 | in references thereto; reenacting s. 901.15(6) and (7), F.S.,
120 | relating to when arrest by an officer without warrant is lawful,



COMMITTEE/SUBCOMMITTEE AMENDMENT


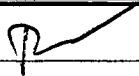
Bill No. HB 101 (2016)

Amendment No. 1

121 | to incorporate the amendment made by the act to ss. 741.31 and
122 | 784.047, F.S., in references thereto; providing an effective
123 | date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 105 Offenses Involving Electronic Benefits Transfer Cards
SPONSOR(S): Smith
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 218

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

SUMMARY ANALYSIS

Currently, s. 414.39(2), F.S., in relevant part, makes it a criminal offense for a person to knowingly use, transfer, acquire, *traffic*, alter, forge, or possess, in any manner not authorized by law, a food assistance identification card or an authorization, including an electronic authorization, for the expenditure of food assistance benefits. The subsection also specifies that it is a crime for a person to attempt to commit, or to aid or abet another person in the commission of, the aforementioned acts. Depending on the value of the public assistance wrongfully received, retained, misappropriated, sought, or used, these criminal offenses range from a first degree misdemeanor to a first degree felony.

Florida law does not currently describe acts that are included in the term "traffic" as used in s. 414.39(2), F.S. The bill adds language providing that the following acts are included in the term "traffics":

- Buying, selling, stealing, or otherwise effecting an exchange of food assistance benefits for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. Attempting to do such acts is also included in the term.
- Exchanging firearms, ammunition, explosives, or controlled substances for food assistance benefits.
- Purchasing with food assistance benefits a product with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with food assistance benefits in exchange for cash or consideration other than eligible food.
- Intentionally purchasing products originally purchased with food assistance benefits in exchange for cash or consideration other than eligible food.

The bill also specifically prohibits an individual from possessing two or more electronic benefit access cards issued to other persons and attempting to sell or selling one or more of the cards. This offense is punished under the bill as a third degree felony and requires a violator to complete six months of community service with a nonprofit entity that services the community with food distribution for the needy.

The bill may have a positive prison and jail bed impact (i.e., may increase the need for prison and jail beds). Please see "Fiscal Impact on State Government" and "Fiscal Impact on Local Governments," *infra*.

The bill takes effect October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Food Assistance Benefits

Food assistance benefits, formerly referred to as food stamps, are provided through the federal Supplemental Nutrition Assistance Program (SNAP).¹ These benefits are disbursed to recipients on a monthly basis primarily through an electronic benefits transfer (EBT) to a debit card that may be accessed using a personal identification number (PIN), although, in some cases, manual benefits vouchers may be used, e.g., when electronic systems are not working.² In Florida, the EBT debit card is referred to as the EBT Access card.³ Benefits that are not used in one month carry over to the following month.⁴

Purchases with food assistance benefits must be made at retailers who have been approved by the United States (U.S.) Department of Agriculture.⁵ Florida law specifically prohibits use or acceptance of food assistance benefits at adult entertainment establishments, casinos, and gambling and gaming facilities.⁶ The benefits:

- May be used to buy breads cereals, fruits, vegetables, meats, fish, poultry, dairy products, and seeds and plants to grow and produce food for a household to eat.
- May not be used to buy beer, wine, liquor, cigarettes, tobacco, pet food, soaps, paper products, household supplies, vitamins, medicines, food that will be eaten in the store, or hot food.⁷

As of July 2015, 45,480,644 persons from 22,419,259 households were receiving food assistance benefits nationwide. Of those totals, 3,650,705 persons from 2,013,221 households were Florida residents (19.4 percent of this state's population).⁸ For federal Fiscal Year 2014, the average monthly benefit per Florida resident was \$129.33 and per Florida household was \$237.45.⁹ A total of \$5.47 billion in food assistance benefits were distributed in Florida during federal Fiscal Year 2014.¹⁰

¹ 7 C.F.R. § 271.1 (2015).

² U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Your Benefits*, <http://www.fns.usda.gov/snap/mobile/benefits/how-to-use-ebt-card.html> (last visited November 1, 2015); Conference call with staff of the Division of Public Assistance Fraud, Department of Financial Services (October 30, 2015).

³ Florida Department of Children and Families, *Welcome to EBT*, <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/welcome-ebt> (last visited on November 1, 2015).

⁴ U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program Retail Merchants*, <http://www.fns.usda.gov/snap/mobile/benefits/what-can-i-buy.html> (last visited November 1, 2015).

⁵ U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Your Benefits*, <http://www.fns.usda.gov/snap/retailers-0> (last visited November 1, 2015).

⁶ s. 402.82, F.S.

⁷ Florida Department of Children and Families, *Food Assistance Program Fact Sheet*, <https://www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf> (last visited November 1, 2015).

⁸ U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Number of Persons Participating*, <http://www.fns.usda.gov/sites/default/files/pd/29SNAPcurrPP.pdf> (last visited November 1, 2015); U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Number of Households Participating*, <http://www.fns.usda.gov/sites/default/files/pd/30SNAPcurrHH.pdf> (last visited November 1, 2015); Food Research and Action Center, *Supplemental Nutrition Assistance Program: Share of Population Participating* http://frac.org/wp-content/uploads/2011/01/snapdata2015_jul.pdf (last visited November 1, 2015).

⁹ U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Average Monthly Benefit per Person*, [http://www.fns.usda.gov/sites/default/files/pd/18SNAPavg\\$PP.pdf](http://www.fns.usda.gov/sites/default/files/pd/18SNAPavg$PP.pdf) (last visited November 1, 2015); and U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Average Monthly Benefit per Household*, [http://www.fns.usda.gov/sites/default/files/pd/19SNAPavg\\$HH.pdf](http://www.fns.usda.gov/sites/default/files/pd/19SNAPavg$HH.pdf) (last visited November 1, 2015).

¹⁰ U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Benefits*, <http://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap> (last visited November 1, 2015).

Public Assistance Fraud Offenses

Offenses constituting public assistance¹¹ fraud are set forth in s. 414.39, F.S, which, in relevant part, specifies that a person commits a crime if he or she knowingly uses, transfers, acquires, *traffics*, alters, forges, or possesses in any manner not authorized by law:

- A food assistance identification card;
- An authorization, including, but not limited to, an electronic authorization, for the expenditure of food assistance benefits;
- A certificate of eligibility for medical services; or
- A Medicaid identification card.¹²

Additionally, the statute specifies that it is a crime for a person to attempt to commit, or to aid or abet another person in the commission of, the aforementioned acts.¹³

Section 414.39(5), F.S., establishes the criminal penalties that apply to the above-described offenses and specifies that if the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is:

- Less than an aggregate value of \$200 in any 12 consecutive months, such person commits a misdemeanor of the first degree.¹⁴
- Of an aggregate value of \$200 or more, but less than \$20,000 in any 12 consecutive months, such person commits a felony of the third degree.¹⁵
- Of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months, such person commits a felony of the second degree.¹⁶
- Of an aggregate value of \$100,000 or more in any 12 consecutive months, such person commits a felony of the first degree.^{17, 18}

Currently, the term “traffic” is not defined by Florida’s public assistance fraud statute. In February 2013, the U.S. Department of Agriculture adopted the following definition of trafficking for federal purposes of SNAP:

Trafficking means:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and

¹¹ Section 414.0252(10), F.S., defines “public assistance” to mean “benefits paid on the basis of the temporary cash assistance, food assistance, Medicaid, or optional state supplementation program.”

¹² s. 414.39(2), F.S.

¹³ *Id.*

¹⁴ 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.

¹⁵ 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.

¹⁶ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁷ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁸ Section 414.39(5)(e), F.S., states, “As used in this subsection, the value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act committed in violation of this section.”

returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

(4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.¹⁹

Investigations of Public Assistance Fraud

The Division of Public Assistance Fraud within the Department of Financial Services (DFS) is authorized to investigate public assistance fraud in Florida.²⁰ These investigations have found a wide variety of methods used to commit such fraud:

- Applicants may make misrepresentations on their benefit applications, e.g., not reporting or under-reporting income.
- Recipients may fail to report a change in circumstances, e.g., failing to report a change in household composition or income.²¹
- Recipients or others in possession of the food assistance benefits may sell the benefits for cash or other consideration usually valued at some amount less than the value of the benefits, to retailers who then misrepresent that the benefits were used to purchase food at the store in order to obtain the full value of the benefit from the federal government or who use the benefits to purchase food to stock the store's shelves. According to a recent news report, store clerks in Jacksonville have used this method of fraud to receive tens of thousands of dollars in profit per month per store.²²
- Recipients may purchase food with their benefits at a low-priced shopping club and resell the food to others for consumption or to retailers who resell the food at a higher price.²³

Effect of Bill

The bill amends s. 414.39(2), F.S., to specify acts that are included in the term "traffics" for purposes of the subsection's prohibitions against trafficking in food assistance benefits. The bill specifies that "traffics" includes:

- Buying, selling, stealing, or otherwise effecting an exchange of food assistance benefits issued and accessed via EBT cards, card numbers and PINs, or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

¹⁹ 7 C.F.R. § 271.2 (2015).

²⁰ Section 414.411, F.S.

²¹ Requirements for the reporting of changes in circumstances are set forth in 7 C.F.R. 273.12(2015).

²² Jennifer Waugh, *EBT Fraud Steals Millions in Taxpayer Dollars*, News 4 Jax (November 20, 2014),

<http://www.news4jax.com/news/ebt-fraud-steals-millions-in-taxpayer-dollars/29640166>.

²³ U.S. Department of Agriculture, Food and Nutrition Service, *What is SNAP Fraud?*, <http://www.fns.usda.gov/fraud/what-snap-fraud> (last visited November 1, 2015); Conference call with staff of the Division of Public Assistance Fraud, Department of Financial Services (October 30, 2015).

- Exchanging firearms, ammunition, explosives, or controlled substances, as defined in s. 893.02, for food assistance benefits;
- Purchasing with food assistance benefits a product with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with food assistance benefits in exchange for cash or consideration other than eligible food;
- Intentionally purchasing products originally purchased with food assistance benefits in exchange for cash or consideration other than eligible food; or
- Attempting to buy, sell, steal, or otherwise effect an exchange of food assistance benefits issued and accessed via EBT cards, card numbers and PINs, or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

These acts are substantively the same as acts described in the federal definition of “trafficking” in 7 C.F.R. s. 271.2.

The bill also specifically prohibits an individual from possessing two or more EBT cards issued to other persons and attempting to sell or selling one or more of the cards. This offense is punished under the bill as a third degree felony and requires a violator to complete six months of community service with a nonprofit entity that services the community with food distribution for the needy.

B. SECTION DIRECTORY:

Section 1. Amends s. 414.39, F.S., relating to fraud.

Section 2. Provides that the bill takes effect October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill, due to its creation of a 3rd felony offense relating to the possession of two or more EBT cards, will have a positive indeterminate prison bed impact on the Department of Corrections (i.e., the bill will increase the number of prison beds needed by an indeterminate number).

The bill may also have a positive prison bed impact if its description of acts that constitute “trafficking” results in greater arrests and convictions for felony public assistance fraud.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill could have a positive jail bed impact on local governments if its description of acts that constitute “trafficking” results in greater arrests and convictions for felony public assistance fraud.

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 the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill's title is "[a]n act relating to offenses involving electronic benefits transfers"; however, the bill's language in s. 414.399(2)(b), F.S., also contemplates the fact that benefits are sometimes manually exchanged. It may be desirable to broaden the bill's title to specify "[a]n act relating to public assistance fraud."

In s. 414.39(2)(b)1.b., F.S., the bill indicates that one method of prohibited trafficking is "[e]xchanging firearms, ammunition, explosives, or controlled substances, as defined in s. 893.02, for food assistance benefits." Such exchange, however, is also prohibited in s. 414.39(2)(b)1.a., F.S., which broadly prohibits the exchange of cash or "consideration" other than eligible food for food assistance benefits. To avoid any construction of the law by a court which would limit the types of "consideration" prohibited to firearms, ammunition, explosives, or controlled substances, based on the rule of statutory construction stating that the more specific statute controls, it may be desirable to delete s. 414.39(2)(b)1.b., F.S., from the bill.

In s. 414.39(2)(b)1.c., F.S., the bill provides that a method of prohibited trafficking is, "[p]urchasing with food assistance benefits a product *with the intent of obtaining cash or consideration other than eligible food by reselling the product*, and subsequently *intentionally* reselling the product purchased with food assistance benefits in exchange for cash or consideration other than eligible food." In many cases, it will be difficult, if not impossible, for investigators to acquire evidence of the purchaser's intent at the time of the purchase. If the bill's intent is to proscribe the reselling of such products then merely proscribing only such intentional resale will accomplish that intent. This is the approach taken by Wisconsin in its statute that adopts a description of trafficking which is similar to that adopted in the Code of Federal Regulations and which states in relevant part, "(dm) 'Traffic food stamp program benefits' means to do any of the following: *** 5. Purchase, for cash or other consideration that is not food, food that was previously purchased from a supplier using food stamp program benefits."²⁴

In s. 414.39(2)(b)2., F.S., the bill provides that a method of prohibited trafficking is "attempting" to do the acts proscribed by s. 414.39(b)1.a., F.S. Attempted trafficking, however, is already proscribed by s.

414.39(2)(b), F.S., in current law, which is redesignated as s. 414.39(2)(a)2., F.S., by the bill. To avoid conflict and the potential for a court to limit an attempt offenses to those acts proscribed by s. 414.39(2)(b)1.a., F.S., it may be desirable to delete s. 414.39(2)(b)2., F.S., from the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

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A bill to be entitled
An act relating to offenses involving electronic
benefits transfer cards; amending s. 414.39, F.S.;
specifying acts that constitute trafficking in food
assistance benefits cards and are subject to criminal
penalties; prohibiting specified acts relating to
sales or offers of sale of electronic benefits
transfer cards; providing criminal penalties;
providing an effective date.

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

Section 1. Subsection (2) of section 414.39, Florida
Statutes, is amended to read:

414.39 Fraud.—

(2) (a) Any person who knowingly:

1. ~~(a)~~ Uses, transfers, acquires, traffics, alters, forges,
or possesses;

2. ~~(b)~~ Attempts to use, transfer, acquire, traffic, alter,
forge, or possess; or

3. ~~(c)~~ Aids and abets another person in the use, transfer,
acquisition, traffic, alteration, forgery, or possession of,

a food assistance identification card, an authorization,
including, but not limited to, an electronic authorization, for
the expenditure of food assistance benefits, a certificate of

27 | eligibility for medical services, or a Medicaid identification
 28 | card in any manner not authorized by law commits a crime and
 29 | shall be punished as provided in subsection (5).

30 | (b)1. For purposes of this subsection, the term "traffics"
 31 | includes:

32 | a. Buying, selling, stealing, or otherwise effecting an
 33 | exchange of food assistance benefits issued and accessed via
 34 | electronic benefits transfer (EBT) cards, card numbers and
 35 | personal identification numbers (PINs), or by manual voucher and
 36 | signature, for cash or consideration other than eligible food,
 37 | either directly, indirectly, in complicity or collusion with
 38 | others, or acting alone;

39 | b. Exchanging firearms, ammunition, explosives, or
 40 | controlled substances, as defined in s. 893.02, for food
 41 | assistance benefits;

42 | c. Purchasing with food assistance benefits a product with
 43 | the intent of obtaining cash or consideration other than
 44 | eligible food by reselling the product, and subsequently
 45 | intentionally reselling the product purchased with food
 46 | assistance benefits in exchange for cash or consideration other
 47 | than eligible food; or

48 | d. Intentionally purchasing products originally purchased
 49 | with food assistance benefits in exchange for cash or
 50 | consideration other than eligible food.

51 | 2. Attempting to buy, sell, steal, or otherwise effect an
 52 | exchange of food assistance benefits issued and accessed via EBT

53 cards, card numbers and PINs, or by manual voucher and
 54 signatures, for cash or consideration other than eligible food,
 55 either directly, indirectly, in complicity or collusion with
 56 others, or acting alone.

57 (c) An individual who has possession of two or more EBT
 58 cards issued to other persons and who attempts to sell or sells
 59 one or more of these cards commits a felony of the third degree,
 60 punishable as provided in s. 775.082, s. 775.083, or s. 775.084
 61 and a mandatory sentence of 6 months of community service with a
 62 nonprofit entity that services the community with food
 63 distribution for the needy.

64 Section 2. This act shall take effect October 1, 2016.



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 Smith offered the following:

Amendment (with title amendment)

6 Remove lines 30-63 and insert:

7 (b) For purposes of this subsection, the term "traffic," as
8 it relates to food assistance benefits, includes:

9 1. Buying, selling, stealing, or otherwise effecting an
10 exchange of food assistance benefits for cash or consideration
11 other than eligible food, either directly, indirectly, in
12 complicity or collusion with others, or acting alone;

13 2. Intentionally reselling a product purchased with food
14 assistance benefits in exchange for cash or consideration other
15 than eligible food; or

16 3. Intentionally purchasing a product originally purchased
17 with food assistance benefits using cash or consideration other



Amendment No. 1

18 | than eligible food.

19 | (c)1. Notwithstanding subsection (5), a person who
20 | knowingly possesses in any manner not authorized by law two or
21 | more electronic benefit transfer cards for food assistance
22 | benefits which are issued to other persons and who sells or
23 | attempts to sell one or more of such cards commits a felony of
24 | the third degree, punishable as provided in s. 775.082, s.
25 | 775.083, or s. 775.084. Each electronic benefit transfer card
26 | possessed, sold, or attempted to be sold in violation of this
27 | subparagraph constitutes a separate offense.

28 | 2. A person who commits a violation of subparagraph 1.
29 | shall be ordered by the court to serve at least 40 hours of
30 | community service. If the court determines that the community
31 | service can be performed at a nonprofit entity that provides the
32 | community with food services for the needy, the court shall
33 | order that the community service be performed at such an entity.

34 | Section 2. Paragraph (a) of subsection (3) of section
35 | 414.39, Florida Statutes, is amended to read:

36 | 921.0022 Criminal Punishment Code; offense severity
37 | ranking chart.—

38 | (3) OFFENSE SEVERITY RANKING CHART

39 | (a) LEVEL 1

40 |

Florida	Felony	
Statute	Degree	Description

41 |



Amendment No. 1

42	24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
43	212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
44	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
45	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
46	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
47	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
48	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
	322.212	3rd	Possession of forged, stolen,



Amendment No. 1

49	(1) (a) - (c)		counterfeit, or unlawfully issued driver license; possession of simulated identification.
50	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
51	322.212(5)(a)	3rd	False application for driver license or identification card.
52	414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.
53	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.



Amendment No. 1

54

509.151(1) 3rd Defraud an innkeeper, food or
lodging value greater than
\$300.

55

517.302(1) 3rd Violation of the Florida
Securities and Investor
Protection Act.

56

562.27(1) 3rd Possess still or still
apparatus.

57

713.69 3rd Tenant removes property upon
which lien has accrued, value
more than \$50.

58

812.014(3)(c) 3rd Petit theft (3rd conviction);
theft of any property not
specified in subsection (2).

59

812.081(2) 3rd Unlawfully makes or causes to
be made a reproduction of a
trade secret.

60

815.04(5)(a) 3rd Offense against intellectual
property (i.e., computer



Amendment No. 1

programs, data).

61

817.52(2) 3rd Hiring with intent to defraud,
motor vehicle services.

62

817.569(2) 3rd Use of public record or public
records information or
providing false information to
facilitate commission of a
felony.

63

826.01 3rd Bigamy.

64

828.122(3) 3rd Fighting or baiting animals.

65

831.04(1) 3rd Any erasure, alteration, etc.,
of any replacement deed, map,
plat, or other document listed
in s. 92.28.

66

831.31(1)(a) 3rd Sell, deliver, or possess
counterfeit controlled
substances, all but s.
893.03(5) drugs.

67

832.041(1) 3rd Stopping payment with intent to



Amendment No. 1

68			defraud \$150 or more.
	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
69			
	838.15(2)	3rd	Commercial bribe receiving.
70			
	838.16	3rd	Commercial bribery.
71			
	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
72			
	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
73			
	849.01	3rd	Keeping gambling house.
74			
	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.



Amendment No. 1

75
849.23 3rd Gambling-related machines;
 "common offender" as to
 property rights.

76
849.25(2) 3rd Engaging in bookmaking.

77
860.08 3rd Interfere with a railroad
 signal.

78
860.13(1)(a) 3rd Operate aircraft while under
 the influence.

79
893.13(2)(a)2. 3rd Purchase of cannabis.

80
893.13(6)(a) 3rd Possession of cannabis (more
 than 20 grams).

81
934.03(1)(a) 3rd Intercepts, or procures any
 other person to intercept, any
 wire or oral communication.

82
83 Section 3. For the purpose of incorporating the amendment
84 made by this act to section 414.39, Florida Statutes, in a
85 reference thereto, paragraph (b) of subsection (1) of section
86 414.41, Florida Statutes, is reenacted to read:



Amendment No. 1

87 414.41 Recovery of payments made due to mistake or fraud.—

88 (1) Whenever it becomes apparent that any person or
89 provider has received any public assistance under this chapter
90 to which she or he is not entitled, through either simple
91 mistake or fraud on the part of the department or on the part of
92 the recipient or participant, the department shall take all
93 necessary steps to recover the overpayment. Recovery may include
94 Federal Income Tax Refund Offset Program collections activities
95 in conjunction with the Food and Nutrition Service and the
96 Internal Revenue Service to intercept income tax refunds due to
97 clients who owe food assistance or temporary cash assistance
98 debt to the state. The department will follow the guidelines in
99 accordance with federal rules and regulations and consistent
100 with the Food Assistance Program. The department may make
101 appropriate settlements and shall establish a policy and cost-
102 effective rules to be used in the computation and recovery of
103 such overpayments.

104 (b) When the intentional program violation or case facts
105 do not warrant criminal prosecution for fraud as defined in s.
106 414.39, the department will initiate an administrative
107 disqualification hearing. The administrative disqualification
108 hearing will be initiated regardless of the individual's current
109 eligibility.

110 Section 4. For the purpose of incorporating the amendment
111 made by this act to section 414.39, Florida Statutes, in a
112 reference thereto, paragraph (a) of subsection (1) of section



Amendment No. 1

113 772.102, Florida Statutes, is reenacted to read:

114 772.102 Definitions.—As used in this chapter, the term:

115 (1) "Criminal activity" means to commit, to attempt to
116 commit, to conspire to commit, or to solicit, coerce, or
117 intimidate another person to commit:

118 (a) Any crime that is chargeable by indictment or
119 information under the following provisions:

120 1. Section 210.18, relating to evasion of payment of
121 cigarette taxes.

122 2. Section 414.39, relating to public assistance fraud.

123 3. Section 440.105 or s. 440.106, relating to workers'
124 compensation.

125 4. Part IV of chapter 501, relating to telemarketing.

126 5. Chapter 517, relating to securities transactions.

127 6. Section 550.235 or s. 550.3551, relating to dogracing
128 and horseracing.

129 7. Chapter 550, relating to jai alai frontons.

130 8. Chapter 552, relating to the manufacture, distribution,
131 and use of explosives.

132 9. Chapter 562, relating to beverage law enforcement.

133 10. Section 624.401, relating to transacting insurance
134 without a certificate of authority, s. 624.437(4)(c)1., relating
135 to operating an unauthorized multiple-employer welfare
136 arrangement, or s. 626.902(1)(b), relating to representing or
137 aiding an unauthorized insurer.

138 11. Chapter 687, relating to interest and usurious



Amendment No. 1

- 139 practices.
- 140 12. Section 721.08, s. 721.09, or s. 721.13, relating to
141 real estate timeshare plans.
- 142 13. Chapter 782, relating to homicide.
- 143 14. Chapter 784, relating to assault and battery.
- 144 15. Chapter 787, relating to kidnapping or human
145 trafficking.
- 146 16. Chapter 790, relating to weapons and firearms.
- 147 17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07,
148 relating to prostitution.
- 149 18. Chapter 806, relating to arson.
- 150 19. Section 810.02(2)(c), relating to specified burglary
151 of a dwelling or structure.
- 152 20. Chapter 812, relating to theft, robbery, and related
153 crimes.
- 154 21. Chapter 815, relating to computer-related crimes.
- 155 22. Chapter 817, relating to fraudulent practices, false
156 pretenses, fraud generally, and credit card crimes.
- 157 23. Section 827.071, relating to commercial sexual
158 exploitation of children.
- 159 24. Chapter 831, relating to forgery and counterfeiting.
- 160 25. Chapter 832, relating to issuance of worthless checks
161 and drafts.
- 162 26. Section 836.05, relating to extortion.
- 163 27. Chapter 837, relating to perjury.
- 164 28. Chapter 838, relating to bribery and misuse of public



Amendment No. 1

- 165 office.
- 166 29. Chapter 843, relating to obstruction of justice.
- 167 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
168 s. 847.07, relating to obscene literature and profanity.
- 169 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
170 849.25, relating to gambling.
- 171 32. Chapter 893, relating to drug abuse prevention and
172 control.
- 173 33. Section 914.22 or s. 914.23, relating to witnesses,
174 victims, or informants.
- 175 34. Section 918.12 or s. 918.13, relating to tampering
176 with jurors and evidence.
- 177 Section 5. For the purpose of incorporating the amendment
178 made by this act to section 414.39, Florida Statutes, in a
179 reference thereto, paragraph (a) of subsection (1) of section
180 895.02, Florida Statutes, is reenacted to read:
- 181 895.02 Definitions.—As used in ss. 895.01-895.08, the
182 term:
- 183 (1) "Racketeering activity" means to commit, to attempt to
184 commit, to conspire to commit, or to solicit, coerce, or
185 intimidate another person to commit:
- 186 (a) Any crime that is chargeable by petition, indictment,
187 or information under the following provisions of the Florida
188 Statutes:
- 189 1. Section 210.18, relating to evasion of payment of
190 cigarette taxes.



Amendment No. 1

- 191 2. Section 316.1935, relating to fleeing or attempting to
192 elude a law enforcement officer and aggravated fleeing or
193 eluding.
- 194 3. Section 403.727(3)(b), relating to environmental
195 control.
- 196 4. Section 409.920 or s. 409.9201, relating to Medicaid
197 fraud.
- 198 5. Section 414.39, relating to public assistance fraud.
- 199 6. Section 440.105 or s. 440.106, relating to workers'
200 compensation.
- 201 7. Section 443.071(4), relating to creation of a
202 fictitious employer scheme to commit reemployment assistance
203 fraud.
- 204 8. Section 465.0161, relating to distribution of medicinal
205 drugs without a permit as an Internet pharmacy.
- 206 9. Section 499.0051, relating to crimes involving
207 contraband and adulterated drugs.
- 208 10. Part IV of chapter 501, relating to telemarketing.
- 209 11. Chapter 517, relating to sale of securities and
210 investor protection.
- 211 12. Section 550.235 or s. 550.3551, relating to dogracing
212 and horseracing.
- 213 13. Chapter 550, relating to jai alai frontons.
- 214 14. Section 551.109, relating to slot machine gaming.
- 215 15. Chapter 552, relating to the manufacture,
216 distribution, and use of explosives.



Amendment No. 1

217 16. Chapter 560, relating to money transmitters, if the
218 violation is punishable as a felony.

219 17. Chapter 562, relating to beverage law enforcement.

220 18. Section 624.401, relating to transacting insurance
221 without a certificate of authority, s. 624.437(4)(c)1., relating
222 to operating an unauthorized multiple-employer welfare
223 arrangement, or s. 626.902(1)(b), relating to representing or
224 aiding an unauthorized insurer.

225 19. Section 655.50, relating to reports of currency
226 transactions, when such violation is punishable as a felony.

227 20. Chapter 687, relating to interest and usurious
228 practices.

229 21. Section 721.08, s. 721.09, or s. 721.13, relating to
230 real estate timeshare plans.

231 22. Section 775.13(5)(b), relating to registration of
232 persons found to have committed any offense for the purpose of
233 benefiting, promoting, or furthering the interests of a criminal
234 gang.

235 23. Section 777.03, relating to commission of crimes by
236 accessories after the fact.

237 24. Chapter 782, relating to homicide.

238 25. Chapter 784, relating to assault and battery.

239 26. Chapter 787, relating to kidnapping or human
240 trafficking.

241 27. Chapter 790, relating to weapons and firearms.



Amendment No. 1

242 28. Chapter 794, relating to sexual battery, but only if
243 such crime was committed with the intent to benefit, promote, or
244 further the interests of a criminal gang, or for the purpose of
245 increasing a criminal gang member's own standing or position
246 within a criminal gang.

247 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
248 796.05, or s. 796.07, relating to prostitution.

249 30. Chapter 806, relating to arson and criminal mischief.

250 31. Chapter 810, relating to burglary and trespass.

251 32. Chapter 812, relating to theft, robbery, and related
252 crimes.

253 33. Chapter 815, relating to computer-related crimes.

254 34. Chapter 817, relating to fraudulent practices, false
255 pretenses, fraud generally, and credit card crimes.

256 35. Chapter 825, relating to abuse, neglect, or
257 exploitation of an elderly person or disabled adult.

258 36. Section 827.071, relating to commercial sexual
259 exploitation of children.

260 37. Section 828.122, relating to fighting or baiting
261 animals.

262 38. Chapter 831, relating to forgery and counterfeiting.

263 39. Chapter 832, relating to issuance of worthless checks
264 and drafts.

265 40. Section 836.05, relating to extortion.

266 41. Chapter 837, relating to perjury.



Amendment No. 1

- 267 42. Chapter 838, relating to bribery and misuse of public
268 office.
- 269 43. Chapter 843, relating to obstruction of justice.
- 270 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
271 s. 847.07, relating to obscene literature and profanity.
- 272 45. Chapter 849, relating to gambling, lottery, gambling
273 or gaming devices, slot machines, or any of the provisions
274 within that chapter.
- 275 46. Chapter 874, relating to criminal gangs.
- 276 47. Chapter 893, relating to drug abuse prevention and
277 control.
- 278 48. Chapter 896, relating to offenses related to financial
279 transactions.
- 280 49. Sections 914.22 and 914.23, relating to tampering with
281 or harassing a witness, victim, or informant, and retaliation
282 against a witness, victim, or informant.
- 283 50. Sections 918.12 and 918.13, relating to tampering with
284 jurors and evidence.
- 285 Section 6. For the purpose of incorporating the amendment
286 made by this act to section 414.39, Florida Statutes, in
287 references thereto, subsection (5) of section 1002.91, Florida
288 Statutes, is reenacted to read:
- 289 1002.91 Investigations of fraud or overpayment;
290 penalties.—
- 291 (5) If a school readiness program provider or a Voluntary
292 Prekindergarten Education Program provider, or an owner,



Amendment No. 1

293 officer, or director thereof, is convicted of, found guilty of,
 294 or pleads guilty or nolo contendere to, regardless of
 295 adjudication, public assistance fraud pursuant to s. 414.39, or
 296 is acting as the beneficial owner for someone who has been
 297 convicted of, found guilty of, or pleads guilty or nolo
 298 contendere to, regardless of adjudication, public assistance
 299 fraud pursuant to s. 414.39, the early learning coalition shall
 300 refrain from contracting with, or using the services of, that
 301 provider for a period of 5 years. In addition, the coalition
 302 shall refrain from contracting with, or using the services of,
 303 any provider that shares an officer or director with a provider
 304 that is convicted of, found guilty of, or pleads guilty or nolo
 305 contendere to, regardless of adjudication, public assistance
 306 fraud pursuant to s. 414.39 for a period of 5 years.

307 -----
 308
 309 **T I T L E A M E N D M E N T**

310 Remove lines 2-8 and insert:

311 An act relating to public assistance fraud; amending s. 414.39,
 312 F.S.; specifying acts that constitute trafficking in food
 313 assistance benefits and are subject to criminal penalties;
 314 prohibiting specified acts relating to the possession and sale
 315 of electronic benefits transfer cards for food assistance
 316 benefits which are issued to other persons; providing criminal
 317 penalties; amending s. 921.0022, F.S.; deleting reference to s.
 318 414.39(2), F.S., relating to the unauthorized use, possession,



Amendment No. 1

319 | forgery, or alteration of certain food assistance program and
320 | Medicaid identification, from the offense severity ranking
321 | chart; reenacting ss. 414.41(1)(b), 772.102(1)(a), 895.02(1)(a),
322 | and 1002.91(5), F.S., relating to recovery of payments made due
323 | to mistake or fraud, definitions for civil remedies for criminal
324 | practices, definitions for racketeering, and investigations of
325 | fraud or overpayment, respectively, to incorporate the amendment
326 | made by this act to s. 414.39, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 217 Care for Retired Law Enforcement Dogs
SPONSOR(S): Kerner
TIED BILLS: None **IDEN./SIM. BILLS:** SB 440

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

SUMMARY ANALYSIS

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

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

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

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

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

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

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

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

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

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

The bill takes effect July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Law enforcement canines serve in many different disciplines including narcotics detection, explosives detection, search and rescue, patrol, and human remains detection.¹ Law enforcement agencies agree that the use of law enforcement canines is an extremely cost-effective means for crime control and that these canines possess skills and abilities that frequently exceed that of existing technology.² These disciplines require a huge physical demand from the canine, and many suffer injuries during their service.³ As a result, law enforcement canines often have medical needs upon retirement.

Law enforcement canines generally retire at seven or eight years of age.⁴ When the time comes for the canine to retire, he or she is usually adopted by his or her handler, but sometimes is adopted by others.⁵ Once the canine is retired, his or her owner is responsible for the canine's medical bills, which can be costly.⁶

Recently, efforts have been made to ensure that law enforcement canines are provided medical care after retirement. For example in 2013, a police department in England decided to pay pension benefits to its retired police dogs.⁷ These benefits include up to \$798 a year for three years for medical bills after retirement.⁸ In September 2012, a Delaware nonprofit organization called the National K-9 Working Dog, Inc., proposed its "Police K-9 Bill Of Rights," which seeks to amend federal law to provide medical benefits for retired police dogs.⁹ A number of non-profit organizations have also been established that advocate for similar rights of retired law enforcement dogs.¹⁰ However, most of them have reached full enrollment and cannot provide enough funding and care for the growing amount of retired canines.¹¹

Effect of the Bill

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

The bill provides the following legislative findings:

¹ See <http://www.retiredpaws.org/> (last visited Oct. 28, 2015).

² See <http://brevardsheriff.com/home/commands-services/operational-services/k-9-unit> (last visited Oct. 28, 2015); www.softiretdk9fund.com; <http://www.wsvn.com/story/27320793/student-launches-retired-k-9-donation-fund> (last visited Oct. 28, 2015).

³ *Police dogs face danger in the line of duty*, Dec. 27, 2013, http://articles.orlandosentinel.com/2013-12-27/news/os-police-dogs-face-dangers-20131227_1_such-dogs-bowden-suspected-car-burglar (last visited Oct. 28, 2015).

⁴ See Brevard Cty. Sheriff's Office, *K-9 Unit*, <http://www.brevardsheriff.com/home/commands-services/operational-services/k-9-unit/> (last visited Oct. 28, 2015); see also Florida Highway Patrol, *Retired K9s*, <http://www.flhsmv.gov/florida-highway-patrol/specialized-areas/criminal-interdiction-unit/> (last visited Oct. 28, 2015).

⁵ See <http://www.retiredpaws.org/> (last visited Oct. 28, 2015).

⁶ *Id.*

⁷ *England's Retired Police Dogs To Receive Pension*, Nov. 4, 2013, <http://www.dogonews.com/2013/11/4/englands-retired-police-dogs-to-receive-pension> (last visited Oct. 28, 2015).

⁸ *Police Dogs To Get Full Pensions For Medical Bills After Retirement In Nottinghamshire, England*, Nov. 5, 2013, http://www.huffingtonpost.com/2013/11/05/police-dog-pensions_n_4215560.html (last visited Oct. 29, 2015).

⁹ *Police K-9 Bill of Rights*, <http://nationalk-9workingdog.org/police-k-9-bill-of-rights/> (last visited Oct. 29, 2015).

¹⁰ See, e.g., "Retired Paws" based in Sahuarita, Arizona, <http://www.retiredpaws.org/> (last visited Oct. 29, 2015); see also "RIMADYL K-9 Courage Program", <https://www.rimadylk9courage.com/#About>.

¹¹ See <https://www.rimadylk9courage.com/#About> (stating that the program has reached maximum enrollment and advising owners to join the wait list).

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

The bill establishes the Program within the Florida Department of Law Enforcement (FDLE) and requires FDLE to contract with a corporation not for profit organized under ch. 617, F.S.,¹² to administer and manage the Program. Notwithstanding the competitive sealed bid procedures required under ch. 287, F.S., FDLE must enter into a contract with a corporation that:

- Is dedicated to the protection or care of retired law enforcement dogs;
- Holds exempt status under s. 501(a) of the Internal Revenue Code as an organization described in s. 501(c)(3)¹³ of the Internal Revenue Code;
- Has held its exempt status for at least five years;
- Agrees to be subject to review and audit at the discretion of the Auditor General to ensure accurate accounting and disbursement of state funds; and
- Demonstrates the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs in complying with Program requirements.

Beginning in FY 2016-2017, and each year thereafter, the bill appropriates the sum of \$300,000 in recurring funds from the General Revenue Fund to FDLE for the purpose of implementing the Program.

The bill requires the contract between FDLE and the corporation to contain provisions specifying that the corporation must receive administrative fees, including salaries and benefits, of up to 10 percent of the appropriated funds.

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

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

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

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

¹² "Corporation not for profit" means a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under this chapter. s. 617.01401(5), F.S.

¹³ Under 26 U.S.C.A. s. 501(c)(3), the following organizations are described: "[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

- Served or was employed by a law enforcement agency in the state for the principle purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders; and
- Received certification in obedience and apprehension work from a certifying organization.¹⁴

The bill also provides definitions for law enforcement agency,¹⁵ veterinarian,¹⁶ and veterinary care.¹⁷

B. SECTION DIRECTORY:

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

Section 2. Provides an appropriation.

Section 3. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Adopters of retired law enforcement dogs may receive reimbursement for certain veterinary care.

¹⁴ Such as the National Police Canine Association, <http://www.npca.net/> (last visited Oct. 29, 2015). The National Police Canine Association is one of many such organizations in the country, including The Florida Law Enforcement Canine Association (FLECA) which is a 501(c)(3) non-profit organization dedicated to the training and certification of Florida's Law Enforcement Canine Teams according to the website, <http://www.flecak9.com/> (last visited Oct. 29, 2015). Additionally, FDLE provides a 400 hour K-9 Team training course and proficiency exam.

¹⁵ "Law enforcement agency" means a lawfully established state or local public agency having primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

¹⁶ "Veterinarian" is defined in accordance with s. 474.202, F.S., as a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under the authority ch. 474, F.S.

¹⁷ "Veterinary care" means any veterinary medical service described in s. 474.202, F.S., which is provided by a veterinarian licensed under ch. 474, F.S. The term includes annual wellness examinations, vaccines, internal and external parasite prevention treatments, testing and treatment of illnesses and diseases, medications, emergency care and surgeries, specialty care such as veterinary oncology, euthanasia, and cremation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill defines "veterinary care" as a veterinary medical service specified in s. 474.202, F.S. This section of law, however, does not specify "veterinary medical services"; rather, such services are described in the section's definition of the "practice of veterinary medicine."¹⁸ For clarity, it may be desirable to amend the bill's definition of "veterinary care" to refer to the services described in the referenced definition for the "practice of veterinary medicine."

The bill requires FDLE to enter into a contract with a corporation not for profit "[n]otwithstanding the *competitive sealed bid* procedures required under chapter 287..." Chapter 287, F.S. specifies procedures for the *competitive solicitation* of commodities and contractual services.

The bill provides for former handlers and adopters to be reimbursed for veterinary care, but does not require documentation that the invoice was paid.

The bill uses the terms "veterinary care," "care," and "veterinary service" interchangeably. It may be desirable to amend the bill to use the defined term "veterinary care" consistently.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

¹⁸ Section 474.202(9), F.S., defines the "practice of veterinary medicine" as "diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal."

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

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

23
 24 Section 1. Section 943.69, Florida Statutes, is created to
 25 read:

26 943.69 Care for Retired Law Enforcement Dogs Program.-

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

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

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

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

43 (c) "Veterinarian" has the same meaning as provided in s.
 44 474.202.

45 (d) "Veterinary care" means a veterinary medical service
 46 specified in s. 474.202 which is provided by a veterinarian
 47 licensed under chapter 474. The term includes annual wellness
 48 examinations, vaccines, internal and external parasite
 49 prevention treatments, testing and treatment of illnesses and
 50 diseases, medications, emergency care and surgeries, specialty
 51 care such as veterinary oncology, euthanasia, and cremation.

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

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

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

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

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

67 (4) ESTABLISHMENT OF PROGRAM.-The Care for Retired Law
 68 Enforcement Dogs Program is created within the Department of Law
 69 Enforcement to provide a stable funding source for veterinary
 70 care provided to these dogs.

71 (5) ADMINISTRATION.-The Department of Law Enforcement
 72 shall contract with a corporation not for profit organized under
 73 chapter 617 to administer and manage the Care for Retired Law
 74 Enforcement Dogs Program. Notwithstanding the competitive sealed
 75 bid procedures required under chapter 287, the department shall
 76 enter into a contract with a corporation not for profit that:

77 (a) Is dedicated to the protection or care of retired law
 78 enforcement dogs;

79 (b) Is exempt from taxation under s. 501(a) of the
 80 Internal Revenue Code as an organization described in s.
 81 501(c)(3) of that code;

82 (c) Has maintained such tax-exempt status for at least 5
 83 years;

84 (d) Agrees to be subject to review and audit at the
 85 discretion of the Auditor General in order to ensure accurate
 86 accounting and disbursement of state funds; and

87 (e) Demonstrates the ability to effectively and
 88 efficiently disseminate information and to assist former
 89 handlers and adopters of retired law enforcement dogs in
 90 complying with this section.

91 (6) FUNDING.—

92 (a) The corporation not for profit shall be the disbursing
 93 authority for funds appropriated by the Legislature to the
 94 department for the Care for Retired Law Enforcement Dogs
 95 Program. These funds shall be disbursed upon receipt of:

96 1. Valid documentation from the law enforcement agency
 97 from which the dog retired which verifies that the dog was in
 98 the service of or employed by such agency; and

99 2. A valid invoice from a veterinarian for veterinary care
 100 provided in this state to a retired law enforcement dog which is
 101 submitted by the former handler or adopter of a retired law
 102 enforcement dog.

103 (b) Annual disbursements to a former handler or adopter to
 104 reimburse him or her for the cost of care provided to a retired

105 law enforcement dog may not exceed \$1,500 per dog. A former
 106 handler or adopter of a retired law enforcement dog may not
 107 accumulate unused funds from a current year for use in a future
 108 year.

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

114 (7) ADMINISTRATIVE FEES.—The corporation not for profit
 115 must receive administrative fees, including salaries and
 116 benefits, of up to 10 percent of appropriated funds.

117 (8) RULEMAKING AUTHORITY.—The department shall adopt rules
 118 pursuant to ss. 120.536(1) and 120.54 to implement this section.

119 Section 2. For the 2016-2017 fiscal year, and each fiscal
 120 year thereafter, the sum of \$300,000 in recurring funds is
 121 appropriated from the General Revenue Fund to the Department of
 122 Law Enforcement for the purpose of implementing the Care for
 123 Retired Law Enforcement Dogs Program.

124 Section 3. This act shall take effect July 1, 2016.



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 Kerner offered the following:

Amendment

Remove lines 45-110 and insert:

7 (d) "Veterinary care" means the practice of veterinary
8 medicine as defined in s. 474.202 by a veterinarian. The term
9 includes annual wellness examinations, vaccines, internal and
10 external parasite prevention treatments, testing and treatment
11 of illnesses and diseases, medications, emergency care and
12 surgeries, specialty care such as veterinary oncology,
13 euthanasia, and cremation.

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

15 (a) Law enforcement dogs have become an integral part of
16 many law enforcement efforts statewide, including the
17 apprehension of suspects through tracking and searching,



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18 evidence location, drug and bomb detection, and search and
19 rescue operations;

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

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

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

29 (4) ESTABLISHMENT OF PROGRAM.-The Care for Retired Law
30 Enforcement Dogs Program is created within the Department of Law
31 Enforcement to provide a stable funding source for veterinary
32 care provided to these dogs.

33 (5) ADMINISTRATION.-The Department of Law Enforcement
34 shall contract with a corporation not for profit organized under
35 chapter 617 to administer and manage the Care for Retired Law
36 Enforcement Dogs Program. Notwithstanding chapter 287, the
37 department shall select a corporation not for profit through a
38 competitive grant award process which:

39 (a) Is dedicated to the protection or care of retired law
40 enforcement dogs;

41 (b) Is exempt from taxation under s. 501(a) of the
42 Internal Revenue Code as an organization described in s.
43 501(c) (3) of that code;



Amendment No. 1

44 (c) Has maintained such tax-exempt status for at least 5
45 years;

46 (d) Agrees to be subject to review and audit at the
47 discretion of the Auditor General in order to ensure accurate
48 accounting and disbursement of state funds; and

49 (e) Demonstrates the ability to effectively and
50 efficiently disseminate information and to assist former
51 handlers and adopters of retired law enforcement dogs in
52 complying with this section.

53 (6) FUNDING.-

54 (a) The corporation not for profit shall be the disbursing
55 authority for funds appropriated by the Legislature to the
56 department for the Care for Retired Law Enforcement Dogs
57 Program. These funds shall be disbursed to the former handler or
58 adopter of a retired law enforcement dog upon receipt of:

59 1. Valid documentation from the law enforcement agency
60 from which the dog retired which verifies that the dog was in
61 the service of or employed by such agency; and

62 2. A valid invoice from a veterinarian for veterinary care
63 provided in this state to a retired law enforcement dog and
64 documentation establishing payment of the invoice by the former
65 handler or adopter of a retired law enforcement dog.

66 (b) Annual disbursements to a former handler or adopter to
67 reimburse him or her for the cost of veterinary care provided to
68 a retired law enforcement dog may not exceed \$1,500 per dog. A
69 former handler or adopter of a retired law enforcement dog may



Amendment No. 1

70 | not accumulate unused funds from a current year for use in a
71 | future year.

72 | (c) A former handler or adopter of a retired law
73 | enforcement dog who seeks reimbursement for veterinary care
74 |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 253 Highway Safety
SPONSOR(S): Passidomo and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 332

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox	<i>Lee</i> White <i>W</i>
2) Appropriations Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill amends and creates various sections of the Florida Statutes, which are designed to protect bicyclists and other vulnerable users of a roadway.

Specifically, the bill:

- Defines "bicycle lane," "bodily injury," and "vulnerable user of a public roadway or vulnerable user;"
- Makes it a first degree misdemeanor for a person to commit a noncriminal traffic infraction that causes serious bodily injury or death and, within five years of such violation, commit another noncriminal traffic infraction that causes serious bodily injury or death. The license will also be suspended for three months, after which the driver must apply for a new license, pass required exams, and pay required fees;
- Requires a vehicle to pass at a safe distance of not less than three feet between any part of or attachment to the vehicle, anything extending from the vehicle, and any trailer or other thing being towed by the vehicle and a vulnerable user;
- Allows a driver to briefly and safely drive on the left side of a roadway in a no-passing zone when passing a vulnerable user in order to provide at least three feet between the vehicle and the vulnerable user;
- Requires a person making a right turn that overtakes a vulnerable user traveling in the same direction to signal appropriately and to complete the turn only if it can be achieved by maintaining a safe distance from the vulnerable user;
- Prohibits a person operating a vehicle who overtakes and passes a vulnerable user of a public roadway proceeding in the same direction from making a right or left 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;
- Requires a person operating a vehicle to allow a group of bicyclists to proceed through a stop sign as a group in specified instances; and
- Requires a law enforcement officer to note on certain traffic citations if the violation contributed to the bodily injury of a vulnerable user, requires the recipients of such citations to appear before a judge for a hearing, and permits a fine of no more than \$2,500 to be imposed.

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 October 1, 2016.

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.¹

Florida crash reports for the 2014 calendar year indicate that 7,737 pedestrians, 8,040 motorcyclists, 6,680 bicyclists, and 399 other non-motorists were injured in traffic crashes.²

During the 2014 Regular Session, the Florida Legislature 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 “bicycle lane,” “bodily injury,” and “vulnerable user or vulnerable user of a public roadway.” These definitions apply to all of ch. 316, F.S.

“Bicycle Lane” is defined as a portion of a roadway or highway that has been designated by pavement markings and signs for the preferential or exclusive use by bicycles.

“Bodily injury” is defined as an injury to a human being consisting of:

- A broken bone;
- A torn ligament;
- A concussion;
- A laceration requiring stitches; or
- Any other physical injury that results in impairment of the function of a bodily member, organ, or mental faculty.⁷

¹ s. 316.2065(1), F.S.

² Florida Department of Highway Safety and Motor Vehicles, *Traffic Crash Facts Annual Report 2014*, <https://firesportal.com/Pages/Public/DHSMVDdocuments.aspx> (last visited October 21, 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 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.

⁷ This definition does not apply to statutes that refer to the term “serious bodily injury.”

“Vulnerable user of a public roadway” 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 roadway, crosswalk, or shoulder of the roadway:
 - A farm tractor or similar vehicle designed primarily for farm use;
 - A horse-drawn carriage;
 - An electric personal assistive mobility device; or
 - A wheelchair.

The bill also places the definition section in alphabetical order and amends ss. 212.05, 316.1303, 316.235, 316.545, 316.605, 316.6105, 316.613, 316.622, 316.650, 316.70320.01, 320.08, 320.0801, 320.38, 322.031, 450.181, 559.903, 655.960, 732.402, and 860.065, F.S., to conform to the changes made in the definition section.

Overtaking and Passing

Section 316.083, F.S., in part, 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.⁸

Section 316.084, F.S., provides specified instances when a vehicle may overtake and pass on the right of another vehicle.

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 roadway. 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, anything extending from the vehicle, and any trailer or other thing being towed by the vehicle and the vulnerable user.

Violations of s. 316.083, F.S., 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.

The bill also amends s. 316.084, F.S., to clarify that a bicycle in the bicycle lane or on the shoulder of a roadway is not prohibited by the section’s requirements from passing other vehicles on the right.

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.⁹ 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.¹⁰ A violation is a noncriminal traffic infraction, punishable as a moving violation.¹¹

⁸ s. 316.083(3), F.S.

⁹ 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.

¹⁰ s. 316.0875(3), F.S.

¹¹ s. 316.0875(4), F.S.

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 user in order to provide at least three feet between the vehicle and the vulnerable user.

Turning at Intersections

Section 316.151, F.S., in part, requires a driver of a vehicle turning right at an intersection to approach and make the turn as close as practicable to the right-hand curb or edge of the roadway.¹² The section also provides specified restrictions for a vehicle turning left at an intersection. A violation is a noncriminal traffic infraction, punishable as a moving violation.¹³

Effect of the Bill

The bill amends s. 316.151, F.S., requiring a vehicle that is overtaking and passing a vulnerable user proceeding in the same direction by turning right to:

- Give an appropriate signal;¹⁴ and
- Only complete the turn if it can be made a safe distance from the vulnerable user.

The bill also provides that a driver of a vehicle must yield the right-of-way to a bicycle or pedestrian when crossing a sidewalk, bicycle lane, or bicycle path to turn right.

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.

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, 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.¹⁵

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.

Bicycle Regulations

Every person operating a bicycle must comply with all the regulations of ch. 316, F.S., except for those which by their nature can have no application to bicyclists, or that are specially enumerated in s. 316.2065, F.S.¹⁶ In part, s. 316.2065, F.S., prohibits persons riding bicycles on a roadway to ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. The statute is silent as to roadway operation of persons riding bicycles in groups of four or more.

Effect of the Bill

The bill permits persons riding in groups of four or more, to proceed through a stop sign in a group, provided the group comes to a full stop at the stop sign and obeys all traffic laws. A person operating a vehicle is required to allow the entire group to travel through the intersection before moving forward.

¹² s. 316.151(1)(a), F.S.

¹³ s. 316.151(3), F.S.

¹⁴ The bill references "an appropriate signal as provided for in s. 316.155, F.S." Section 316.155(2), F.S., provides "a signal of intention to turn right or left must be given continuously during not less than the last 100 feet traveled by the vehicle before turning, except that such a signal by hand or arm need not be given continuously by a bicyclist if the hand is needed in the control or operation of the bicycle."

¹⁵ s. 316.1925(2), F.S.

¹⁶ s. 316.2065(1), F.S.

The bill also makes conforming changes to the section to include the new term “bicycle lane.”

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

- Any infraction of s. 316.083, F.S. (overtaking or passing);
- Any infraction of s. 316.151, F.S. (turning when passing a vulnerable user); or
- Any violation of s. 316.1925, F.S. (careless driving).

Newly-Created Sections

Noncriminal Traffic Infractions Causing Serious Bodily Injury or Death

The bill creates s. 316.0275, F.S., to provide that a noncriminal traffic infraction causing serious bodily injury¹⁷ or death is reclassified to a first degree misdemeanor¹⁸ when the person convicted for such infraction has another conviction, within the preceding five years, for a noncriminal traffic infraction that caused serious bodily injury or death. A person who violates this provision must also have their driver license suspended for three months.¹⁹

Infractions Contributing to Bodily Injury of a Vulnerable User

For cases where a violation of ss. 316.083, 316.151, or 316.189, F.S., contributes to the bodily injury of a vulnerable user, the bill creates s. 318.142, F.S., to:

- Require the law enforcement officer issuing the citation to make a note of such on the citation; and
- Permit, in addition to any other penalty, the imposition of a fine of no more than \$2,500.

B. SECTION DIRECTORY:

Section 1. Amends s. 316.003, F.S., relating to definitions.

Section 2. Creates s. 316.0275, F.S., relating to noncriminal traffic infractions leading to serious bodily injury or death; reclassification.

Section 3. Amends s. 316.083, F.S., relating to overtaking and passing a vehicle.

Section 4. Amends s. 316.084, F.S., relating to when overtaking on the right is permitted.

Section 5. Amends s. 316.0875, F.S., relating to no-passing zones.

Section 6. Amends s. 316.151, F.S., relating to required position and method of turning at intersections.

¹⁷ The bill defines “serious bodily injury” as an injury to a person, excluding the at fault driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

¹⁸ 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.

¹⁹ The bill provides that at the end of three-month suspension, the person must apply for a new license, and pass all required examinations and pay all required fees. A person is permitted to apply for a hardship waiver under s. 322.271, F.S.

- Section 7. Amends s. 316.1925, F.S., relating to careless driving.
- Section 8. Amends s. 316.2065, F.S., relating to bicycle regulations.
- Section 9. Creates s. 318.142, F.S., relating to infractions contributing to bodily injury of a vulnerable user of a public roadway.
- Section 10. Amends s. 318.19, F.S., relating to infractions requiring a mandatory hearing.
- Section 11. Amends s. 212.05, F.S., relating to sales, storage, use tax.
- Section 12. Amends s. 316.1303, F.S., relating to traffic regulations to assist mobility-impaired persons.
- Section 13. Amends s. 316.235, F.S., relating to additional lighting equipment.
- Section 14. Amends s. 316.545, F.S., relating to weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.
- Section 15. Amends s. 316.605, F.S., relating to licensing of vehicles.
- Section 16. Amends s. 316.6105, F.S., relating to violations involving operation of motor vehicle in unsafe condition or without required equipment; procedure for disposition.
- Section 17. Amends 316.613, F.S., relating to child restraint requirements.
- Section 18. Amends s. 316.622, F.S., relating to farm labor vehicles.
- Section 19. Amends s. 316.650, F.S., relating to traffic citations.
- Section 20. Amends s. 316.70, F.S., relating to nonpublic sector buses; safety rules.
- Section 21. Amends s. 320.01, F.S., relating to definitions.
- Section 22. Amends s. 320.08, F.S., relating to license taxes.
- Section 23. Amends s. 320.0801, F.S., relating to additional license tax on certain vehicles.
- Section 24. Amends s. 320.38, F.S., relating to when nonresident exemption not allowed.
- Section 25. Amends s. 322.031, F.S., relating to nonresident; when license required.
- Section 26. Amends s. 450.181, F.S., relating to definitions.
- Section 27. Amends s. 559.903, F.S., relating to definitions.
- Section 28. Amends s. 655.960, F.S., relating to definitions.
- Section 29. Amends s. 732.402, F.S., relating to exempt property.
- Section 30. Amends s. 860.065, F.S., relating to commercial transportation; penalty for use in commission of a felony.
- Section 31. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill creates s. 316.2075, F.S., which, in part, provides that a person who violates that section must have their license suspended for three months. Payments of reinstatement fees for suspended licenses will have a positive indeterminate impact to state revenues.

See fiscal comments for other impacts on state revenues.

2. Expenditures:

The bill requires a person cited for certain traffic infractions (overtaking or passing, turning when passing or careless driving) that contribute to the bodily injury of a vulnerable user to appear for a judicial hearing. To the extent that this increases hearings conducted by the court, the bill will likely have an indeterminate negative impact on the workload of the judiciary.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

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 offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who violate ss. 316.083, 316.151, or 316.189, F.S., and contribute to the bodily injury of a vulnerable user may be subject to the imposition of a fine of no more than \$2,500.

D. FISCAL COMMENTS:

To the extent citations are issued for turning when passing a vulnerable user of a public road or if a traffic violation contributes to bodily injury of a vulnerable user, the bill may have a positive fiscal impact to state and local governments' revenues. The amount of these revenues cannot be quantified.

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.

Section 2. of this bill, which creates a new misdemeanor offense, appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 693. The bill provides for the specified portions of a motor vehicle that must have a three-foot clearance from a vulnerable user when a vehicle passes such vulnerable user on the roadway. The language in the bill uses "and," when it should be "or."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled

2 An act relating to highway safety; amending s.
3 316.003, F.S.; providing definitions; creating s.
4 316.0275, F.S.; providing criminal penalties for
5 certain noncriminal traffic infractions that cause
6 serious bodily injury or death to a person; defining
7 the term "serious bodily injury"; amending s. 316.083,
8 F.S.; revising provisions relating to the passing of a
9 vehicle; directing a law enforcement officer issuing a
10 citation for specified violations to note certain
11 information on the citation; amending s. 316.084,
12 F.S.; exempting bicycles from provisions for passing a
13 vehicle on the right under certain circumstances;
14 amending s. 316.0875, F.S.; revising exceptions to
15 provisions for designated no-passing zones; amending
16 s. 316.151, F.S.; revising provisions for turning at
17 intersections; directing a law enforcement officer
18 issuing a citation for specified violations to note
19 certain information on the citation; amending s.
20 316.1925, F.S.; revising provisions relating to
21 careless driving; directing a law enforcement officer
22 issuing a citation for specified violations to note
23 certain information on the citation; amending s.
24 316.2065, F.S.; revising provisions for operation of a
25 bicycle; requiring motor vehicle operators to allow a
26 group of bicycles to travel through an intersection

27 under certain circumstances; creating s. 318.142,
 28 F.S.; providing penalties for specified infractions
 29 contributing to bodily injury of a vulnerable user;
 30 amending s. 318.19, F.S.; requiring a hearing for
 31 specified offenses; directing a law enforcement
 32 officer issuing a citation for specified violations to
 33 note certain information on the citation; amending ss.
 34 212.05, 316.1303, 316.235, 316.545, 316.605, 316.6105,
 35 316.613, 316.622, 316.650, 316.70, 320.01, 320.08,
 36 320.0801, 320.38, 322.031, 450.181, 559.903, 655.960,
 37 732.402, and 860.065, F.S.; conforming cross-
 38 references; providing an effective date.

39
 40 WHEREAS, the Legislature recognizes that everyone must
 41 share the road, and

42 WHEREAS, there are laws in place, such as ss. 316.2065 and
 43 316.2068, Florida Statutes, that require certain vulnerable road
 44 users to follow safe practices when operating on the roadways of
 45 the state, and

46 WHEREAS, there are laws in place that similarly require
 47 persons who operate a vehicle on the highways of the state to
 48 operate the vehicle in a safe manner, and

49 WHEREAS, it is the intent of the Legislature to amend the
 50 Florida Uniform Traffic Control laws to protect vulnerable road
 51 users while balancing their rights against the rights of those
 52 who choose to travel by motor vehicle, NOW, THEREFORE,

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

Section 1. Section 316.003, Florida Statutes, is amended to read:

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

(1) AUTHORIZED EMERGENCY VEHICLES.—Vehicles of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Health, the Department of Transportation, and the Department of Corrections as are designated or authorized by their respective department or the chief of police of an incorporated city or any sheriff of any of the various counties.

(2) ~~(90)~~ AUTONOMOUS VEHICLE.—Any vehicle equipped with autonomous technology. The term "autonomous technology" means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed without the active control or monitoring by a human operator. The term excludes a motor vehicle enabled with active safety systems or driver assistance systems, including, without

79 | limitation, a system to provide electronic blind spot
 80 | assistance, crash avoidance, emergency braking, parking
 81 | assistance, adaptive cruise control, lane keep assistance, lane
 82 | departure warning, or traffic jam and queuing assistant, unless
 83 | any such system alone or in combination with other systems
 84 | enables the vehicle on which the technology is installed to
 85 | drive without the active control or monitoring by a human
 86 | operator.

87 | (3)~~(2)~~ BICYCLE.—Every vehicle propelled solely by human
 88 | power, and every motorized bicycle propelled by a combination of
 89 | human power and an electric helper motor capable of propelling
 90 | the vehicle at a speed of not more than 20 miles per hour on
 91 | level ground upon which any person may ride, having two tandem
 92 | wheels, and including any device generally recognized as a
 93 | bicycle though equipped with two front or two rear wheels. The
 94 | term does not include such a vehicle with a seat height of no
 95 | more than 25 inches from the ground when the seat is adjusted to
 96 | its highest position or a scooter or similar device. No person
 97 | under the age of 16 may operate or ride upon a motorized
 98 | bicycle.

99 | (4) BICYCLE LANE.—A portion of a roadway or highway that
 100 | has been designated by pavement markings and signs for the
 101 | preferential or exclusive use by bicycles.

102 | (5)~~(63)~~ BICYCLE PATH.—Any road, path, or way that is open
 103 | to bicycle travel, which road, path, or way is physically
 104 | separated from motorized vehicular traffic by an open space or

105 | by a barrier and is located either within the highway right-of-
 106 | way or within an independent right-of-way.

107 | (6) BODILY INJURY.—Except for purposes of any statute
 108 | referring to the term "serious bodily injury," the term "bodily
 109 | injury" means an injury to a human being consisting of a broken
 110 | bone, a torn ligament, a concussion, a laceration requiring
 111 | stitches, or any other physical injury that results in
 112 | impairment of the function of a bodily member, organ, or mental
 113 | faculty.

114 | ~~(7)~~~~(76)~~ BRAKE HORSEPOWER.—The actual unit of torque
 115 | developed per unit of time at the output shaft of an engine, as
 116 | measured by a dynamometer.

117 | ~~(8)~~~~(3)~~ BUS.—Any motor vehicle designed for carrying more
 118 | than 10 passengers and used for the transportation of persons
 119 | and any motor vehicle, other than a taxicab, designed and used
 120 | for the transportation of persons for compensation.

121 | ~~(9)~~~~(4)~~ BUSINESS DISTRICT.—The territory contiguous to, and
 122 | including, a highway when 50 percent or more of the frontage
 123 | thereon, for a distance of 300 feet or more, is occupied by
 124 | buildings in use for business.

125 | ~~(10)~~~~(5)~~ CANCELLATION.—Cancellation means that a license
 126 | which was issued through error or fraud is declared void and
 127 | terminated. A new license may be obtained only as permitted in
 128 | this chapter.

129 | ~~(11)~~~~(64)~~ CHIEF ADMINISTRATIVE OFFICER.—The head, or his or
 130 | her designee, of any law enforcement agency which is authorized

131 to enforce traffic laws.

132 (12)~~(65)~~ CHILD.—A child as defined in s. 39.01, s. 984.03,
 133 or s. 985.03.

134 (13)~~(66)~~ COMMERCIAL MOTOR VEHICLE.—Any self-propelled or
 135 towed vehicle used on the public highways in commerce to
 136 transport passengers or cargo, if such vehicle:

137 (a) Has a gross vehicle weight rating of 10,000 pounds or
 138 more;

139 (b) Is designed to transport more than 15 passengers,
 140 including the driver; or

141 (c) Is used in the transportation of materials found to be
 142 hazardous for the purposes of the Hazardous Materials
 143 Transportation Act, as amended (49 U.S.C. ss. 1801 et seq.).
 144

145 A vehicle that occasionally transports personal property to and
 146 from a closed-course motorsport facility, as defined in s.
 147 549.09(1)(a), is not a commercial motor vehicle if it is not
 148 used for profit and corporate sponsorship is not involved. As
 149 used in this subsection, the term "corporate sponsorship" means
 150 a payment, donation, gratuity, in-kind service, or other benefit
 151 provided to or derived by a person in relation to the underlying
 152 activity, other than the display of product or corporate names,
 153 logos, or other graphic information on the property being
 154 transported.

155 (14)~~(67)~~ COURT.—The court having jurisdiction over traffic
 156 offenses.

157 (15)~~(6)~~ CROSSWALK.—

158 (a) That part of a roadway at an intersection included
 159 within the connections of the lateral lines of the sidewalks on
 160 opposite sides of the highway, measured from the curbs or, in
 161 the absence of curbs, from the edges of the traversable roadway.

162 (b) Any portion of a roadway at an intersection or
 163 elsewhere distinctly indicated for pedestrian crossing by lines
 164 or other markings on the surface.

165 (16)~~(7)~~ DAYTIME.—The period from a half hour before
 166 sunrise to a half hour after sunset. Nighttime means at any
 167 other hour.

168 (17)~~(8)~~ DEPARTMENT.—The Department of Highway Safety and
 169 Motor Vehicles as defined in s. 20.24. Any reference herein to
 170 Department of Transportation shall be construed as referring to
 171 the Department of Transportation, defined in s. 20.23, or the
 172 appropriate division thereof.

173 (18)~~(9)~~ DIRECTOR.—The Director of the Division of the
 174 Florida Highway Patrol of the Department of Highway Safety and
 175 Motor Vehicles.

176 (19)~~(10)~~ DRIVER.—Any person who drives or is in actual
 177 physical control of a vehicle on a highway or who is exercising
 178 control of a vehicle or steering a vehicle being towed by a
 179 motor vehicle.

180 (20)~~(83)~~ ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.—Any
 181 self-balancing, two-nontandem-wheeled device, designed to
 182 transport only one person, with an electric propulsion system

183 with average power of 750 watts (1 horsepower), the maximum
 184 speed of which, on a paved level surface when powered solely by
 185 such a propulsion system while being ridden by an operator who
 186 weighs 170 pounds, is less than 20 miles per hour. Electric
 187 personal assistive mobility devices are not vehicles as defined
 188 in this section.

189 (21)~~(11)~~ EXPLOSIVE.—Any chemical compound or mechanical
 190 mixture that is commonly used or intended for the purpose of
 191 producing an explosion and which contains any oxidizing and
 192 combustive units or other ingredients in such proportions,
 193 quantities, or packing that an ignition by fire, friction,
 194 concussion, percussion, or detonator of any part of the compound
 195 or mixture may cause such a sudden generation of highly heated
 196 gases that the resultant gaseous pressures are capable of
 197 producing destructive effect on contiguous objects or of
 198 destroying life or limb.

199 (22)~~(62)~~ FARM LABOR VEHICLE.—Any vehicle equipped and used
 200 for the transportation of nine or more migrant or seasonal farm
 201 workers, in addition to the driver, to or from a place of
 202 employment or employment-related activities. The term does not
 203 include:

204 (a) Any vehicle carrying only members of the immediate
 205 family of the owner or driver.

206 (b) Any vehicle being operated by a common carrier of
 207 passengers.

208 (c) Any carpool as defined in s. 450.28(3).

209 (23)~~(12)~~ FARM TRACTOR.—Any motor vehicle designed and used
 210 primarily as a farm implement for drawing plows, mowing
 211 machines, and other implements of husbandry.

212 (24)~~(13)~~ FLAMMABLE LIQUID.—Any liquid which has a flash
 213 point of 70 degrees Fahrenheit or less, as determined by a
 214 Tagliabue or equivalent closed-cup test device.

215 (25)~~(68)~~ GOLF CART.—A motor vehicle designed and
 216 manufactured for operation on a golf course for sporting or
 217 recreational purposes.

218 (26)~~(14)~~ GROSS WEIGHT.—The weight of a vehicle without
 219 load plus the weight of any load thereon.

220 (27)~~(69)~~ HAZARDOUS MATERIAL.—Any substance or material
 221 which has been determined by the secretary of the United States
 222 Department of Transportation to be capable of imposing an
 223 unreasonable risk to health, safety, and property. This term
 224 includes hazardous waste as defined in s. 403.703(13).

225 (28)~~(15)~~ HOUSE TRAILER.—

226 (a) A trailer or semitrailer which is designed,
 227 constructed, and equipped as a dwelling place, living abode, or
 228 sleeping place (either permanently or temporarily) and is
 229 equipped for use as a conveyance on streets and highways, or

230 (b) A trailer or a semitrailer the chassis and exterior
 231 shell of which is designed and constructed for use as a house
 232 trailer, as defined in paragraph (a), but which is used instead,
 233 permanently or temporarily, for the advertising, sales, display,
 234 or promotion of merchandise or services or for any other

235 commercial purpose except the transportation of property for
 236 hire or the transportation of property for distribution by a
 237 private carrier.

238 (29)~~(16)~~ IMPLEMENT OF HUSBANDRY.—Any vehicle designed and
 239 adapted exclusively for agricultural, horticultural, or
 240 livestock-raising operations or for lifting or carrying an
 241 implement of husbandry and in either case not subject to
 242 registration if used upon the highways.

243 (30)~~(17)~~ INTERSECTION.—

244 (a) The area embraced within the prolongation or
 245 connection of the lateral curblines; or, if none, then the
 246 lateral boundary lines of the roadways of two highways which
 247 join one another at, or approximately at, right angles; or the
 248 area within which vehicles traveling upon different highways
 249 joining at any other angle may come in conflict.

250 (b) Where a highway includes two roadways 30 feet or more
 251 apart, then every crossing of each roadway of such divided
 252 highway by an intersecting highway shall be regarded as a
 253 separate intersection. In the event such intersecting highway
 254 also includes two roadways 30 feet or more apart, then every
 255 crossing of two roadways of such highways shall be regarded as a
 256 separate intersection.

257 (31)~~(18)~~ LANED HIGHWAY.—A highway the roadway of which is
 258 divided into two or more clearly marked lanes for vehicular
 259 traffic.

260 (32)~~(19)~~ LIMITED ACCESS FACILITY.—A street or highway

261 especially designed for through traffic and over, from, or to
 262 which owners or occupants of abutting land or other persons have
 263 no right or easement, or only a limited right or easement, of
 264 access, light, air, or view by reason of the fact that their
 265 property abuts upon such limited access facility or for any
 266 other reason. Such highways or streets may be parkways from
 267 which trucks, buses, and other commercial vehicles are excluded;
 268 or they may be freeways open to use by all customary forms of
 269 street and highway traffic.

270 (33)~~(20)~~ LOCAL AUTHORITIES.—Includes all officers and
 271 public officials of the several counties and municipalities of
 272 this state.

273 (34)~~(91)~~ LOCAL HEARING OFFICER.—The person, designated by
 274 a department, county, or municipality that elects to authorize
 275 traffic infraction enforcement officers to issue traffic
 276 citations under s. 316.0083(1)(a), who is authorized to conduct
 277 hearings related to a notice of violation issued pursuant to s.
 278 316.0083. The charter county, noncharter county, or municipality
 279 may use its currently appointed code enforcement board or
 280 special magistrate to serve as the local hearing officer. The
 281 department may enter into an interlocal agreement to use the
 282 local hearing officer of a county or municipality.

283 (35)~~(80)~~ MAXI-CUBE VEHICLE.—A specialized combination
 284 vehicle consisting of a truck carrying a separable cargo-
 285 carrying unit combined with a semitrailer designed so that the
 286 separable cargo-carrying unit is to be loaded and unloaded

287 through the semitrailer. The entire combination may not exceed
 288 65 feet in length, and a single component of that combination
 289 may not exceed 34 feet in length.

290 (36)~~(61)~~ MIGRANT OR SEASONAL FARM WORKER.—Any person
 291 employed in hand labor operations in planting, cultivation, or
 292 harvesting agricultural crops.

293 (37)~~(77)~~ MOPED.—Any vehicle with pedals to permit
 294 propulsion by human power, having a seat or saddle for the use
 295 of the rider and designed to travel on not more than three
 296 wheels; with a motor rated not in excess of 2 brake horsepower
 297 and not capable of propelling the vehicle at a speed greater
 298 than 30 miles per hour on level ground; and with a power-drive
 299 system that functions directly or automatically without
 300 clutching or shifting gears by the operator after the drive
 301 system is engaged. If an internal combustion engine is used, the
 302 displacement may not exceed 50 cubic centimeters.

303 (38)~~(86)~~ MOTOR CARRIER TRANSPORTATION CONTRACT.—

304 (a) A contract, agreement, or understanding covering:

305 1. The transportation of property for compensation or hire
 306 by the motor carrier;

307 2. Entrance on property by the motor carrier for the
 308 purpose of loading, unloading, or transporting property for
 309 compensation or hire; or

310 3. A service incidental to activity described in
 311 subparagraph 1. or subparagraph 2., including, but not limited
 312 to, storage of property.

313 (b) "Motor carrier transportation contract" does not
 314 include the Uniform Intermodal Interchange and Facilities Access
 315 Agreement administered by the Intermodal Association of North
 316 America or other agreements providing for the interchange, use,
 317 or possession of intermodal chassis, containers, or other
 318 intermodal equipment.

319 (39)~~(21)~~ MOTOR VEHICLE.—Except when used in s. 316.1001, a
 320 self-propelled vehicle not operated upon rails or guideway, but
 321 not including any bicycle, motorized scooter, electric personal
 322 assistive mobility device, swamp buggy, or moped. For purposes
 323 of s. 316.1001, "motor vehicle" has the same meaning as in s.
 324 320.01(1)(a).

325 (40)~~(22)~~ MOTORCYCLE.—Any motor vehicle having a seat or
 326 saddle for the use of the rider and designed to travel on not
 327 more than three wheels in contact with the ground, but excluding
 328 a tractor or a moped.

329 (41)~~(82)~~ MOTORIZED SCOOTER.—Any vehicle not having a seat
 330 or saddle for the use of the rider, designed to travel on not
 331 more than three wheels, and not capable of propelling the
 332 vehicle at a speed greater than 30 miles per hour on level
 333 ground.

334 (42)~~(78)~~ NONPUBLIC SECTOR BUS.—Any bus which is used for
 335 the transportation of persons for compensation and which is not
 336 owned, leased, operated, or controlled by a municipal, county,
 337 or state government or a governmentally owned or managed
 338 nonprofit corporation.

339 (43)~~(23)~~ OFFICIAL TRAFFIC CONTROL DEVICES.—All signs,
 340 signals, markings, and devices, not inconsistent with this
 341 chapter, placed or erected by authority of a public body or
 342 official having jurisdiction for the purpose of regulating,
 343 warning, or guiding traffic.

344 (44)~~(24)~~ OFFICIAL TRAFFIC CONTROL SIGNAL.—Any device,
 345 whether manually, electrically, or mechanically operated, by
 346 which traffic is alternately directed to stop and permitted to
 347 proceed.

348 (45)~~(25)~~ OPERATOR.—Any person who is in actual physical
 349 control of a motor vehicle upon the highway, or who is
 350 exercising control over or steering a vehicle being towed by a
 351 motor vehicle.

352 (46)~~(26)~~ OWNER.—A person who holds the legal title of a
 353 vehicle, or, in the event a vehicle is the subject of an
 354 agreement for the conditional sale or lease thereof with the
 355 right of purchase upon performance of the conditions stated in
 356 the agreement and with an immediate right of possession vested
 357 in the conditional vendee or lessee, or in the event a mortgagor
 358 of a vehicle is entitled to possession, then such conditional
 359 vendee, or lessee, or mortgagor shall be deemed the owner, for
 360 the purposes of this chapter.

361 (47)~~(27)~~ PARK OR PARKING.—The standing of a vehicle,
 362 whether occupied or not, otherwise than temporarily for the
 363 purpose of and while actually engaged in loading or unloading
 364 merchandise or passengers as may be permitted by law under this

365 chapter.

366 (48)~~(28)~~ PEDESTRIAN.—Any person afoot.

367 (49)~~(29)~~ PERSON.—Any natural person, firm, copartnership,
368 association, or corporation.

369 (50)~~(30)~~ PNEUMATIC TIRE.—Any tire in which compressed air
370 is designed to support the load.

371 (51)~~(31)~~ POLE TRAILER.—Any vehicle without motive power
372 designed to be drawn by another vehicle and attached to the
373 towing vehicle by means of a reach or pole, or by being boomed
374 or otherwise secured to the towing vehicle, and ordinarily used
375 for transporting long or irregularly shaped loads such as poles,
376 pipes, or structural members capable, generally, of sustaining
377 themselves as beams between the supporting connections.

378 (52)~~(32)~~ POLICE OFFICER.—Any officer authorized to direct
379 or regulate traffic or to make arrests for violations of traffic
380 regulations, including Florida highway patrol officers,
381 sheriffs, deputy sheriffs, and municipal police officers.

382 (53)~~(33)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise
383 provided in paragraph (53) (b), any privately owned way or place
384 used for vehicular travel by the owner and those having express
385 or implied permission from the owner, but not by other persons.

386 (54)~~(34)~~ RADIOACTIVE MATERIALS.—Any materials or
387 combination of materials which emit ionizing radiation
388 spontaneously in which the radioactivity per gram of material,
389 in any form, is greater than 0.002 microcuries.

390 (55)~~(35)~~ RAILROAD.—A carrier of persons or property upon

391 cars operated upon stationary rails.

392 (56)~~(36)~~ RAILROAD SIGN OR SIGNAL.—Any sign, signal, or
 393 device erected by authority of a public body or official, or by
 394 a railroad, and intended to give notice of the presence of
 395 railroad tracks or the approach of a railroad train.

396 (57)~~(37)~~ RAILROAD TRAIN.—A steam engine, electric or other
 397 motor, with or without cars coupled thereto, operated upon
 398 rails, except a streetcar.

399 (58)~~(38)~~ RESIDENCE DISTRICT.—The territory contiguous to,
 400 and including, a highway, not comprising a business district,
 401 when the property on such highway, for a distance of 300 feet or
 402 more, is, in the main, improved with residences or residences
 403 and buildings in use for business.

404 (59)~~(39)~~ REVOCATION.—Revocation means that a licensee's
 405 privilege to drive a motor vehicle is terminated. A new license
 406 may be obtained only as permitted by law.

407 (60)~~(40)~~ RIGHT-OF-WAY.—The right of one vehicle or
 408 pedestrian to proceed in a lawful manner in preference to
 409 another vehicle or pedestrian approaching under such
 410 circumstances of direction, speed, and proximity as to give rise
 411 to danger of collision unless one grants precedence to the
 412 other.

413 (61)~~(41)~~ ROAD TRACTOR.—Any motor vehicle designed and used
 414 for drawing other vehicles and not so constructed as to carry
 415 any load thereon, either independently or as any part of the
 416 weight of a vehicle or load so drawn.

417 (62)~~(42)~~ ROADWAY.—That portion of a highway improved,
 418 designed, or ordinarily used for vehicular travel, exclusive of
 419 the berm or shoulder. In the event a highway includes two or
 420 more separate roadways, the term "roadway" as used herein refers
 421 to any such roadway separately, but not to all such roadways
 422 collectively.

423 (63)~~(43)~~ SADDLE MOUNT; FULL MOUNT.—An arrangement whereby
 424 the front wheels of one vehicle rest in a secured position upon
 425 another vehicle. All of the wheels of the towing vehicle are
 426 upon the ground, and only the rear wheels of the towed vehicle
 427 rest upon the ground. Such combinations may include one full
 428 mount, whereby a smaller transport vehicle is placed completely
 429 on the last towed vehicle.

430 (64)~~(44)~~ SAFETY ZONE.—The area or space officially set
 431 apart within a roadway for the exclusive use of pedestrians and
 432 protected or so marked by adequate signs or authorized pavement
 433 markings as to be plainly visible at all times while set apart
 434 as a safety zone.

435 (65)~~(92)~~ SANITATION VEHICLE.—A motor vehicle that bears an
 436 emblem that is visible from the roadway and clearly identifies
 437 that the vehicle belongs to or is under contract with a person,
 438 entity, cooperative, board, commission, district, or unit of
 439 local government that provides garbage, trash, refuse, or
 440 recycling collection.

441 (66)~~(45)~~ SCHOOL BUS.—Any motor vehicle that complies with
 442 the color and identification requirements of chapter 1006 and is

443 used to transport children to or from public or private school
 444 or in connection with school activities, but not including buses
 445 operated by common carriers in urban transportation of school
 446 children. The term "school" includes all preelementary,
 447 elementary, secondary, and postsecondary schools.

448 (67)~~(46)~~ SEMITRAILER.—Any vehicle with or without motive
 449 power, other than a pole trailer, designed for carrying persons
 450 or property and for being drawn by a motor vehicle and so
 451 constructed that some part of its weight and that of its load
 452 rests upon, or is carried by, another vehicle.

453 (68)~~(47)~~ SIDEWALK.—That portion of a street between the
 454 curblines, or the lateral line, of a roadway and the adjacent
 455 property lines, intended for use by pedestrians.

456 (69)~~(48)~~ SPECIAL MOBILE EQUIPMENT.—Any vehicle not
 457 designed or used primarily for the transportation of persons or
 458 property and only incidentally operated or moved over a highway,
 459 including, but not limited to, ditchdigging apparatus, well-
 460 boring apparatus, and road construction and maintenance
 461 machinery, such as asphalt spreaders, bituminous mixers, bucket
 462 loaders, tractors other than truck tractors, ditchers, leveling
 463 graders, finishing machines, motor graders, road rollers,
 464 scarifiers, earthmoving carryalls and scrapers, power shovels
 465 and draglines, and self-propelled cranes and earthmoving
 466 equipment. The term does not include house trailers, dump
 467 trucks, truck-mounted transit mixers, cranes or shovels, or
 468 other vehicles designed for the transportation of persons or

469 property to which machinery has been attached.

470 (70)~~(49)~~ STAND OR STANDING.—The halting of a vehicle,
 471 whether occupied or not, otherwise than temporarily, for the
 472 purpose of, and while actually engaged in, receiving or
 473 discharging passengers, as may be permitted by law under this
 474 chapter.

475 (71)~~(50)~~ STATE ROAD.—Any highway designated as a state-
 476 maintained road by the Department of Transportation.

477 (72)~~(51)~~ STOP.—When required, complete cessation from
 478 movement.

479 (73)~~(52)~~ STOP OR STOPPING.—When prohibited, any halting,
 480 even momentarily, of a vehicle, whether occupied or not, except
 481 when necessary to avoid conflict with other traffic or to comply
 482 with the directions of a law enforcement officer or traffic
 483 control sign or signal.

484 (74)~~(70)~~ STRAIGHT TRUCK.—Any truck on which the cargo unit
 485 and the motive power unit are located on the same frame so as to
 486 form a single, rigid unit.

487 (75)~~(53)~~ STREET OR HIGHWAY.—

488 (a) The entire width between the boundary lines of every
 489 way or place of whatever nature when any part thereof is open to
 490 the use of the public for purposes of vehicular traffic;

491 (b) The entire width between the boundary lines of any
 492 privately owned way or place used for vehicular travel by the
 493 owner and those having express or implied permission from the
 494 owner, but not by other persons, or any limited access road

495 owned or controlled by a special district, whenever, by written
 496 agreement entered into under s. 316.006(2)(b) or (3)(b), a
 497 county or municipality exercises traffic control jurisdiction
 498 over said way or place;

499 (c) Any area, such as a runway, taxiway, ramp, clear zone,
 500 or parking lot, within the boundary of any airport owned by the
 501 state, a county, a municipality, or a political subdivision,
 502 which area is used for vehicular traffic but which is not open
 503 for vehicular operation by the general public; or

504 (d) Any way or place used for vehicular traffic on a
 505 controlled access basis within a mobile home park recreation
 506 district which has been created under s. 418.30 and the
 507 recreational facilities of which district are open to the
 508 general public.

509 (76)~~(54)~~ SUSPENSION.—Temporary withdrawal of a licensee's
 510 privilege to drive a motor vehicle.

511 (77)~~(89)~~ SWAMP BUGGY.—A motorized off-road vehicle that is
 512 designed or modified to travel over swampy or varied terrain and
 513 that may use large tires or tracks operated from an elevated
 514 platform. The term does not include any vehicle defined in
 515 chapter 261 or otherwise defined or classified in this chapter.

516 (78)~~(81)~~ TANDEM AXLE.—Any two axles whose centers are more
 517 than 40 inches but not more than 96 inches apart and are
 518 individually attached to or articulated from, or both, a common
 519 attachment to the vehicle, including a connecting mechanism
 520 designed to equalize the load between axles.

521 (79)~~(71)~~ TANDEM TRAILER TRUCK.—Any combination of a truck
 522 tractor, semitrailer, and trailer coupled together so as to
 523 operate as a complete unit.

524 (80)~~(72)~~ TANDEM TRAILER TRUCK HIGHWAY NETWORK.—A highway
 525 network consisting primarily of four or more lanes, including
 526 all interstate highways; highways designated by the United
 527 States Department of Transportation as elements of the National
 528 Network; and any street or highway designated by the Florida
 529 Department of Transportation for use by tandem trailer trucks,
 530 in accordance with s. 316.515, except roads on which truck
 531 traffic was specifically prohibited on January 6, 1983.

532 (81)~~(73)~~ TERMINAL.—Any location where:

533 (a) Freight either originates, terminates, or is handled
 534 in the transportation process; or

535 (b) Commercial motor carriers maintain operating
 536 facilities.

537 (82)~~(55)~~ THROUGH HIGHWAY.—Any highway or portion thereof
 538 on which vehicular traffic is given the right-of-way and at the
 539 entrances to which vehicular traffic from intersecting highways
 540 is required to yield right-of-way to vehicles on such through
 541 highway in obedience to either a stop sign or yield sign, or
 542 otherwise in obedience to law.

543 (83)~~(56)~~ TIRE WIDTH.—Tire width is that width stated on
 544 the surface of the tire by the manufacturer of the tire, if the
 545 width stated does not exceed 2 inches more than the width of the
 546 tire contacting the surface.

547 (84)~~(57)~~ TRAFFIC.—Pedestrians, ridden or herded animals,
 548 and vehicles, streetcars, and other conveyances either singly or
 549 together while using any street or highway for purposes of
 550 travel.

551 (85)~~(87)~~ TRAFFIC INFRACTION DETECTOR.—A vehicle sensor
 552 installed to work in conjunction with a traffic control signal
 553 and a camera or cameras synchronized to automatically record two
 554 or more sequenced photographic or electronic images or streaming
 555 video of only the rear of a motor vehicle at the time the
 556 vehicle fails to stop behind the stop bar or clearly marked stop
 557 line when facing a traffic control signal steady red light. Any
 558 notification under s. 316.0083(1)(b) or traffic citation issued
 559 by the use of a traffic infraction detector must include a
 560 photograph or other recorded image showing both the license tag
 561 of the offending vehicle and the traffic control device being
 562 violated.

563 (86)~~(84)~~ TRAFFIC SIGNAL PREEMPTION SYSTEM.—Any system or
 564 device with the capability of activating a control mechanism
 565 mounted on or near traffic signals which alters a traffic
 566 signal's timing cycle.

567 (87)~~(58)~~ TRAILER.—Any vehicle with or without motive
 568 power, other than a pole trailer, designed for carrying persons
 569 or property and for being drawn by a motor vehicle.

570 (88)~~(74)~~ TRANSPORTATION.—The conveyance or movement of
 571 goods, materials, livestock, or persons from one location to
 572 another on any road, street, or highway open to travel by the

573 public.

574 (89)~~(88)~~ TRI-VEHICLE.—An enclosed three-wheeled passenger
575 vehicle that:

576 (a) Is designed to operate with three wheels in contact
577 with the ground;

578 (b) Has a minimum unladen weight of 900 pounds;

579 (c) Has a single, completely enclosed, occupant
580 compartment;

581 (d) Is produced in a minimum quantity of 300 in any
582 calendar year;

583 (e) Is capable of a speed greater than 60 miles per hour
584 on level ground; and

585 (f) Is equipped with:

586 1. Seats that are certified by the vehicle manufacturer to
587 meet the requirements of Federal Motor Vehicle Safety Standard
588 No. 207, "Seating systems" (49 C.F.R. s. 571.207);

589 2. A steering wheel used to maneuver the vehicle;

590 3. A propulsion unit located forward or aft of the
591 enclosed occupant compartment;

592 4. A seat belt for each vehicle occupant certified to meet
593 the requirements of Federal Motor Vehicle Safety Standard No.
594 209, "Seat belt assemblies" (49 C.F.R. s. 571.209);

595 5. A windshield and an appropriate windshield wiper and
596 washer system that are certified by the vehicle manufacturer to
597 meet the requirements of Federal Motor Vehicle Safety Standard
598 No. 205, "Glazing Materials" (49 C.F.R. s. 571.205) and Federal

599 Motor Vehicle Safety Standard No. 104, "Windshield Wiping and
600 Washing Systems" (49 C.F.R. s. 571.104); and

601 6. A vehicle structure certified by the vehicle
602 manufacturer to meet the requirements of Federal Motor Vehicle
603 Safety Standard No. 216, "Rollover crush resistance" (49 C.F.R.
604 s. 571.216).

605 (90)~~(59)~~ TRUCK.—Any motor vehicle designed, used, or
606 maintained primarily for the transportation of property.

607 (91)~~(60)~~ TRUCK TRACTOR.—Any motor vehicle designed and
608 used primarily for drawing other vehicles and not so constructed
609 as to carry a load other than a part of the weight of the
610 vehicle and load so drawn.

611 (92)~~(93)~~ UTILITY SERVICE VEHICLE.—A motor vehicle that
612 bears an emblem that is visible from the roadway and clearly
613 identifies that the vehicle belongs to or is under contract with
614 a person, entity, cooperative, board, commission, district, or
615 unit of local government that provides electric, natural gas,
616 water, wastewater, cable, telephone, or communications services.

617 (93)~~(75)~~ VEHICLE.—Every device, in, upon, or by which any
618 person or property is or may be transported or drawn upon a
619 highway, excepting devices used exclusively upon stationary
620 rails or tracks.

621 (94)~~(85)~~ VICTIM SERVICES PROGRAMS.—Any community-based
622 organization whose primary purpose is to act as an advocate for
623 the victims and survivors of traffic crashes and for their
624 families. The victims services offered by these programs may

625 include grief and crisis counseling, assistance with preparing
 626 victim compensation claims excluding third-party legal action,
 627 or connecting persons with other service providers, and
 628 providing emergency financial assistance.

629 (95) VULNERABLE USER OF A PUBLIC ROADWAY OR VULNERABLE
 630 USER.—

631 (a) A pedestrian, including a person actually engaged in
 632 work upon a highway, work upon utility facilities along a
 633 highway, or the provision of emergency services within the
 634 right-of-way;

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

637 (c) A person riding an animal; or

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

640 1. A farm tractor or similar vehicle designed primarily
 641 for farm use;

642 2. A horse-drawn carriage;

643 3. An electric personal assistive mobility device; or

644 4. A wheelchair.

645 (96)(79) WORK ZONE AREA.—The area and its approaches on
 646 any state-maintained highway, county-maintained highway, or
 647 municipal street where construction, repair, maintenance, or
 648 other street-related or highway-related work is being performed
 649 or where one or more lanes is closed to traffic.

650 Section 2. Section 316.0275, Florida Statutes, is created

651 to read:

652 316.0275 Noncriminal traffic infractions leading to
 653 serious bodily injury or death; reclassification.-

654 (1) Notwithstanding any other provision of law, if an
 655 individual commits and is convicted of a noncriminal traffic
 656 infraction under this chapter which causes serious bodily injury
 657 or death to a person and, within 5 years after that violation,
 658 commits and is convicted of another noncriminal traffic
 659 infraction under this chapter which causes serious bodily injury
 660 or death to a person, the second such violation shall be
 661 reclassified as a misdemeanor of the first degree, punishable as
 662 provided in s. 775.082 or s. 775.083, and the individual's
 663 driver license shall be suspended for 3 months. At the end of
 664 the suspension, the driver must apply for a new driver license
 665 and pass all required examinations pursuant to s. 322.08 and pay
 666 all required fees for such license. During the 3-month
 667 suspension, the individual may apply for a hardship waiver under
 668 s. 322.271.

669 (2) As used in this section only, the term "serious bodily
 670 injury" means an injury to a person, excluding an injury to the
 671 at-fault driver, which consists of a physical condition that
 672 creates a substantial risk of death, serious personal
 673 disfigurement, or protracted loss or impairment of the function
 674 of any bodily member or organ.

675 Section 3. Section 316.083, Florida Statutes, is amended
 676 to read:

677 316.083 Overtaking and passing a vehicle.—The following
 678 provisions ~~rules shall~~ govern the overtaking and passing of a
 679 vehicle ~~vehieles~~ proceeding in the same direction, ~~subject to~~
 680 ~~those limitations, exceptions, and special rules hereinafter~~
 681 ~~stated:~~

682 (1) The driver of a vehicle overtaking another vehicle
 683 proceeding in the same direction shall give an appropriate
 684 signal as provided for in s. 316.156, shall pass to the left
 685 thereof at a safe distance, and shall not again drive to the
 686 right side of the roadway until safely clear of the overtaken
 687 vehicle.

688 (2) The driver of a motor vehicle overtaking a person
 689 operating a bicycle or other vulnerable user of a public roadway
 690 ~~nonmotorized vehicle~~ must pass the person operating the bicycle
 691 or other vulnerable user ~~nonmotorized vehicle~~ at a safe distance
 692 of not less than 3 feet between any part of or attachment to the
 693 motor vehicle, anything extending from the motor vehicle, and
 694 any trailer or other thing being towed by the motor vehicle and
 695 the bicycle, the person operating the bicycle, or other
 696 vulnerable user ~~nonmotorized vehicle~~.

697 (3)~~(2)~~ Except when overtaking and passing on the right is
 698 permitted, the driver of an overtaken vehicle shall give way to
 699 the right in favor of the overtaking vehicle, on audible signal
 700 or upon the visible blinking of the headlamps of the overtaking
 701 vehicle if such overtaking is being attempted at nighttime, and
 702 shall not increase the speed of his or her vehicle until

703 completely passed by the overtaking vehicle.

704 ~~(4)(3)~~ A violation of this section is a noncriminal
 705 traffic infraction, punishable as a moving violation as provided
 706 in chapter 318. If a violation of this section contributed to
 707 the bodily injury of a vulnerable user of a public roadway, the
 708 law enforcement officer issuing the citation for the violation
 709 shall note such information on the citation.

710 Section 4. Section 316.084, Florida Statutes, is amended
 711 to read:

712 316.084 When overtaking on the right is permitted.—

713 (1) The driver of a vehicle may overtake and pass on the
 714 right of another vehicle only under the following conditions:

715 (a) When the vehicle overtaken is making or about to make
 716 a left turn;

717 (b) Upon a street or highway with unobstructed pavement
 718 not occupied by parked vehicles of sufficient width for two or
 719 more lines of moving traffic in each direction;

720 (c) Upon a one-way street, or upon any roadway on which
 721 traffic is restricted to one direction of movement, where the
 722 roadway is free from obstructions and of sufficient width for
 723 two or more lines of moving vehicles.

724 (2) The driver of a vehicle may overtake and pass another
 725 vehicle on the right only under conditions permitting such
 726 movement in safety. In no event shall such movement be made by
 727 driving off the pavement or main-traveled portion of the
 728 roadway.

729 (3) This section does not prohibit a bicycle that is in a
 730 bicycle lane or on the shoulder of a roadway or highway from
 731 passing another vehicle on the right.

732 ~~(4)(3)~~ A violation of this section is a noncriminal
 733 traffic infraction, punishable as a moving violation as provided
 734 in chapter 318.

735 Section 5. Section 316.0875, Florida Statutes, is amended
 736 to read:

737 316.0875 No-passing zones.—

738 (1) The Department of Transportation and local authorities
 739 are authorized to determine those portions of any highway under
 740 their respective jurisdiction where overtaking and passing or
 741 driving to the left of the roadway would be especially hazardous
 742 and may, by appropriate signs or markings on the roadway,
 743 indicate the beginning and end of such zones, and, when such
 744 signs or markings are in place and clearly visible to an
 745 ordinarily observant person, each ~~every~~ driver of a vehicle
 746 shall obey the directions thereof.

747 (2) Where signs or markings are in place to define a no-
 748 passing zone as set forth in subsection (1), a ~~no~~ driver may
 749 not, shall at any time, drive on the left side of the roadway
 750 with such no-passing zone or on the left side of any pavement
 751 striping designed to mark such no-passing zone throughout its
 752 length.

753 (3) This section does not apply to a person who safely and
 754 briefly drives to the left of the center of the roadway or

755 pavement striping only to the extent necessary to:

756 (a) Avoid ~~When an obstruction; exists making it necessary~~
 757 ~~to drive to the left of the center of the highway, nor~~

758 (b) Turn ~~To the driver of a vehicle turning~~ left into or
 759 from an alley, private road, or driveway; or

760 (c) Comply with the requirements regarding a safe distance
 761 to pass a vulnerable road user, as required by s. 316.083(2).

762 (4) A violation of this section is a noncriminal traffic
 763 infraction, punishable as a moving violation as provided in
 764 chapter 318.

765 Section 6. Section 316.151, Florida Statutes, is amended
 766 to read:

767 316.151 Required position and method of turning at
 768 intersections.—

769 (1) (a) Right turn.—The driver of a vehicle intending to
 770 turn right at an intersection onto a highway, public or private
 771 roadway, or driveway shall do so as follows:

772 1. (a) Right turn.—Both the approach for a right turn and a
 773 right turn shall be made as close as practicable to the right-
 774 hand curb or edge of the roadway.

775 2. When overtaking and passing a bicycle or other
 776 vulnerable user proceeding in the same direction, the driver of
 777 a motor vehicle shall give an appropriate signal as provided for
 778 in s. 316.155 and shall make the right turn only if it can be
 779 made at a safe distance from the bicycle or other vulnerable
 780 user.

781 3. When crossing a sidewalk, bicycle lane, or bicycle path
 782 to turn right, the driver of a motor vehicle shall yield the
 783 right-of-way to a bicycle or pedestrian.

784 (b) Left turn.—The driver of a vehicle intending to turn
 785 left at an any intersection onto a highway, public or private
 786 roadway, or driveway shall do so as follows:

787 1. The driver shall approach the intersection in the
 788 extreme left-hand lane lawfully available to traffic moving in
 789 the direction of travel of such vehicle. Thereafter, and, after
 790 ~~entering the intersection,~~ the left turn shall be made so as to
 791 leave the intersection in a lane lawfully available to traffic
 792 moving in such direction upon the roadway being entered.

793 2. A person riding a bicycle and intending to turn left in
 794 accordance with this section is entitled to the full use of the
 795 lane from which the turn may legally be made. Whenever
 796 practicable the left turn shall be made in that portion of the
 797 intersection to the left of the center of the intersection.

798 ~~(c) Left turn by bicycle.—In addition to the method of~~
 799 ~~making a left turn described in paragraph (b),~~ a person riding a
 800 bicycle and intending to turn left may do so as follows ~~has the~~
 801 ~~option of following the course described hereafter:~~

802 a. The rider shall approach the turn as close as
 803 practicable to the right curb or edge of the roadway;

804 b. After proceeding across the intersecting roadway, the
 805 turn shall be made as close as practicable to the curb or edge
 806 of the roadway on the far side of the intersection; and,

807 c. Before proceeding, the bicyclist shall comply with any
 808 official traffic control device or police officer regulating
 809 traffic on the highway along which the bicyclist intends to
 810 proceed.

811 (2) The state, county, and local authorities in their
 812 respective jurisdictions may cause official traffic control
 813 devices to be placed within or adjacent to intersections and
 814 thereby require and direct that a different course from that
 815 specified in this section be traveled by vehicles turning at an
 816 intersection. When such devices are so placed, the ~~no~~ driver of
 817 a vehicle may not turn a vehicle at an intersection other than
 818 as directed and required by such devices.

819 (3) A violation of this section is a noncriminal traffic
 820 infraction, punishable as a moving violation as provided in
 821 chapter 318. If a violation of this section contributes to the
 822 bodily injury of a vulnerable user of a public roadway, the law
 823 enforcement officer issuing the citation for the violation shall
 824 note such information on the citation.

825 Section 7. Section 316.1925, Florida Statutes, is amended
 826 to read:

827 316.1925 Careless driving.—

828 (1) A ~~Any~~ person operating a vehicle upon the streets or
 829 highways within the state shall drive the same in a careful and
 830 prudent manner, having regard for the width, grade, curves,
 831 corners, traffic, and all other attendant circumstances, so as
 832 not to endanger the life, limb, or property of any person. A

833 person who fails ~~Failure~~ to drive in such manner commits ~~shall~~
 834 ~~constitute~~ careless driving and ~~a violation of this section.~~

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

837 (2) If a violation under subsection (1) contributed to the
 838 bodily injury of a vulnerable user of a public roadway, the law
 839 enforcement officer issuing the citation for the violation shall
 840 note such information on the citation.

841 Section 8. Subsections (1), (5), and (6) of section
 842 316.2065, Florida Statutes, are amended to read:

843 316.2065 Bicycle regulations.—

844 (1) A bicycle is a vehicle under Florida law and shall be
 845 operated in the same manner as any other vehicle and every
 846 person operating a bicycle ~~propelling a vehicle by human power~~
 847 has all of the rights and all of the duties applicable to the
 848 driver of any other vehicle under this chapter, except as to
 849 special regulations in this chapter, and except as to provisions
 850 of this chapter which by their nature can have no application.

851 (5)(a) Any person operating a bicycle upon a roadway at
 852 less than the normal speed of traffic at the time and place and
 853 under the conditions then existing shall ride in the bicycle
 854 ~~lane marked for bicycle use~~ or, if there is no bicycle lane in
 855 the roadway is marked for bicycle use, as close as practicable
 856 to the right-hand curb or edge of the roadway except under any
 857 of the following situations:

858 1. When overtaking and passing another bicycle or vehicle

859 proceeding in the same direction.

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

862 3. When reasonably necessary to avoid any condition or
863 potential conflict, including, but not limited to, a fixed or
864 moving object, parked or moving vehicle, bicycle, pedestrian,
865 animal, surface hazard, turn lane, or substandard-width lane,
866 which makes it unsafe to continue along the right-hand curb or
867 edge or within a bicycle lane. For the purposes of this
868 subsection, a "substandard-width lane" is a lane that is too
869 narrow for a bicycle and another vehicle to travel safely side
870 by side within the lane.

871 (b) Any person operating a bicycle upon a one-way highway
872 with two or more marked traffic lanes may ride as near the left-
873 hand curb or edge of such roadway as practicable.

874 (6) (a) Persons riding bicycles upon a roadway or in a
875 bicycle lane may not ride more than two abreast except on
876 bicycle paths or parts of roadways set aside for the exclusive
877 use of bicycles. Persons riding two abreast may not impede
878 traffic when traveling at less than the normal speed of traffic
879 at the time and place and under the conditions then existing and
880 shall ride within a single lane.

881 (b) When stopping at a stop sign, persons riding bicycles
882 in groups of four or more, after coming to a full stop and
883 obeying all traffic laws, may proceed through the stop sign in a
884 group and motor vehicle operators shall allow the entire group

885 to travel through the intersection before moving forward.

886 Section 9. Section 318.142, Florida Statutes, is created
887 to read:

888 318.142 Infractions contributing to bodily injury of a
889 vulnerable user of a public roadway.-In addition to any other
890 penalty imposed for a violation under s. 316.083, s. 316.151, or
891 s. 316.1925, if the violation contributed to the bodily injury
892 of a vulnerable user of a public roadway as defined in s.
893 316.003, the law enforcement officer issuing the citation for
894 the infraction shall note such information on the citation and
895 the designated official may impose a fine of not more than
896 \$2,500.

897 Section 10. Section 318.19, Florida Statutes, is amended
898 to read:

899 318.19 Infractions requiring a mandatory hearing.-Any
900 person cited for the infractions listed in this section shall
901 not have the provisions of s. 318.14(2), (4), and (9) available
902 to him or her but must appear before the designated official at
903 the time and location of the scheduled hearing:

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

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

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

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

910 (5) Any infraction of s. 316.183(2), s. 316.187, or s.

911 316.189 of exceeding the speed limit by 30 m.p.h. or more; or
 912 (6) Any infraction of s. 316.083, s. 316.151, or s.
 913 316.1925 which contributes to bodily injury of a vulnerable user
 914 of a public roadway as defined in s. 316.003. If an infraction
 915 listed in this subsection contributes to the bodily injury of a
 916 vulnerable user of a public roadway, the law enforcement officer
 917 issuing the citation for the infraction shall note such
 918 information on the citation.

919 Section 11. Paragraph (c) of subsection (1) of section
 920 212.05, Florida Statutes, is amended to read:

921 212.05 Sales, storage, use tax.—It is hereby declared to
 922 be the legislative intent that every person is exercising a
 923 taxable privilege who engages in the business of selling
 924 tangible personal property at retail in this state, including
 925 the business of making mail order sales, or who rents or
 926 furnishes any of the things or services taxable under this
 927 chapter, or who stores for use or consumption in this state any
 928 item or article of tangible personal property as defined herein
 929 and who leases or rents such property within the state.

930 (1) For the exercise of such privilege, a tax is levied on
 931 each taxable transaction or incident, which tax is due and
 932 payable as follows:

933 (c) At the rate of 6 percent of the gross proceeds derived
 934 from the lease or rental of tangible personal property, as
 935 defined herein; however, the following special provisions apply
 936 to the lease or rental of motor vehicles:

937 1. When a motor vehicle is leased or rented for a period
 938 of less than 12 months:

939 a. If the motor vehicle is rented in Florida, the entire
 940 amount of such rental is taxable, even if the vehicle is dropped
 941 off in another state.

942 b. If the motor vehicle is rented in another state and
 943 dropped off in Florida, the rental is exempt from Florida tax.

944 2. Except as provided in subparagraph 3., for the lease or
 945 rental of a motor vehicle for a period of not less than 12
 946 months, sales tax is due on the lease or rental payments if the
 947 vehicle is registered in this state; provided, however, that no
 948 tax shall be due if the taxpayer documents use of the motor
 949 vehicle outside this state and tax is being paid on the lease or
 950 rental payments in another state.

951 3. The tax imposed by this chapter does not apply to the
 952 lease or rental of a commercial motor vehicle as defined in s.
 953 316.003(13)(a) ~~316.003(66)(a)~~ to one lessee or rentee for a
 954 period of not less than 12 months when tax was paid on the
 955 purchase price of such vehicle by the lessor. To the extent tax
 956 was paid with respect to the purchase of such vehicle in another
 957 state, territory of the United States, or the District of
 958 Columbia, the Florida tax payable shall be reduced in accordance
 959 with the provisions of s. 212.06(7). This subparagraph shall
 960 only be available when the lease or rental of such property is
 961 an established business or part of an established business or
 962 the same is incidental or germane to such business.

963 Section 12. Subsection (1) of section 316.1303, Florida
 964 Statutes, is amended to read:

965 316.1303 Traffic regulations to assist mobility-impaired
 966 persons.—

967 (1) Whenever a pedestrian who is mobility impaired is in
 968 the process of crossing a public street or highway with the
 969 assistance of a guide dog or service animal designated as such
 970 with a visible means of identification, a walker, a crutch, an
 971 orthopedic cane, or a wheelchair, the driver of a vehicle
 972 approaching the intersection, as defined in s. 316.003
 973 ~~316.003(17)~~, shall bring his or her vehicle to a full stop
 974 before arriving at the intersection and, before proceeding,
 975 shall take precautions necessary to avoid injuring the
 976 pedestrian.

977 Section 13. Subsection (5) of section 316.235, Florida
 978 Statutes, is amended to read:

979 316.235 Additional lighting equipment.—

980 (5) A bus, as defined in s. 316.003 ~~316.003(3)~~, may be
 981 equipped with a deceleration lighting system which cautions
 982 following vehicles that the bus is slowing, preparing to stop,
 983 or is stopped. Such lighting system shall consist of amber
 984 lights mounted in horizontal alignment on the rear of the
 985 vehicle at or near the vertical centerline of the vehicle, not
 986 higher than the lower edge of the rear window or, if the vehicle
 987 has no rear window, not higher than 72 inches from the ground.
 988 Such lights shall be visible from a distance of not less than

989 300 feet to the rear in normal sunlight. Lights are permitted to
 990 light and flash during deceleration, braking, or standing and
 991 idling of the bus. Vehicular hazard warning flashers may be used
 992 in conjunction with or in lieu of a rear-mounted deceleration
 993 lighting system.

994 Section 14. Paragraph (b) of subsection (2) and paragraph
 995 (a) of subsection (4) of section 316.545, Florida Statutes, are
 996 amended to read:

997 316.545 Weight and load unlawful; special fuel and motor
 998 fuel tax enforcement; inspection; penalty; review.-

999 (2)

1000 (b) The officer or inspector shall inspect the license
 1001 plate or registration certificate of the commercial vehicle, as
 1002 defined in s. 316.003 ~~316.003(66)~~, to determine if its gross
 1003 weight is in compliance with the declared gross vehicle weight.
 1004 If its gross weight exceeds the declared weight, the penalty
 1005 shall be 5 cents per pound on the difference between such
 1006 weights. In those cases when the commercial vehicle, as defined
 1007 in s. 316.003 ~~316.003(66)~~, is being operated over the highways
 1008 of the state with an expired registration or with no
 1009 registration from this or any other jurisdiction or is not
 1010 registered under the applicable provisions of chapter 320, the
 1011 penalty herein shall apply on the basis of 5 cents per pound on
 1012 that scaled weight which exceeds 35,000 pounds on laden truck
 1013 tractor-semitrailer combinations or tandem trailer truck
 1014 combinations, 10,000 pounds on laden straight trucks or straight

1015 | truck-trailer combinations, or 10,000 pounds on any unladen
 1016 | commercial motor vehicle. If the license plate or registration
 1017 | has not been expired for more than 90 days, the penalty imposed
 1018 | under this paragraph may not exceed \$1,000. In the case of
 1019 | special mobile equipment as defined in s. 316.003 ~~316.003(48)~~,
 1020 | which qualifies for the license tax provided for in s.
 1021 | 320.08(5)(b), being operated on the highways of the state with
 1022 | an expired registration or otherwise not properly registered
 1023 | under the applicable provisions of chapter 320, a penalty of \$75
 1024 | shall apply in addition to any other penalty which may apply in
 1025 | accordance with this chapter. A vehicle found in violation of
 1026 | this section may be detained until the owner or operator
 1027 | produces evidence that the vehicle has been properly registered.
 1028 | Any costs incurred by the retention of the vehicle shall be the
 1029 | sole responsibility of the owner. A person who has been assessed
 1030 | a penalty pursuant to this paragraph for failure to have a valid
 1031 | vehicle registration certificate pursuant to the provisions of
 1032 | chapter 320 is not subject to the delinquent fee authorized in
 1033 | s. 320.07 if such person obtains a valid registration
 1034 | certificate within 10 working days after such penalty was
 1035 | assessed.

1036 | (4)(a) No commercial vehicle, as defined in s. 316.003
 1037 | ~~316.003(66)~~, shall be operated over the highways of this state
 1038 | unless it has been properly registered under the provisions of
 1039 | s. 207.004. Whenever any law enforcement officer identified in
 1040 | s. 207.023(1), upon inspecting the vehicle or combination of

1041 | vehicles, determines that the vehicle is in violation of s.
 1042 | 207.004, a penalty in the amount of \$50 shall be assessed, and
 1043 | the vehicle may be detained until payment is collected by the
 1044 | law enforcement officer.

1045 | Section 15. Subsection (2) of section 316.605, Florida
 1046 | Statutes, is amended to read:

1047 | 316.605 Licensing of vehicles.—

1048 | (2) Any commercial motor vehicle, as defined in s. 316.003
 1049 | ~~316.003(66)~~, operating over the highways of this state with an
 1050 | expired registration, with no registration from this or any
 1051 | other jurisdiction, or with no registration under the applicable
 1052 | provisions of chapter 320 shall be in violation of s. 320.07(3)
 1053 | and shall subject the owner or operator of such vehicle to the
 1054 | penalty provided. In addition, a commercial motor vehicle found
 1055 | in violation of this section may be detained by any law
 1056 | enforcement officer until the owner or operator produces
 1057 | evidence that the vehicle has been properly registered and that
 1058 | any applicable delinquent penalties have been paid.

1059 | Section 16. Subsection (6) of section 316.6105, Florida
 1060 | Statutes, is amended to read:

1061 | 316.6105 Violations involving operation of motor vehicle
 1062 | in unsafe condition or without required equipment; procedure for
 1063 | disposition.—

1064 | (6) This section does not apply to commercial motor
 1065 | vehicles as defined in s. 316.003 ~~316.003(66)~~ or transit buses
 1066 | owned or operated by a governmental entity.

1067 Section 17. Paragraph (a) of subsection (2) of section
 1068 316.613, Florida Statutes, is amended to read:

1069 316.613 Child restraint requirements.—

1070 (2) As used in this section, the term "motor vehicle"
 1071 means a motor vehicle as defined in s. 316.003 that is operated
 1072 on the roadways, streets, and highways of the state. The term
 1073 does not include:

1074 (a) A school bus as defined in s. 316.003 ~~316.003(45)~~.

1075 Section 18. Subsection (8) of section 316.622, Florida
 1076 Statutes, is amended to read:

1077 316.622 Farm labor vehicles.—

1078 (8) The department shall provide to the Department of
 1079 Business and Professional Regulation each quarter a copy of each
 1080 accident report involving a farm labor vehicle, as defined in s.
 1081 316.003 ~~316.003(62)~~, commencing with the first quarter of the
 1082 2006-2007 fiscal year.

1083 Section 19. Paragraph (b) of subsection (1) of section
 1084 316.650, Florida Statutes, is amended to read:

1085 316.650 Traffic citations.—

1086 (1)

1087 (b) The department shall prepare, and supply to every
 1088 traffic enforcement agency in the state, an appropriate
 1089 affidavit-of-compliance form that shall be issued along with the
 1090 form traffic citation for any violation of s. 316.610 and that
 1091 indicates the specific defect needing to be corrected. However,
 1092 such affidavit of compliance shall not be issued in the case of

1093 a violation of s. 316.610 by a commercial motor vehicle as
 1094 defined in s. 316.003 ~~316.003(66)~~. Such affidavit-of-compliance
 1095 form shall be distributed in the same manner and to the same
 1096 parties as is the form traffic citation.

1097 Section 20. Subsection (1) of section 316.70, Florida
 1098 Statutes, is amended to read:

1099 316.70 Nonpublic sector buses; safety rules.—

1100 (1) The Department of Transportation shall establish and
 1101 revise standards to assure the safe operation of nonpublic
 1102 sector buses, as defined in s. 316.003 ~~316.003(78)~~, which
 1103 standards shall be those contained in 49 C.F.R. parts 382, 385,
 1104 and 390-397 and which shall be directed towards assuring that:

1105 (a) Nonpublic sector buses are safely maintained,
 1106 equipped, and operated.

1107 (b) Nonpublic sector buses are carrying the insurance
 1108 required by law and carrying liability insurance on the checked
 1109 baggage of passengers not to exceed the standard adopted by the
 1110 United States Department of Transportation.

1111 (c) Florida license tags are purchased for nonpublic
 1112 sector buses pursuant to s. 320.38.

1113 (d) The driving records of drivers of nonpublic sector
 1114 buses are checked by their employers at least once each year to
 1115 ascertain whether the driver has a suspended or revoked driver
 1116 license.

1117 Section 21. Paragraph (a) of subsection (1) of section
 1118 320.01, Florida Statutes, is amended to read:

1119 320.01 Definitions, general.—As used in the Florida
 1120 Statutes, except as otherwise provided, the term:

1121 (1) "Motor vehicle" means:

1122 (a) An automobile, motorcycle, truck, trailer,
 1123 semitrailer, truck tractor and semitrailer combination, or any
 1124 other vehicle operated on the roads of this state, used to
 1125 transport persons or property, and propelled by power other than
 1126 muscular power, but the term does not include traction engines,
 1127 road rollers, special mobile equipment as defined in s. 316.003
 1128 ~~316.003(48)~~, vehicles that run only upon a track, bicycles,
 1129 swamp buggies, or mopeds.

1130 Section 22. Section 320.08, Florida Statutes, is amended
 1131 to read:

1132 320.08 License taxes.—Except as otherwise provided herein,
 1133 there are hereby levied and imposed annual license taxes for the
 1134 operation of motor vehicles, mopeds, motorized bicycles as
 1135 defined in s. 316.003(3) ~~316.003(2)~~, tri-vehicles as defined in
 1136 s. 316.003, and mobile homes, as defined in s. 320.01, which
 1137 shall be paid to and collected by the department or its agent
 1138 upon the registration or renewal of registration of the
 1139 following:

1140 (1) MOTORCYCLES AND MOPEDS.—

1141 (a) Any motorcycle: \$10 flat.

1142 (b) Any moped: \$5 flat.

1143 (c) Upon registration of a motorcycle, motor-driven cycle,
 1144 or moped, in addition to the license taxes specified in this

1145 subsection, a nonrefundable motorcycle safety education fee in
 1146 the amount of \$2.50 shall be paid. The proceeds of such
 1147 additional fee shall be deposited in the Highway Safety
 1148 Operating Trust Fund to fund a motorcycle driver improvement
 1149 program implemented pursuant to s. 322.025, the Florida
 1150 Motorcycle Safety Education Program established in s. 322.0255,
 1151 or the general operations of the department.

1152 (d) An ancient or antique motorcycle: \$7.50 flat, of which
 1153 \$2.50 shall be deposited into the General Revenue Fund.

1154 (2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

1155 (a) An ancient or antique automobile, as defined in s.
 1156 320.086, or a street rod, as defined in s. 320.0863: \$7.50 flat.

1157 (b) Net weight of less than 2,500 pounds: \$14.50 flat.

1158 (c) Net weight of 2,500 pounds or more, but less than
 1159 3,500 pounds: \$22.50 flat.

1160 (d) Net weight of 3,500 pounds or more: \$32.50 flat.

1161 (3) TRUCKS.—

1162 (a) Net weight of less than 2,000 pounds: \$14.50 flat.

1163 (b) Net weight of 2,000 pounds or more, but not more than
 1164 3,000 pounds: \$22.50 flat.

1165 (c) Net weight more than 3,000 pounds, but not more than
 1166 5,000 pounds: \$32.50 flat.

1167 (d) A truck defined as a "goat," or other vehicle if used
 1168 in the field by a farmer or in the woods for the purpose of
 1169 harvesting a crop, including naval stores, during such
 1170 harvesting operations, and which is not principally operated

1171 upon the roads of the state: \$7.50 flat. The term "goat" means a
 1172 motor vehicle designed, constructed, and used principally for
 1173 the transportation of citrus fruit within citrus groves or for
 1174 the transportation of crops on farms, and which can also be used
 1175 for hauling associated equipment or supplies, including required
 1176 sanitary equipment, and the towing of farm trailers.

1177 (e) An ancient or antique truck, as defined in s. 320.086:
 1178 \$7.50 flat.

1179 (4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS
 1180 VEHICLE WEIGHT.—

1181 (a) Gross vehicle weight of 5,001 pounds or more, but less
 1182 than 6,000 pounds: \$60.75 flat, of which \$15.75 shall be
 1183 deposited into the General Revenue Fund.

1184 (b) Gross vehicle weight of 6,000 pounds or more, but less
 1185 than 8,000 pounds: \$87.75 flat, of which \$22.75 shall be
 1186 deposited into the General Revenue Fund.

1187 (c) Gross vehicle weight of 8,000 pounds or more, but less
 1188 than 10,000 pounds: \$103 flat, of which \$27 shall be deposited
 1189 into the General Revenue Fund.

1190 (d) Gross vehicle weight of 10,000 pounds or more, but
 1191 less than 15,000 pounds: \$118 flat, of which \$31 shall be
 1192 deposited into the General Revenue Fund.

1193 (e) Gross vehicle weight of 15,000 pounds or more, but
 1194 less than 20,000 pounds: \$177 flat, of which \$46 shall be
 1195 deposited into the General Revenue Fund.

1196 (f) Gross vehicle weight of 20,000 pounds or more, but

1197 | less than 26,001 pounds: \$251 flat, of which \$65 shall be
 1198 | deposited into the General Revenue Fund.

1199 | (g) Gross vehicle weight of 26,001 pounds or more, but
 1200 | less than 35,000: \$324 flat, of which \$84 shall be deposited
 1201 | into the General Revenue Fund.

1202 | (h) Gross vehicle weight of 35,000 pounds or more, but
 1203 | less than 44,000 pounds: \$405 flat, of which \$105 shall be
 1204 | deposited into the General Revenue Fund.

1205 | (i) Gross vehicle weight of 44,000 pounds or more, but
 1206 | less than 55,000 pounds: \$773 flat, of which \$201 shall be
 1207 | deposited into the General Revenue Fund.

1208 | (j) Gross vehicle weight of 55,000 pounds or more, but
 1209 | less than 62,000 pounds: \$916 flat, of which \$238 shall be
 1210 | deposited into the General Revenue Fund.

1211 | (k) Gross vehicle weight of 62,000 pounds or more, but
 1212 | less than 72,000 pounds: \$1,080 flat, of which \$280 shall be
 1213 | deposited into the General Revenue Fund.

1214 | (l) Gross vehicle weight of 72,000 pounds or more: \$1,322
 1215 | flat, of which \$343 shall be deposited into the General Revenue
 1216 | Fund.

1217 | (m) Notwithstanding the declared gross vehicle weight, a
 1218 | truck tractor used within a 150-mile radius of its home address
 1219 | is eligible for a license plate for a fee of \$324 flat if:

1220 | 1. The truck tractor is used exclusively for hauling
 1221 | forestry products; or

1222 | 2. The truck tractor is used primarily for the hauling of

1223 forestry products, and is also used for the hauling of
 1224 associated forestry harvesting equipment used by the owner of
 1225 the truck tractor.

1226
 1227 Of the fee imposed by this paragraph, \$84 shall be deposited
 1228 into the General Revenue Fund.

1229 (n) A truck tractor or heavy truck, not operated as a for-
 1230 hire vehicle, which is engaged exclusively in transporting raw,
 1231 unprocessed, and nonmanufactured agricultural or horticultural
 1232 products within a 150-mile radius of its home address, is
 1233 eligible for a restricted license plate for a fee of:

1234 1. If such vehicle's declared gross vehicle weight is less
 1235 than 44,000 pounds, \$87.75 flat, of which \$22.75 shall be
 1236 deposited into the General Revenue Fund.

1237 2. If such vehicle's declared gross vehicle weight is
 1238 44,000 pounds or more and such vehicle only transports from the
 1239 point of production to the point of primary manufacture; to the
 1240 point of assembling the same; or to a shipping point of a rail,
 1241 water, or motor transportation company, \$324 flat, of which \$84
 1242 shall be deposited into the General Revenue Fund.

1243
 1244 Such not-for-hire truck tractors and heavy trucks used
 1245 exclusively in transporting raw, unprocessed, and
 1246 nonmanufactured agricultural or horticultural products may be
 1247 incidentally used to haul farm implements and fertilizers
 1248 delivered direct to the growers. The department may require any

1249 documentation deemed necessary to determine eligibility prior to
 1250 issuance of this license plate. For the purpose of this
 1251 paragraph, "not-for-hire" means the owner of the motor vehicle
 1252 must also be the owner of the raw, unprocessed, and
 1253 nonmanufactured agricultural or horticultural product, or the
 1254 user of the farm implements and fertilizer being delivered.

1255 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
 1256 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

1257 (a)1. A semitrailer drawn by a GVW truck tractor by means
 1258 of a fifth-wheel arrangement: \$13.50 flat per registration year
 1259 or any part thereof, of which \$3.50 shall be deposited into the
 1260 General Revenue Fund.

1261 2. A semitrailer drawn by a GVW truck tractor by means of
 1262 a fifth-wheel arrangement: \$68 flat per permanent registration,
 1263 of which \$18 shall be deposited into the General Revenue Fund.

1264 (b) A motor vehicle equipped with machinery and designed
 1265 for the exclusive purpose of well drilling, excavation,
 1266 construction, spraying, or similar activity, and which is not
 1267 designed or used to transport loads other than the machinery
 1268 described above over public roads: \$44 flat, of which \$11.50
 1269 shall be deposited into the General Revenue Fund.

1270 (c) A school bus used exclusively to transport pupils to
 1271 and from school or school or church activities or functions
 1272 within their own county: \$41 flat, of which \$11 shall be
 1273 deposited into the General Revenue Fund.

1274 (d) A wrecker, as defined in s. 320.01, which is used to

1275 tow a vessel as defined in s. 327.02, a disabled, abandoned,
 1276 stolen-recovered, or impounded motor vehicle as defined in s.
 1277 320.01, or a replacement motor vehicle as defined in s. 320.01:
 1278 \$41 flat, of which \$11 shall be deposited into the General
 1279 Revenue Fund.

1280 (e) A wrecker that is used to tow any nondisabled motor
 1281 vehicle, a vessel, or any other cargo unless used as defined in
 1282 paragraph (d), as follows:

1283 1. Gross vehicle weight of 10,000 pounds or more, but less
 1284 than 15,000 pounds: \$118 flat, of which \$31 shall be deposited
 1285 into the General Revenue Fund.

1286 2. Gross vehicle weight of 15,000 pounds or more, but less
 1287 than 20,000 pounds: \$177 flat, of which \$46 shall be deposited
 1288 into the General Revenue Fund.

1289 3. Gross vehicle weight of 20,000 pounds or more, but less
 1290 than 26,000 pounds: \$251 flat, of which \$65 shall be deposited
 1291 into the General Revenue Fund.

1292 4. Gross vehicle weight of 26,000 pounds or more, but less
 1293 than 35,000 pounds: \$324 flat, of which \$84 shall be deposited
 1294 into the General Revenue Fund.

1295 5. Gross vehicle weight of 35,000 pounds or more, but less
 1296 than 44,000 pounds: \$405 flat, of which \$105 shall be deposited
 1297 into the General Revenue Fund.

1298 6. Gross vehicle weight of 44,000 pounds or more, but less
 1299 than 55,000 pounds: \$772 flat, of which \$200 shall be deposited
 1300 into the General Revenue Fund.

1301 7. Gross vehicle weight of 55,000 pounds or more, but less
 1302 than 62,000 pounds: \$915 flat, of which \$237 shall be deposited
 1303 into the General Revenue Fund.

1304 8. Gross vehicle weight of 62,000 pounds or more, but less
 1305 than 72,000 pounds: \$1,080 flat, of which \$280 shall be
 1306 deposited into the General Revenue Fund.

1307 9. Gross vehicle weight of 72,000 pounds or more: \$1,322
 1308 flat, of which \$343 shall be deposited into the General Revenue
 1309 Fund.

1310 (f) A hearse or ambulance: \$40.50 flat, of which \$10.50
 1311 shall be deposited into the General Revenue Fund.

1312 (6) MOTOR VEHICLES FOR HIRE.—

1313 (a) Under nine passengers: \$17 flat, of which \$4.50 shall
 1314 be deposited into the General Revenue Fund; plus \$1.50 per cwt,
 1315 of which 50 cents shall be deposited into the General Revenue
 1316 Fund.

1317 (b) Nine passengers and over: \$17 flat, of which \$4.50
 1318 shall be deposited into the General Revenue Fund; plus \$2 per
 1319 cwt, of which 50 cents shall be deposited into the General
 1320 Revenue Fund.

1321 (7) TRAILERS FOR PRIVATE USE.—

1322 (a) Any trailer weighing 500 pounds or less: \$6.75 flat
 1323 per year or any part thereof, of which \$1.75 shall be deposited
 1324 into the General Revenue Fund.

1325 (b) Net weight over 500 pounds: \$3.50 flat, of which \$1
 1326 shall be deposited into the General Revenue Fund; plus \$1 per

1327 cwt, of which 25 cents shall be deposited into the General
 1328 Revenue Fund.

1329 (8) TRAILERS FOR HIRE.—

1330 (a) Net weight under 2,000 pounds: \$3.50 flat, of which \$1
 1331 shall be deposited into the General Revenue Fund; plus \$1.50 per
 1332 cwt, of which 50 cents shall be deposited into the General
 1333 Revenue Fund.

1334 (b) Net weight 2,000 pounds or more: \$13.50 flat, of which
 1335 \$3.50 shall be deposited into the General Revenue Fund; plus
 1336 \$1.50 per cwt, of which 50 cents shall be deposited into the
 1337 General Revenue Fund.

1338 (9) RECREATIONAL VEHICLE-TYPE UNITS.—

1339 (a) A travel trailer or fifth-wheel trailer, as defined by
 1340 s. 320.01(1)(b), that does not exceed 35 feet in length: \$27
 1341 flat, of which \$7 shall be deposited into the General Revenue
 1342 Fund.

1343 (b) A camping trailer, as defined by s. 320.01(1)(b)2.:
 1344 \$13.50 flat, of which \$3.50 shall be deposited into the General
 1345 Revenue Fund.

1346 (c) A motor home, as defined by s. 320.01(1)(b)4.:

1347 1. Net weight of less than 4,500 pounds: \$27 flat, of
 1348 which \$7 shall be deposited into the General Revenue Fund.

1349 2. Net weight of 4,500 pounds or more: \$47.25 flat, of
 1350 which \$12.25 shall be deposited into the General Revenue Fund.

1351 (d) A truck camper as defined by s. 320.01(1)(b)3.:

1352 1. Net weight of less than 4,500 pounds: \$27 flat, of

1353 | which \$7 shall be deposited into the General Revenue Fund.
 1354 | 2. Net weight of 4,500 pounds or more: \$47.25 flat, of
 1355 | which \$12.25 shall be deposited into the General Revenue Fund.
 1356 | (e) A private motor coach as defined by s. 320.01(1)(b)5.:
 1357 | 1. Net weight of less than 4,500 pounds: \$27 flat, of
 1358 | which \$7 shall be deposited into the General Revenue Fund.
 1359 | 2. Net weight of 4,500 pounds or more: \$47.25 flat, of
 1360 | which \$12.25 shall be deposited into the General Revenue Fund.
 1361 | (10) PARK TRAILERS; TRAVEL TRAILERS; FIFTH-WHEEL TRAILERS;
 1362 | 35 FEET TO 40 FEET.—
 1363 | (a) Park trailers.—Any park trailer, as defined in s.
 1364 | 320.01(1)(b)7.: \$25 flat.
 1365 | (b) A travel trailer or fifth-wheel trailer, as defined in
 1366 | s. 320.01(1)(b), that exceeds 35 feet: \$25 flat.
 1367 | (11) MOBILE HOMES.—
 1368 | (a) A mobile home not exceeding 35 feet in length: \$20
 1369 | flat.
 1370 | (b) A mobile home over 35 feet in length, but not
 1371 | exceeding 40 feet: \$25 flat.
 1372 | (c) A mobile home over 40 feet in length, but not
 1373 | exceeding 45 feet: \$30 flat.
 1374 | (d) A mobile home over 45 feet in length, but not
 1375 | exceeding 50 feet: \$35 flat.
 1376 | (e) A mobile home over 50 feet in length, but not
 1377 | exceeding 55 feet: \$40 flat.
 1378 | (f) A mobile home over 55 feet in length, but not

1379 | exceeding 60 feet: \$45 flat.

1380 | (g) A mobile home over 60 feet in length, but not
1381 | exceeding 65 feet: \$50 flat.

1382 | (h) A mobile home over 65 feet in length: \$80 flat.

1383 | (12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised
1384 | motor vehicle dealer, independent motor vehicle dealer, marine
1385 | boat trailer dealer, or mobile home dealer and manufacturer
1386 | license plate: \$17 flat, of which \$4.50 shall be deposited into
1387 | the General Revenue Fund.

1388 | (13) EXEMPT OR OFFICIAL LICENSE PLATES.—Any exempt or
1389 | official license plate: \$4 flat, of which \$1 shall be deposited
1390 | into the General Revenue Fund.

1391 | (14) LOCALLY OPERATED MOTOR VEHICLES FOR HIRE.—A motor
1392 | vehicle for hire operated wholly within a city or within 25
1393 | miles thereof: \$17 flat, of which \$4.50 shall be deposited into
1394 | the General Revenue Fund; plus \$2 per cwt, of which 50 cents
1395 | shall be deposited into the General Revenue Fund.

1396 | (15) TRANSPORTER.—Any transporter license plate issued to
1397 | a transporter pursuant to s. 320.133: \$101.25 flat, of which
1398 | \$26.25 shall be deposited into the General Revenue Fund.

1399 | Section 23. Subsection (1) of section 320.0801, Florida
1400 | Statutes, is amended to read:

1401 | 320.0801 Additional license tax on certain vehicles.—

1402 | (1) In addition to the license taxes specified in s.
1403 | 320.08 and in subsection (2), there is hereby levied and imposed
1404 | an annual license tax of 10 cents for the operation of a motor

1405 vehicle, as defined in s. 320.01, and moped, as defined in s.
 1406 316.003 ~~316.003(77)~~, which tax shall be paid to the department
 1407 or its agent upon the registration or renewal of registration of
 1408 the vehicle. Notwithstanding the provisions of s. 320.20,
 1409 revenues collected from the tax imposed in this subsection shall
 1410 be deposited in the Emergency Medical Services Trust Fund and
 1411 used solely for the purpose of carrying out the provisions of
 1412 ss. 395.401, 395.4015, 395.404, and 395.4045 and s. 11, chapter
 1413 87-399, Laws of Florida.

1414 Section 24. Section 320.38, Florida Statutes, is amended
 1415 to read:

1416 320.38 When nonresident exemption not allowed.—The
 1417 provisions of s. 320.37 authorizing the operation of motor
 1418 vehicles over the roads of this state by nonresidents of this
 1419 state when such vehicles are duly registered or licensed under
 1420 the laws of some other state or foreign country do not apply to
 1421 any nonresident who accepts employment or engages in any trade,
 1422 profession, or occupation in this state, except a nonresident
 1423 migrant or seasonal farm worker as defined in s. 316.003
 1424 ~~316.003(61)~~. In every case in which a nonresident, except a
 1425 nonresident migrant or seasonal farm worker as defined in s.
 1426 316.003 ~~316.003(61)~~, accepts employment or engages in any trade,
 1427 profession, or occupation in this state or enters his or her
 1428 children to be educated in the public schools of this state,
 1429 such nonresident shall, within 10 days after the commencement of
 1430 such employment or education, register his or her motor vehicles

1431 in this state if such motor vehicles are proposed to be operated
 1432 on the roads of this state. Any person who is enrolled as a
 1433 student in a college or university and who is a nonresident but
 1434 who is in this state for a period of up to 6 months engaged in a
 1435 work-study program for which academic credits are earned from a
 1436 college whose credits or degrees are accepted for credit by at
 1437 least three accredited institutions of higher learning, as
 1438 defined in s. 1005.02, is not required to have a Florida
 1439 registration for the duration of the work-study program if the
 1440 person's vehicle is properly registered in another jurisdiction.
 1441 Any nonresident who is enrolled as a full-time student in such
 1442 institution of higher learning is also exempt for the duration
 1443 of such enrollment.

1444 Section 25. Subsection (1) of section 322.031, Florida
 1445 Statutes, is amended to read:

1446 322.031 Nonresident; when license required.—

1447 (1) In each case in which a nonresident, except a
 1448 nonresident migrant or seasonal farm worker as defined in s.
 1449 316.003 ~~316.003(61)~~, accepts employment or engages in a trade,
 1450 profession, or occupation in this state or enters his or her
 1451 children to be educated in the public schools of this state,
 1452 such nonresident shall, within 30 days after beginning such
 1453 employment or education, be required to obtain a Florida driver
 1454 license if such nonresident operates a motor vehicle on the
 1455 highways of this state. The spouse or dependent child of such
 1456 nonresident shall also be required to obtain a Florida driver

1457 license within that 30-day period before operating a motor
 1458 vehicle on the highways of this state.

1459 Section 26. Subsection (3) of section 450.181, Florida
 1460 Statutes, is amended to read:

1461 450.181 Definitions.—As used in part II, unless the
 1462 context clearly requires a different meaning:

1463 (3) The term "migrant laborer" has the same meaning as
 1464 migrant or seasonal farm workers as defined in s. 316.003
 1465 ~~316.003(61)~~.

1466 Section 27. Subsection (5) of section 559.903, Florida
 1467 Statutes, is amended to read:

1468 559.903 Definitions.—As used in this act:

1469 (5) "Motor vehicle" means any automobile, truck, bus,
 1470 recreational vehicle, motorcycle, motor scooter, or other motor
 1471 powered vehicle, but does not include trailers, mobile homes,
 1472 travel trailers, trailer coaches without independent motive
 1473 power, watercraft or aircraft, or special mobile equipment as
 1474 defined in s. 316.003 ~~316.003(48)~~.

1475 Section 28. Subsection (1) of section 655.960, Florida
 1476 Statutes, is amended to read:

1477 655.960 Definitions; ss. 655.960-655.965.—As used in this
 1478 section and ss. 655.961-655.965, unless the context otherwise
 1479 requires:

1480 (1) "Access area" means any paved walkway or sidewalk
 1481 which is within 50 feet of any automated teller machine. The
 1482 term does not include any street or highway open to the use of

1483 the public, as defined in s. 316.003(75)(a) or (b)
 1484 ~~316.003(53)(a) or (b)~~, including any adjacent sidewalk, as
 1485 defined in s. 316.003 ~~316.003(47)~~.

1486 Section 29. Paragraph (b) of subsection (2) of section
 1487 732.402, Florida Statutes, is amended to read:

1488 732.402 Exempt property.—

1489 (2) Exempt property shall consist of:

1490 (b) Two motor vehicles as defined in s. 316.003
 1491 ~~316.003(21)~~, which do not, individually as to either such motor
 1492 vehicle, have a gross vehicle weight in excess of 15,000 pounds,
 1493 held in the decedent's name and regularly used by the decedent
 1494 or members of the decedent's immediate family as their personal
 1495 motor vehicles.

1496 Section 30. Subsection (1) of section 860.065, Florida
 1497 Statutes, is amended to read:

1498 860.065 Commercial transportation; penalty for use in
 1499 commission of a felony.—

1500 (1) It is unlawful for any person to attempt to obtain,
 1501 solicit to obtain, or obtain any means of public or commercial
 1502 transportation or conveyance, including vessels, aircraft,
 1503 railroad trains, or commercial vehicles as defined in s. 316.003
 1504 ~~316.003(66)~~, with the intent to use such public or commercial
 1505 transportation or conveyance to commit any felony or to
 1506 facilitate the commission of any felony.

1507 Section 31. This act shall take effect October 1, 2016.



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)

Remove lines 650-674 and insert:

Section 2. Subsection (1) and paragraphs (e) and (f) of subsection (2) of section 316.027, Florida Statutes, are amended to read:

316.027 Crash involving death or personal injuries.—

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

~~(a)~~ "Serious bodily injury" means an injury to a person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

~~(b) "Vulnerable road user" means:~~



Amendment No. 1

18 ~~1. A pedestrian, including a person actually engaged in~~
19 ~~work upon a highway, or in work upon utility facilities along a~~
20 ~~highway, or engaged in the provision of emergency services~~
21 ~~within the right-of-way;~~

22 ~~2. A person operating a bicycle, motorcycle, scooter, or~~
23 ~~moped lawfully on the roadway;~~

24 ~~3. A person riding an animal; or~~

25 ~~4. A person lawfully operating on a public right-of-way,~~
26 ~~crosswalk, or shoulder of the roadway:~~

27 ~~a. A farm tractor or similar vehicle designed primarily~~
28 ~~for farm use;~~

29 ~~b. A skateboard, roller skates, or in-line skates;~~

30 ~~c. A horse-drawn carriage;~~

31 ~~d. An electric personal assistive mobility device; or~~

32 ~~e. A wheelchair.~~

33 (2)

34 (e) A driver who violates paragraph (a), paragraph (b), or
35 paragraph (c) shall have his or her driver license revoked for
36 at least 3 years as provided in s. 322.28(4).

37 1. A person convicted of violating paragraph (a),
38 paragraph (b), or paragraph (c) shall, before his or her driving
39 privilege may be reinstated, present to the department proof of
40 completion of a victim's impact panel session in a judicial
41 circuit if such a panel exists, or if such a panel does not
42 exist, a department-approved driver improvement course relating



Amendment No. 1

43 to the rights of vulnerable ~~road~~ users relative to vehicles on
44 the roadway as provided in s. 322.0261(2).

45 2. The department may reinstate an offender's driving
46 privilege after he or she satisfies the 3-year revocation period
47 as provided in s. 322.28(4) and successfully completes either a
48 victim's impact panel session or a department-approved driver
49 improvement course relating to the rights of vulnerable ~~road~~
50 users relative to vehicles on the roadway as provided in s.
51 322.0261(2).

52 3. For purposes of this paragraph, an offender's driving
53 privilege may be reinstated only after the department verifies
54 that the offender participated in and successfully completed a
55 victim's impact panel session or a department-approved driver
56 improvement course.

57 (f) For purposes of sentencing under chapter 921 and
58 determining incentive gain-time eligibility under chapter 944,
59 an offense listed in this subsection is ranked one level above
60 the ranking specified in s. 921.0022 or s. 921.0023 for the
61 offense committed if the victim of the offense was a vulnerable
62 ~~road~~ user.

63 -----
64

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

66 Remove lines 3-7 and insert:



Amendment No. 1

67 | 316.003, F.S.; providing definitions; amending s. 316.027, F.S. ;
68 | deleting the definition of "vulnerable road user;" conforming
69 | provision to changes made by the act; amending s. 316.083,



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee
 3 Representative Passidomo offered the following:

4
5 **Amendment**

6 Remove line 693 and insert:
 7 motor vehicle, anything extending from the motor vehicle, or



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee
3 Representative Passidomo offered the following:

Amendment (with title amendment)

Between lines 1506 and 1507, insert:

7 Section 31. For the purpose of incorporating the amendment
8 made by this act to section 316.1925, Florida Statutes, in a
9 reference thereto, paragraph (b) of subsection (4) of section
10 316.072, Florida Statutes, is reenacted to read:

11 316.072 Obedience to and effect of traffic laws.—

12 (4) PUBLIC OFFICERS AND EMPLOYEES TO OBEY CHAPTER;
13 EXCEPTIONS.—

14 (b) Unless specifically made applicable, the provisions of
15 this chapter, except those contained in ss. 316.192, 316.1925,
16 and 316.193, shall not apply to persons, teams, or motor
17 vehicles and other equipment while actually engaged in work upon



Amendment No. 3

18 the surface of a highway, but shall apply to such persons and
19 vehicles when traveling to or from such work.

20 Section 32. For the purpose of incorporating the
21 amendments made by this act to sections 316.083 and 316.084,
22 Florida Statutes, in references thereto, subsection (5) of
23 section 316.1923, Florida Statutes, is reenacted to read:

24 316.1923 Aggressive careless driving.—"Aggressive careless
25 driving" means committing two or more of the following acts
26 simultaneously or in succession:

27 (5) Improperly passing as defined in s. 316.083, s.
28 316.084, or s. 316.085.

29 Section 33. For the purpose of incorporating the amendment
30 made by this act to section 318.19, Florida Statutes, in a
31 reference thereto, subsection (2) of section 318.14, Florida
32 Statutes, is reenacted to read:

33 318.14 Noncriminal traffic infractions; exception;
34 procedures.—

35 (2) Except as provided in ss. 316.1001(2) and 316.0083,
36 any person cited for a violation requiring a mandatory hearing
37 listed in s. 318.19 or any other criminal traffic violation
38 listed in chapter 316 must sign and accept a citation indicating
39 a promise to appear. The officer may indicate on the traffic
40 citation the time and location of the scheduled hearing and must
41 indicate the applicable civil penalty established in s. 318.18.
42 For all other infractions under this section, except for
43 infractions under s. 316.1001, the officer must certify by



Amendment No. 3

44 | electronic, electronic facsimile, or written signature that the
45 | citation was delivered to the person cited. This certification
46 | is prima facie evidence that the person cited was served with
47 | the citation.

48 | Section 34. For the purpose of incorporating the amendment
49 | made by this act to section 316.2065, Florida Statutes, in a
50 | reference thereto, paragraph (b) of subsection (1) of section
51 | 318.18, Florida Statutes, is reenacted to read:

52 | 318.18 Amount of penalties.—The penalties required for a
53 | noncriminal disposition pursuant to s. 318.14 or a criminal
54 | offense listed in s. 318.17 are as follows:

55 | (1) Fifteen dollars for:

56 | (b) All infractions of s. 316.2065, unless otherwise
57 | specified.

58 | Section 35. For the purpose of incorporating the amendment
59 | made by this act to section 316.027, Florida Statutes, in a
60 | reference thereto, subsection (2) of section 322.0261, Florida
61 | Statutes, is reenacted to read:

62 | 322.0261 Driver improvement course; requirement to
63 | maintain driving privileges; failure to complete; department
64 | approval of course.—

65 | (2) With respect to an operator convicted of, or who
66 | pleaded nolo contendere to, a traffic offense giving rise to a
67 | crash identified in paragraph (1)(a) or paragraph (1)(b), the
68 | department shall require that the operator, in addition to other
69 | applicable penalties, attend a department-approved driver



Amendment No. 3

70 improvement course in order to maintain his or her driving
71 privileges. The department shall include in the course
72 curriculum instruction specifically addressing the rights of
73 vulnerable road users as defined in s. 316.027 relative to
74 vehicles on the roadway. If the operator fails to complete the
75 course within 90 days after receiving notice from the
76 department, the operator's driver license shall be canceled by
77 the department until the course is successfully completed.

78
79 -----
80 **T I T L E A M E N D M E N T**

81 Remove line 38 and insert:

82 references; reenacting s. 316.072(4)(b), F.S., relating to
83 obedience to and effect of traffic laws, to incorporate the
84 amendment made by the act to s. 316.1925, F.S., in a reference
85 thereto; reenacting s. 316.1923(5), F.S., relating to aggressive
86 careless driving, to incorporate the amendment made by the act
87 to ss. 316.083 and 316.084, F.S., in references thereto;
88 reenacting s. 318.14(2), F.S., relating to noncriminal traffic
89 infractions, to incorporate the amendment made by the act to s.
90 318.19, F.S., in a reference thereto; reenacting s.
91 318.18(11)(b), F.S., relating to amount of penalties, to
92 incorporate the amendment made by the act to s. 316.2065, F.S.,
93 in a reference thereto; reenacting s. 322.0261(2), F.S.,
94 relating to driver improvement course, to incorporate the



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 253 (2016)

Amendment No. 3

95 amendment made by the act to s. 316.027, F.S., in a reference
96 thereto; providing an effective date.



Amendment No. 4

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 Baxley offered the following:

Amendment (with title amendment)

Between lines 918 and 919, insert:

Section 11. Section 318.195, Florida Statutes, is created to read:

318.195 Enhanced penalties for moving violations causing serious bodily injury or death to a vulnerable user.-

(1) For purposes of this section, the term "serious bodily injury" means an injury to a person, other than the driver cited for a moving violation under this section, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(2) A person who commits a moving violation under ch. 316



Amendment No. 4

18 that causes:

19 (a) Serious bodily injury to a vulnerable user, as defined
20 in s. 316.003, commits a misdemeanor of the second degree,
21 punishable as provided in s. 775.082 or s. 775.083, and upon
22 conviction, shall pay a fine of \$1,500, be sentenced to at least
23 30 days of electronic monitoring, and attend a department-
24 approved driver improvement course. The court shall also suspend
25 the person's driver license for at least 30 days.

26 (b) The death of a vulnerable user, as defined in s.
27 316.003, commits a misdemeanor of the first degree, punishable
28 as provided in s. 775.082 or s.775.083, and, upon conviction,
29 shall pay a fine of \$5,000, be sentenced to at least 6 months of
30 electronic monitoring, and attend a department-approved advanced
31 driver improvement course. The court shall also suspend the
32 person's driver license for at least 1 year.

33 Section 12. Subsections (2), (4), and (5) of section
34 322.0261, Florida Statutes, are amended to read:

35 322.0261 Driver improvement course; requirement to
36 maintain driving privileges; failure to complete; department
37 approval of course.-

38 (2)(a) With respect to an operator convicted of, or who
39 pleaded nolo contendere to, a traffic offense giving rise to a
40 crash identified in paragraph (1)(a) or paragraph (1)(b), the
41 department shall require that the operator, in addition to other
42 applicable penalties, attend a department-approved driver
43 improvement course in order to maintain his or her driving



Amendment No. 4

44 | privileges. The department shall require ~~include in~~ the course
45 | curriculum to include instruction specifically addressing the
46 | rights of vulnerable ~~read~~ users as defined in s. 316.003 ~~316.027~~
47 | relative to vehicles on the roadway. If the operator fails to
48 | complete the course within 90 days after receiving notice from
49 | the department, the operator's driver license shall be canceled
50 | by the department until the course is successfully completed.

51 | (b) With respect to a person required to attend a
52 | department-approved advanced driver improvement course under s.
53 | 318.195(2), the department shall require that the person, in
54 | addition to other applicable penalties, attend a department-
55 | approved advanced driver improvement course in order to
56 | reinstate his or her driving privileges. The department shall
57 | require the course curriculum to include instruction
58 | specifically addressing the rights of vulnerable users as
59 | defined in s. 316.003 relative to vehicles on the roadway. The
60 | person's driver license shall not be reinstated by the
61 | department until the course is successfully completed.

62 | (5) (a) In determining whether to approve a driver
63 | improvement course for the purposes of this section, the
64 | department shall consider course content designed to promote
65 | safety, driver awareness, crash avoidance techniques, and other
66 | factors or criteria to improve driver performance from a safety
67 | viewpoint.

68 | (b) In determining whether to approve an advanced driver
69 | improvement course as required under paragraph (2)(b), the



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70 department shall consider the duration of the course and
71 advanced course content relating to the rights and safety of
72 vulnerable users in addition to the factors specified under
73 paragraph (a).

74 Section 13. For the purpose of incorporating the amendment
75 made by this act to section 322.0261, Florida Statutes, in
76 references thereto, subsection (1), paragraph (b) of subsection
77 (2), subsection (4), and paragraph (a) of subsection (6) of
78 section 318.1451, Florida Statutes, are reenacted to read:

79 318.1451 Driver improvement schools.-

80 (1) The department shall approve and regulate the courses
81 of all driver improvement schools, as the courses relate to ss.
82 318.14(9), 322.0261, and 322.291, including courses that use
83 technology as a delivery method.

84 (2)

85 (b) In determining whether to approve courses of driver
86 improvement schools that use technology as the delivery method
87 as the courses relate to ss. 318.14(9) and 322.0261, the
88 department shall consider only those courses submitted by a
89 person, business, or entity which have approval for statewide
90 delivery.

91 (4) In addition to a regular course fee, an assessment fee
92 in the amount of \$2.50 shall be collected by the school from
93 each person who elects to attend a course, as it relates to ss.
94 318.14(9), 322.0261, 322.291, and 627.06501. The course provider
95 must remit the \$2.50 assessment fee to the department for



Amendment No. 4

96 deposit into the Highway Safety Operating Trust Fund in order to
97 receive unique course completion certificate numbers for course
98 participants. The assessment fee will be used to administer this
99 program and to fund the general operations of the department.

100 (6) The department shall adopt rules establishing and
101 maintaining policies and procedures to implement the
102 requirements of this section. These policies and procedures may
103 include, but shall not be limited to, the following:

104 (a) Effectiveness studies.—The department shall conduct
105 effectiveness studies on each type of driver improvement course
106 pertaining to ss. 318.14(9), 322.0261, and 322.291 on a
107 recurring 5-year basis, including in the study process the
108 consequence of failed studies.

109
110 -----
111 **T I T L E A M E N D M E N T**

112 Remove line 33 and insert:

113 note certain information on the citation; creating s.
114 318.195, F.S.; providing criminal penalties for a person
115 who commits a moving violation that causes serious bodily
116 injury to or death of a vulnerable user; requiring the
117 court to revoke the person's driver license for a specified
118 period; providing for application to other violations;
119 amending s. 322.0261, F.S., relating to driver improvement
120 courses; providing for the Department of Highway Safety and
121 Motor Vehicles to approve an advanced driver improvement





Amendment No. 4

122 course for certain purposes; providing that a person's
123 driving privilege may not be reinstated until successful
124 completion of the course; reenacting s. 318.1451(1),
125 (2)(b), (4) and (6)(a), F.S., relating to driver
126 improvement schools, to incorporate the amendment made by
127 the act to s. 322.0261, F.S., in references thereto;
128 amending ss.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 47 Offenses Against Brokers, Broker Associates, or Sales Associates
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 214

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

SUMMARY ANALYSIS

Over the past several years, news outlets have reported on a number of violent crimes allegedly committed against brokers, broker associates, and sales associates (hereafter "real estate professionals"), while they were showing real property to prospective buyers. Florida law currently provides for criminal charges to be increased in severity when assault or battery is committed against various protected groups of people. Law enforcement officers, firefighters, sports officials, code inspectors, and people 65 years of age and older are some examples of protected groups. Florida law does not currently include real estate professionals as a protected group.

The bill reclassifies specific offenses committed against a real estate professional while he or she is engaged in showing real property or holding an open house of real property. The reclassified offenses include felony or misdemeanor violations of:

- Section 784.011, relating to assault;
- Section 784.021, relating to aggravated assault;
- Section 784.03, relating to battery and felony battery;
- Section 784.041(1), relating to felony battery;
- Section 784.045, relating to aggravated battery; or
- Section 794.011, relating to sexual battery.

The offenses listed above are reclassified by an increase of one degree, as follows:

- A misdemeanor of the second degree is reclassified as a misdemeanor of the first degree;
- A misdemeanor of the first degree is reclassified as a felony of the third degree;
- A felony of the third degree is reclassified as a felony of the second degree;
- A felony of the second degree is reclassified as a felony of the first degree; and
- A felony of the first degree is reclassified as a life felony.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department of Corrections (i.e., an increase of 10 or fewer beds). The bill may also have a positive jail bed impact.

The bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Violent Crimes against Real Estate Professionals

Over the past several years, news outlets have reported on a number of violent crimes allegedly committed against real estate brokers, broker associates, and sales associates (hereafter "real estate professionals"), while they were showing real property to prospective buyers.¹ The process for showing real estate often causes a real estate professional to be alone at a property with a prospective buyer, yet background checks cannot be completed on each prospective buyer before showing a property. A number of reported violent crimes have occurred against Florida real estate professionals while alone with prospective buyers in Manatee² and Pinellas³ counties.

Criminal Penalties

Assault

Assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.⁴ Assault is typically a second degree misdemeanor.⁵ However, if a perpetrator commits assault using a deadly weapon without intent to kill or commits assault with the intent to commit a felony, the crime constitutes aggravated assault⁶ and is punishable as a third degree felony.

Battery

Battery is to actually and intentionally touch or strike another person against the will of that person or intentionally causing bodily harm to another person.⁷ Battery is typically a first degree misdemeanor.⁸ However, battery can be enhanced to felony battery when a perpetrator commits a battery and causes great bodily harm, permanent disability, or permanent disfigurement to the victim,⁹ or when the perpetrator has one or more prior convictions for battery, aggravated battery, or felony battery, and commits a subsequent battery.¹⁰ Both forms of felony battery are third degree felonies.

Sexual Battery

Section 794.011, F.S., contains a variety of offenses relating to sexual battery. Depending on various factors, such as whether a deadly weapon is used or the victim is physically incapacitated, these

¹ WFTS Webteam & Michael Paluska, *Search on for Man Who Attacked Real Estate Agent*, ABC ACTION NEWS, WFTS TAMPA BAY (Aug. 11, 2015), <http://www.abcactionnews.com/news/region-sarasota-manatee/search-on-for-man-who-attacked-manatee-realtor> (last visited Oct. 21, 2015); Garrison, Trey, *After One Week, Missing Realtor's Trail Goes Cold*, HOUSING WIRE (June 24, 2015), <http://www.housingwire.com/articles/34293-after-one-week-missing-realtors-trail-goes-cold> (last visited Oct. 21, 2015); Ford, Dana, *Risky Business: Real Estate Agent's Killing Hits Home for Realtors*, CNN (Oct. 1, 2014), <http://www.cnn.com/2014/10/01/us/real-estate-risks/> (last visited Oct. 21, 2015).

² Conlon, Kendra, *Realtor Attacked during Showing in Bradenton*, 10 NEWS TAMPA BAY SARASOTA (Aug. 11, 2015), <http://www.wtsp.com/story/news/local/2015/08/10/realtor-attacked-during-showing-bradenton/31444577/> (last visited Oct. 21, 2015).

³ ABC News, *Florida Cops Fear Repeat of Attacks on Real Estate Agents*, ABC NEWS (June 5, 2015), <http://abcnews.go.com/US/florida-cops-fear-repeat-attacks-real-estate-agents/story?id=31547919> (last visited Oct. 21, 2015); Krueger, Curtis, *Man Who Attacked Realtor in St. Petersburg Home Gets Life Sentence*, TAMPA BAY TIMES (Jan. 13, 2012), <http://www.tampabay.com/news/courts/criminal/man-who-attacked-realtor-in-st-petersburg-home-gets-life-sentence/1210628> (last visited Oct. 21, 2015).

⁴ s. 784.011, F.S.

⁵ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

⁶ s. 784.021, F.S.

⁷ s. 784.03, F.S.

⁸ s. 784.03(1)(b), F.S.

⁹ s. 784.041(1), F.S.

¹⁰ s. 784.03(2), F.S.

offenses can be punishable as a third degree felony, a second degree felony, a first degree felony, a life felony, or a capital felony.

Criminal Offense Ranking Chart

Sections 775.082 and 775.083, F.S., establish the following penalties applicable to felony offenses:

- A capital felony must be punished by death if a sentencing proceeding results in findings by the court that the person must be punished by death, otherwise the person must be punished by life imprisonment and is ineligible for parole;
- A life felony committed on or after July 1, 1995, is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a \$15,000 fine;
- A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine;
- A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine; and
- A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine.

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998.¹¹ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe), and are assigned points based on the severity of the offense.¹² If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.¹³

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.¹⁴ A defendant's total sentence points are then entered into a mathematical computation that determines the defendant's lowest permissible sentence.¹⁵ The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense (the statutory maximum sentences for felonies are described above).¹⁶

Reclassification of Offenses in Florida

Florida law currently provides for criminal charges to be increased in severity when assault or battery is committed against various protected groups of people. Law enforcement officers,¹⁷ firefighters,¹⁸ sports officials,¹⁹ code inspectors,²⁰ and people 65 years of age and older²¹ are examples of such protected groups. However, Florida law does not currently include real estate professionals as a protected group.

Effect of the Bill

The bill reclassifies specific offenses committed against a broker, broker associate, or sales associate while he or she is engaged in showing real property or holding an open house of real property. The reclassified offenses include felony or misdemeanor violations of:

- Section 784.011, relating to assault;
- Section 784.021, relating to aggravated assault;
- Section 784.03, relating to battery and felony battery;
- Section 784.041(1), relating to felony battery;
- Section 784.045, relating to aggravated battery; or

¹¹ s. 921.002, F.S.

¹² s. 921.0022, F.S.

¹³ s. 921.0023, F.S.

¹⁴ s. 921.0024, F.S.

¹⁵ *Id.* Section 921.0026, F.S., prohibits a judge from imposing a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."

¹⁶ Section 921.0024(2), F.S.

¹⁷ s. 784.07, F.S.

¹⁸ *Id.*

¹⁹ s. 784.081, F.S.

²⁰ s. 784.083, F.S.

²¹ s. 784.08, F.S.

- Section 794.011, relating to sexual battery.

The offenses listed above are reclassified by an increase of one degree, as follows:

- A misdemeanor of the second degree is reclassified as a misdemeanor of the first degree;
- A misdemeanor of the first degree is reclassified as a felony of the third degree;
- A felony of the third degree is reclassified as a felony of the second degree;
- A felony of the second degree is reclassified as a felony of the first degree; and
- A felony of the first degree is reclassified as a life felony.

The bill defines “broker,” “broker associate,” and “sales associate” in accordance with the definitions provided s. 475.01, F.S.

The bill provides that for the purposes of sentencing and calculation of gain-time, any felony offense that is reclassified under the bill must be ranked one level above the ranking under ss. 921.0022 or 921.0023, F.S., of the offense committed.

B. SECTION DIRECTORY:

Section 1. Creates s. 775.0863, F.S., relating to offenses against brokers, broker associates, or sales associates; reclassification of offenses.

Section 2. Provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department of Corrections (i.e., an increase of 10 or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

As noted above, the bill reclassifies assault, battery, and sexual battery committed against brokers, broker associates, and sales associates. Increased jail sentence terms as a result of these reclassifications may have a positive jail bed impact on local governments.

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 the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to offenses against brokers, broker
 3 associates, or sales associates; creating s. 775.0863,
 4 F.S.; providing definitions; providing applicability;
 5 providing for reclassification of specified offenses
 6 committed on brokers, broker associates, or sales
 7 associates; providing an effective date.

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

10
 11 Section 1. Section 775.0863, Florida Statutes, is created
 12 to read:

13 775.0863 Offenses against brokers, broker associates, or
 14 sales associates; reclassification of offenses.-

15 (1) For purposes of this section, the terms "broker,"
 16 "broker associate," and "sales associate" have the same meanings
 17 as provided in s. 475.01.

18 (2) The degree of an offense shall be reclassified as
 19 provided in subsection (3) if the offense is committed against a
 20 broker, broker associate, or sales associate while he or she is
 21 engaged in the act of showing real property or holding an open
 22 house of real property and the offense is a felony or
 23 misdemeanor violation of:

- 24 (a) Section 784.011, relating to assault;
 25 (b) Section 784.021, relating to aggravated assault;
 26 (c) Section 784.03, relating to battery and felony

27 | battery;

28 | (d) Section 784.041(1), relating to felony battery;

29 | (e) Section 784.045, relating to aggravated battery; or

30 | (f) Section 794.011, relating to sexual battery.

31 | (3)(a) A misdemeanor of the second degree shall be
 32 | reclassified as a misdemeanor of the first degree.

33 | (b) A misdemeanor of the first degree shall be
 34 | reclassified as a felony of the third degree.

35 | (c) A felony of the third degree shall be reclassified as
 36 | a felony of the second degree.

37 | (d) A felony of the second degree shall be reclassified as
 38 | a felony of the first degree.

39 | (e) A felony of the first degree shall be reclassified as
 40 | a life felony.

41 | (4) For purposes of sentencing under chapter 921 and
 42 | determining incentive gain-time eligibility under chapter 944, a
 43 | felony offense that is reclassified under this section is ranked
 44 | one level above the ranking under s. 921.0022 or s. 921.0023 of
 45 | the offense committed.

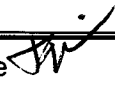
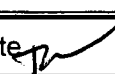
46 | Section 2. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 135 Mandatory Minimum Sentences

SPONSOR(S): Criminal Justice Subcommittee

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 228

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

SUMMARY ANALYSIS

Currently, s. 775.087, F.S., commonly known as the "10-20-Life" law, requires the court to sentence a person convicted of aggravated assault, attempted aggravated assault, or other specified offenses to a minimum term of imprisonment of:

- Three years if, during the commission of the offense, the person actually possessed a firearm or destructive device or 15 years if the firearm possessed was a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.
- Twenty years if, during the commission of the offense, the person discharged a firearm, destructive device, semiautomatic firearm, or machine gun or 25 years to life imprisonment if such discharge resulted in death or great bodily harm to a person.

These minimum terms must be imposed for an aggravated assault conviction unless the court makes written findings that:

- The defendant had a good faith belief that the aggravated assault was justifiable pursuant to chapter 776.
- The aggravated assault was not committed in the course of committing another criminal offense.
- The defendant does not pose a threat to public safety.
- The totality of the circumstances involved in the offense do not justify the imposition of such sentence.

The bill deletes aggravated assault from the offenses that are subject to the mandatory minimum sentences set forth in s. 775.087, F.S., and makes a conforming change by repealing the exception to such sentences based on specified court findings. Thus, persons who are convicted of aggravated assault or attempted aggravated assault and who actually possessed or discharged a firearm or other specified weapon during the commission of that offense will no longer be subject to the 10-20-Life mandatory minimum sentences.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a negative indeterminate prison bed impact on the Department of Corrections (i.e., the bill will reduce the number of prison beds needed by an indeterminate number).

The bill takes effect on July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Aggravated Assault and 10-20-Life

Aggravated Assault

Assault, a first degree misdemeanor,¹ is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.² "Aggravated assault," a third degree felony,³ is an assault with:

- A deadly weapon without intent to kill; or
- An intent to commit a felony.⁴

10-20-Life

Section 775.087, F.S., commonly known as the "10-20-Life" law, requires the court to sentence a person convicted of aggravated assault, attempted aggravated assault, or other specified offenses to a minimum term of imprisonment of:

- Three years⁵ if, during the commission of the offense, the person actually *possessed*⁶ a "firearm" or "destructive device."^{7, 8}
- Fifteen years⁹ if the firearm in the person's possession was a semiautomatic firearm and its high-capacity detachable box magazine¹⁰ or a machine gun.^{11, 12}

If, during the aggravated assault or attempted aggravated assault, the person *discharged* a firearm, destructive device, semiautomatic firearm, or machine gun, the court must sentence the person to a minimum term of imprisonment of 20 years.¹³ If such discharge resulted in death or great bodily harm to a person, the person must be sentenced to a minimum term of imprisonment of not less than 25 years and not more than life in prison.¹⁴

¹ 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.

² s. 784.011, F.S.

³ 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.

⁴ s. 784.021, F.S.

⁵ The other offenses subject to the three-year mandatory minimum term are burglary of a conveyance and certain possession of firearm by a felon. s. 775.087(2)(a)1., F.S. A ten-year minimum mandatory term applies to the possession of a firearm or destructive device during the commission of or attempt to commit the following offenses: murder; sexual battery; robbery; certain burglary; arson; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking and capital importation of illegal drugs and specified controlled substances; and certain possession of a firearm by a felon. *Id.*

⁶ Section 775.087(4), F.S., states, "For purposes of imposition of minimum mandatory sentencing provisions of this section, with respect to a firearm, the term "possession" is defined as carrying it on the person. Possession may also be proven by demonstrating that the defendant had the firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the offense, if proven beyond a reasonable doubt."

⁷ s. 775.087(2)(a)1., F.S.

⁸ The terms "firearm" and "destructive device" are defined in s. 790.001, F.S.

⁹ The other offenses subject to the 15-year mandatory minimum term are murder; sexual battery; robbery; burglary; arson; aggravated battery; kidnapping; escape; sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; and trafficking and capital importation of illegal drugs and specified controlled substances. s. 775.087(3)(a)1., F.S.

¹⁰ The terms "semiautomatic firearm" and "high capacity detachable box magazine" are defined in s. 775.087(2)(e) and (3)(e), F.S.

¹¹ The term "machine gun" is defined in s. 790.001, F.S.

¹² s. 775.087(3)(a)1., F.S.

¹³ s. 775.087(2)(a)2. and (3)(a)2., F.S.

¹⁴ s. 775.087(2)(a)3. and (3)(a)3., F.S.

According to information from the Office of Economic and Demographic Research, 27 inmates were admitted to prison in Fiscal Year 2014-2015 under 10-20-Life mandatory minimum sentences for aggravated assault.¹⁵

Deviations from 10-20-Life

Section 27.366, F.S., states that it is the Legislature's intent "that convicted criminal offenders who meet the criteria in s. 775.087(2) and (3) be sentenced to the minimum mandatory prison terms," provided "that prosecutors should appropriately exercise their discretion in those cases in which the offenders' possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime." If an offender meets the mandatory minimum sentencing criteria in the 10-20-Life law, but does not receive such sentence, the state attorney "must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney."¹⁶

While s. 27.366, F.S., accords prosecutors the discretion to waive imposition of minimum mandatory sentences, statute, aside from one exception adopted by the Legislature in 2014, does not accord such discretion to the sentencing courts.¹⁷ If the charging document specifically pleads the basis for the 10-20-Life mandatory minimum sentence and there is a clear jury finding that the defendant actually possessed or used a firearm or other specified weapon, imposition of a mandatory minimum sentence is a non-discretionary duty of the sentencing court.¹⁸

During the 2014 Regular Session, the Legislature enacted a single exception to the mandatory minimum terms which applies only to sentences for aggravated assault.¹⁹ Section 775.087(6), F.S., specifies that the sentencing court shall not impose such mandatory minimum terms if the court makes written findings that:

- The defendant had a good faith belief that the aggravated assault was justifiable pursuant to chapter 776.
- The aggravated assault was not committed in the course of committing another criminal offense.
- The defendant does not pose a threat to public safety.
- The totality of the circumstances involved in the offense do not justify the imposition of such sentence.

Effect of Bill

The bill deletes aggravated assault from the offenses that are subject to the mandatory minimum sentences set forth in s. 775.087, F.S. Thus, persons who are convicted of aggravated assault or attempted aggravated assault and who actually possessed or discharged a firearm or other specified weapon will no longer be subject to the 10-20-Life law.

The bill also makes a conforming change by repealing subsection (6) of s. 775.087, F.S., which prohibits the imposition of mandatory minimum sentences to an aggravated assault conviction if the sentencing court makes specified findings. Such exception is no longer relevant due to the bill's deletion of aggravated assault from the 10-20-Life law.

Finally, the bill amends s. 985.557(2)(d), F.S., to conform a cross-reference to changes made by the act and reenacts ss. 27.366, 921.0022(2), 921.0024(1)(b), and 947.136(3)(b), F.S., to incorporate the amendment to s. 775.087, F.S.

¹⁵ Email from Matthew Hasbrouck, Office of Economic and Demographic Research, Criminal Justice Impact Conference Summaries, (Oct. 28, 2015) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

¹⁶ s. 27.366, F.S.

¹⁷ *State v. Kelly*, 147 So. 3d 1061 (Fla. 3d DCA 2014).

¹⁸ *Johnson v. State*, 53 So.3d 360, 362 (Fla. 5th DCA 2011) ; *Orjales v. State*, 758 So. 2d 1157, 1159 (Fla. 2d DCA 2000) (quoting *State v. Hargrove*, 694 So. 2d 729, 731 (Fla. 1997)).

¹⁹ Ch. 2014-195, Laws of Fla.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.087, F.S., relating to minimum sentences for possession or use of a weapon during certain felony offenses.

Section 2. Amends s. 985.557, F.S., relating to the direct filing of juveniles.

Section 3. Reenacts s. 27.366, F.S., relating to the legislative intent for the 10-20-Life law.

Section 4. Reenacts s. 921.0022, F.S., relating to the Criminal Punishment Code offense severity ranking chart.

Section 5. Reenacts s. 921.0024, F.S., relating to the Criminal Punishment Code worksheet computations and scoresheets.

Section 6. Reenacts s. 947.146, F.S., relating to the Control Release Authority.

Section 7. Provides that the bill takes effect on July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a negative indeterminate prison bed impact on the Department of Corrections (i.e., the bill will reduce the number of prison beds needed by an indeterminate number).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to mandatory minimum sentences;
 3 amending s. 775.087, F.S.; deleting aggravated assault
 4 from the list of convictions which carry a minimum
 5 term of imprisonment if during the commission of the
 6 offense the convicted person possessed a firearm or
 7 destructive device; deleting aggravated assault from a
 8 list of convictions which carry a minimum term of
 9 imprisonment if during the commission of the offense
 10 the convicted person possessed a firearm or
 11 destructive device; deleting aggravated assault from
 12 the list of convictions which carry a minimum term of
 13 imprisonment if during the commission of the offense
 14 the convicted person possessed a semiautomatic firearm
 15 and its high-capacity detachable box magazine or a
 16 machine gun; deleting a provision prohibiting a court
 17 from imposing the mandatory minimum sentence for a
 18 conviction for aggravated assault if the court makes
 19 specified written findings; conforming cross-
 20 references; amending s. 985.557, F.S.; conforming a
 21 cross-reference; reenacting ss. 27.366, 921.0022(2),
 22 921.0024(1)(b), and 947.146(3)(b), F.S., relating to
 23 legislative intent and policy in cases meeting the
 24 criteria of s. 775.087(2) and (3), F.S., the Criminal
 25 Punishment Code, the Criminal Punishment Code
 26 worksheet, and the Control Release Authority,

27 | respectively, to incorporate the amendment made to s.
 28 | 775.087, F.S., in references thereto; providing an
 29 | effective date.

30 |

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

32 |

33 | Section 1. Subsections (2), (3), and (6) of section
 34 | 775.087, Florida Statutes, are amended to read:

35 | 775.087 Possession or use of weapon; aggravated battery;
 36 | felony reclassification; minimum sentence.-

37 | (2)(a)1. Any person who is convicted of a felony or an
 38 | attempt to commit a felony, regardless of whether the use of a
 39 | weapon is an element of the felony, and the conviction was for:

- 40 | a. Murder;
- 41 | b. Sexual battery;
- 42 | c. Robbery;
- 43 | d. Burglary;
- 44 | e. Arson;
- 45 | ~~f. Aggravated assault;~~
- 46 | f.g. Aggravated battery;
- 47 | g.h. Kidnapping;
- 48 | h.i. Escape;
- 49 | i.j. Aircraft piracy;
- 50 | j.k. Aggravated child abuse;
- 51 | k.l. Aggravated abuse of an elderly person or disabled
 52 | adult;

53 ~~l.m.~~ Unlawful throwing, placing, or discharging of a
 54 destructive device or bomb;
 55 ~~m.n.~~ Carjacking;
 56 ~~n.o.~~ Home-invasion robbery;
 57 ~~o.p.~~ Aggravated stalking;
 58 ~~p.q.~~ Trafficking in cannabis, trafficking in cocaine,
 59 capital importation of cocaine, trafficking in illegal drugs,
 60 capital importation of illegal drugs, trafficking in
 61 phencyclidine, capital importation of phencyclidine, trafficking
 62 in methaqualone, capital importation of methaqualone,
 63 trafficking in amphetamine, capital importation of amphetamine,
 64 trafficking in flunitrazepam, trafficking in gamma-
 65 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
 66 trafficking in Phenethylamines, or other violation of s.
 67 893.135(1); or
 68 ~~q.r.~~ Possession of a firearm by a felon
 69
 70 and during the commission of the offense, such person actually
 71 possessed a "firearm" or "destructive device" as those terms are
 72 defined in s. 790.001, shall be sentenced to a minimum term of
 73 imprisonment of 10 years, except that a person who is convicted
 74 for ~~aggravated assault~~, possession of a firearm by a felon, or
 75 burglary of a conveyance shall be sentenced to a minimum term of
 76 imprisonment of 3 years if such person possessed a "firearm" or
 77 "destructive device" during the commission of the offense.
 78 However, if an offender who is convicted of the offense of

79 possession of a firearm by a felon has a previous conviction of
 80 committing or attempting to commit a felony listed in s.
 81 775.084(1)(b)1. and actually possessed a firearm or destructive
 82 device during the commission of the prior felony, the offender
 83 shall be sentenced to a minimum term of imprisonment of 10
 84 years.

85 2. Any person who is convicted of a felony or an attempt
 86 to commit a felony listed in sub-subparagraphs (a)1.a.-p.
 87 ~~(a)1.a.-q.~~, regardless of whether the use of a weapon is an
 88 element of the felony, and during the course of the commission
 89 of the felony such person discharged a "firearm" or "destructive
 90 device" as defined in s. 790.001 shall be sentenced to a minimum
 91 term of imprisonment of 20 years.

92 3. Any person who is convicted of a felony or an attempt
 93 to commit a felony listed in sub-subparagraphs (a)1.a.-p.
 94 ~~(a)1.a.-q.~~, regardless of whether the use of a weapon is an
 95 element of the felony, and during the course of the commission
 96 of the felony such person discharged a "firearm" or "destructive
 97 device" as defined in s. 790.001 and, as the result of the
 98 discharge, death or great bodily harm was inflicted upon any
 99 person, the convicted person shall be sentenced to a minimum
 100 term of imprisonment of not less than 25 years and not more than
 101 a term of imprisonment of life in prison.

102 (b) Subparagraph (a)1., subparagraph (a)2., or
 103 subparagraph (a)3. does not prevent a court from imposing a
 104 longer sentence of incarceration as authorized by law in

105 addition to the minimum mandatory sentence, or from imposing a
 106 sentence of death pursuant to other applicable law. Subparagraph
 107 (a)1., subparagraph (a)2., or subparagraph (a)3. does not
 108 authorize a court to impose a lesser sentence than otherwise
 109 required by law.

110 Notwithstanding s. 948.01, adjudication of guilt or imposition
 111 of sentence shall not be suspended, deferred, or withheld, and
 112 the defendant is not eligible for statutory gain-time under s.
 113 944.275 or any form of discretionary early release, other than
 114 pardon or executive clemency, or conditional medical release
 115 under s. 947.149, prior to serving the minimum sentence.

116 (c) If the minimum mandatory terms of imprisonment imposed
 117 pursuant to this section exceed the maximum sentences authorized
 118 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
 119 chapter 921, then the mandatory minimum sentence must be
 120 imposed. If the mandatory minimum terms of imprisonment pursuant
 121 to this section are less than the sentences that could be
 122 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
 123 Punishment Code under chapter 921, then the sentence imposed by
 124 the court must include the mandatory minimum term of
 125 imprisonment as required in this section.

126 (d) It is the intent of the Legislature that offenders who
 127 actually possess, carry, display, use, threaten to use, or
 128 attempt to use firearms or destructive devices be punished to
 129 the fullest extent of the law, and the minimum terms of
 130 imprisonment imposed pursuant to this subsection shall be

131 imposed for each qualifying felony count for which the person is
 132 convicted. The court shall impose any term of imprisonment
 133 provided for in this subsection consecutively to any other term
 134 of imprisonment imposed for any other felony offense.

135 (3)(a)1. Any person who is convicted of a felony or an
 136 attempt to commit a felony, regardless of whether the use of a
 137 firearm is an element of the felony, and the conviction was for:

- 138 a. Murder;
- 139 b. Sexual battery;
- 140 c. Robbery;
- 141 d. Burglary;
- 142 e. Arson;
- 143 ~~f. Aggravated assault;~~
- 144 f.g. Aggravated battery;
- 145 ~~g.h.~~ Kidnapping;
- 146 ~~h.i.~~ Escape;
- 147 ~~i.j.~~ Sale, manufacture, delivery, or intent to sell,
 148 manufacture, or deliver any controlled substance;
- 149 j.k. Aircraft piracy;
- 150 ~~k.l.~~ Aggravated child abuse;
- 151 ~~l.m.~~ Aggravated abuse of an elderly person or disabled
 152 adult;
- 153 ~~m.n.~~ Unlawful throwing, placing, or discharging of a
 154 destructive device or bomb;
- 155 ~~n.o.~~ Carjacking;
- 156 ~~o.p.~~ Home-invasion robbery;

157 ~~p.g.~~ Aggravated stalking; or
 158 ~~q.g.~~ Trafficking in cannabis, trafficking in cocaine,
 159 capital importation of cocaine, trafficking in illegal drugs,
 160 capital importation of illegal drugs, trafficking in
 161 phencyclidine, capital importation of phencyclidine, trafficking
 162 in methaqualone, capital importation of methaqualone,
 163 trafficking in amphetamine, capital importation of amphetamine,
 164 trafficking in flunitrazepam, trafficking in gamma-
 165 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
 166 trafficking in Phenethylamines, or other violation of s.
 167 893.135(1);

168
 169 and during the commission of the offense, such person possessed
 170 a semiautomatic firearm and its high-capacity detachable box
 171 magazine or a machine gun as defined in s. 790.001, shall be
 172 sentenced to a minimum term of imprisonment of 15 years.

173 2. Any person who is convicted of a felony or an attempt
 174 to commit a felony listed in subparagraph (a)1., regardless of
 175 whether the use of a weapon is an element of the felony, and
 176 during the course of the commission of the felony such person
 177 discharged a semiautomatic firearm and its high-capacity box
 178 magazine or a "machine gun" as defined in s. 790.001 shall be
 179 sentenced to a minimum term of imprisonment of 20 years.

180 3. Any person who is convicted of a felony or an attempt
 181 to commit a felony listed in subparagraph (a)1., regardless of
 182 whether the use of a weapon is an element of the felony, and

183 during the course of the commission of the felony such person
 184 discharged a semiautomatic firearm and its high-capacity box
 185 magazine or a "machine gun" as defined in s. 790.001 and, as the
 186 result of the discharge, death or great bodily harm was
 187 inflicted upon any person, the convicted person shall be
 188 sentenced to a minimum term of imprisonment of not less than 25
 189 years and not more than a term of imprisonment of life in
 190 prison.

191 (b) Subparagraph (a)1., subparagraph (a)2., or
 192 subparagraph (a)3. does not prevent a court from imposing a
 193 longer sentence of incarceration as authorized by law in
 194 addition to the minimum mandatory sentence, or from imposing a
 195 sentence of death pursuant to other applicable law. Subparagraph
 196 (a)1., subparagraph (a)2., or subparagraph (a)3. does not
 197 authorize a court to impose a lesser sentence than otherwise
 198 required by law.

199 Notwithstanding s. 948.01, adjudication of guilt or imposition
 200 of sentence shall not be suspended, deferred, or withheld, and
 201 the defendant is not eligible for statutory gain-time under s.
 202 944.275 or any form of discretionary early release, other than
 203 pardon or executive clemency, or conditional medical release
 204 under s. 947.149, prior to serving the minimum sentence.

205 (c) If the minimum mandatory terms of imprisonment imposed
 206 pursuant to this section exceed the maximum sentences authorized
 207 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
 208 chapter 921, then the mandatory minimum sentence must be

209 imposed. If the mandatory minimum terms of imprisonment pursuant
 210 to this section are less than the sentences that could be
 211 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
 212 Punishment Code under chapter 921, then the sentence imposed by
 213 the court must include the mandatory minimum term of
 214 imprisonment as required in this section.

215 (d) It is the intent of the Legislature that offenders who
 216 possess, carry, display, use, threaten to use, or attempt to use
 217 a semiautomatic firearm and its high-capacity detachable box
 218 magazine or a machine gun as defined in s. 790.001 be punished
 219 to the fullest extent of the law, and the minimum terms of
 220 imprisonment imposed pursuant to this subsection shall be
 221 imposed for each qualifying felony count for which the person is
 222 convicted. The court shall impose any term of imprisonment
 223 provided for in this subsection consecutively to any other term
 224 of imprisonment imposed for any other felony offense.

225 (e) As used in this subsection, the term:

226 1. "High-capacity detachable box magazine" means any
 227 detachable box magazine, for use in a semiautomatic firearm,
 228 which is capable of being loaded with more than 20 centerfire
 229 cartridges.

230 2. "Semiautomatic firearm" means a firearm which is
 231 capable of firing a series of rounds by separate successive
 232 depressions of the trigger and which uses the energy of
 233 discharge to perform a portion of the operating cycle.

234 ~~(6) Notwithstanding s. 27.366, the sentencing court shall~~

235 ~~not impose the mandatory minimum sentence required by subsection~~
 236 ~~(2) or subsection (3) for a conviction for aggravated assault if~~
 237 ~~the court makes written findings that:~~

238 ~~(a) The defendant had a good faith belief that the~~
 239 ~~aggravated assault was justifiable pursuant to chapter 776.~~

240 ~~(b) The aggravated assault was not committed in the course~~
 241 ~~of committing another criminal offense.~~

242 ~~(c) The defendant does not pose a threat to public safety.~~

243 ~~(d) The totality of the circumstances involved in the~~
 244 ~~offense do not justify the imposition of such sentence.~~

245 Section 2. Paragraph (d) of subsection (2) of section
 246 985.557, Florida Statutes, is amended to read:

247 985.557 Direct filing of an information; discretionary and
 248 mandatory criteria.—

249 (2) MANDATORY DIRECT FILE.—

250 (d)1. With respect to any child who was 16 or 17 years of
 251 age at the time the alleged offense was committed, the state
 252 attorney shall file an information if the child has been charged
 253 with committing or attempting to commit an offense listed in s.
 254 775.087(2)(a)1.a.-p. ~~s. 775.087(2)(a)1.a.-q.~~, and, during the
 255 commission of or attempt to commit the offense, the child:

256 a. Actually possessed a firearm or destructive device, as
 257 those terms are defined in s. 790.001.

258 b. Discharged a firearm or destructive device, as
 259 described in s. 775.087(2)(a)2.

260 c. Discharged a firearm or destructive device, as

261 described in s. 775.087(2)(a)3., and, as a result of the
 262 discharge, death or great bodily harm was inflicted upon any
 263 person.

264 2. Upon transfer, any child who is:

265 a. Charged under sub-subparagraph 1.a. and who has been
 266 previously adjudicated or had adjudication withheld for a
 267 forcible felony offense or any offense involving a firearm, or
 268 who has been previously placed in a residential commitment
 269 program, shall be subject to sentencing under s. 775.087(2)(a),
 270 notwithstanding s. 985.565.

271 b. Charged under sub-subparagraph 1.b. or sub-subparagraph
 272 1.c., shall be subject to sentencing under s. 775.087(2)(a),
 273 notwithstanding s. 985.565.

274 3. Upon transfer, any child who is charged under this
 275 paragraph, but who does not meet the requirements specified in
 276 subparagraph 2., shall be sentenced under s. 985.565; however,
 277 if the court imposes a juvenile sanction, the court must commit
 278 the child to a high-risk or maximum-risk juvenile facility.

279 4. This paragraph shall not apply if the state attorney
 280 has good cause to believe that exceptional circumstances exist
 281 that preclude the just prosecution of the child in adult court.

282 5. The Department of Corrections shall make every
 283 reasonable effort to ensure that any child 16 or 17 years of age
 284 who is convicted and sentenced under this paragraph be
 285 completely separated such that there is no physical contact with
 286 adult offenders in the facility, to the extent that it is

287 consistent with chapter 958.

288 Section 3. For the purpose of incorporating the amendment
 289 made by this act to section 775.087, Florida Statutes, in a
 290 reference thereto, Section 27.366, Florida Statutes, is
 291 reenacted to read:

292 27.366 Legislative intent and policy in cases meeting
 293 criteria of s. 775.087(2) and (3).—It is the intent of the
 294 Legislature that convicted criminal offenders who meet the
 295 criteria in s. 775.087(2) and (3) be sentenced to the minimum
 296 mandatory prison terms provided therein. It is the intent of the
 297 Legislature to establish zero tolerance of criminals who use,
 298 threaten to use, or avail themselves of firearms in order to
 299 commit crimes and thereby demonstrate their lack of value for
 300 human life. It is also the intent of the Legislature that
 301 prosecutors should appropriately exercise their discretion in
 302 those cases in which the offenders' possession of the firearm is
 303 incidental to the commission of a crime and not used in
 304 furtherance of the crime, used in order to commit the crime, or
 305 used in preparation to commit the crime. For every case in which
 306 the offender meets the criteria in this act and does not receive
 307 the mandatory minimum prison sentence, the state attorney must
 308 explain the sentencing deviation in writing and place such
 309 explanation in the case file maintained by the state attorney.

310 Section 4. For the purpose of incorporating the amendment
 311 made by this act to section 775.087, Florida Statutes, in a
 312 reference thereto, Subsection (2) of section 921.0022, Florida

313 Statutes, is reenacted to read:

314 921.0022 Criminal Punishment Code; offense severity
315 ranking chart.—

316 (2) The offense severity ranking chart has 10 offense
317 levels, ranked from least severe, which are level 1 offenses, to
318 most severe, which are level 10 offenses, and each felony
319 offense is assigned to a level according to the severity of the
320 offense. For purposes of determining which felony offenses are
321 specifically listed in the offense severity ranking chart and
322 which severity level has been assigned to each of these
323 offenses, the numerical statutory references in the left column
324 of the chart and the felony degree designations in the middle
325 column of the chart are controlling; the language in the right
326 column of the chart is provided solely for descriptive purposes.
327 Reclassification of the degree of the felony through the
328 application of s. 775.0845, s. 775.0861, s. 775.0862, s.
329 775.087, s. 775.0875, s. 794.023, or any other law that provides
330 an enhanced penalty for a felony offense, to any offense listed
331 in the offense severity ranking chart in this section shall not
332 cause the offense to become unlisted and is not subject to the
333 provisions of s. 921.0023.

334 Section 5. For the purpose of incorporating the amendment
335 made by this act to section 775.087, Florida Statutes, in a
336 reference thereto, paragraph (b) of subsection (1) of section
337 921.0024, Florida Statutes, is reenacted to read:

338 921.0024 Criminal Punishment Code; worksheet computations;

339 | scoresheets.—

340 | (1)

341 | (b) WORKSHEET KEY:

342 | Legal status points are assessed when any form of legal status
 343 | existed at the time the offender committed an offense before the
 344 | court for sentencing. Four (4) sentence points are assessed for
 345 | an offender's legal status.

346 | Community sanction violation points are assessed when a
 347 | community sanction violation is before the court for sentencing.
 348 | Six (6) sentence points are assessed for each community sanction
 349 | violation and each successive community sanction violation,
 350 | unless any of the following apply:

351 | 1. If the community sanction violation includes a new
 352 | felony conviction before the sentencing court, twelve (12)
 353 | community sanction violation points are assessed for the
 354 | violation, and for each successive community sanction violation
 355 | involving a new felony conviction.

356 | 2. If the community sanction violation is committed by a
 357 | violent felony offender of special concern as defined in s.
 358 | 948.06:

359 | a. Twelve (12) community sanction violation points are
 360 | assessed for the violation and for each successive violation of
 361 | felony probation or community control where:

362 | I. The violation does not include a new felony conviction;
 363 | and

364 II. The community sanction violation is not based solely
 365 on the probationer or offender's failure to pay costs or fines
 366 or make restitution payments.

367 b. Twenty-four (24) community sanction violation points
 368 are assessed for the violation and for each successive violation
 369 of felony probation or community control where the violation
 370 includes a new felony conviction.

371 Multiple counts of community sanction violations before the
 372 sentencing court shall not be a basis for multiplying the
 373 assessment of community sanction violation points.

374 Prior serious felony points: If the offender has a primary
 375 offense or any additional offense ranked in level 8, level 9, or
 376 level 10, and one or more prior serious felonies, a single
 377 assessment of thirty (30) points shall be added. For purposes of
 378 this section, a prior serious felony is an offense in the
 379 offender's prior record that is ranked in level 8, level 9, or
 380 level 10 under s. 921.0022 or s. 921.0023 and for which the
 381 offender is serving a sentence of confinement, supervision, or
 382 other sanction or for which the offender's date of release from
 383 confinement, supervision, or other sanction, whichever is later,
 384 is within 3 years before the date the primary offense or any
 385 additional offense was committed.

386 Prior capital felony points: If the offender has one or more
 387 prior capital felonies in the offender's criminal record, points

388 shall be added to the subtotal sentence points of the offender
 389 equal to twice the number of points the offender receives for
 390 the primary offense and any additional offense. A prior capital
 391 felony in the offender's criminal record is a previous capital
 392 felony offense for which the offender has entered a plea of nolo
 393 contendere or guilty or has been found guilty; or a felony in
 394 another jurisdiction which is a capital felony in that
 395 jurisdiction, or would be a capital felony if the offense were
 396 committed in this state.

397 Possession of a firearm, semiautomatic firearm, or machine gun:
 398 If the offender is convicted of committing or attempting to
 399 commit any felony other than those enumerated in s. 775.087(2)
 400 while having in his or her possession: a firearm as defined in
 401 s. 790.001(6), an additional eighteen (18) sentence points are
 402 assessed; or if the offender is convicted of committing or
 403 attempting to commit any felony other than those enumerated in
 404 s. 775.087(3) while having in his or her possession a
 405 semiautomatic firearm as defined in s. 775.087(3) or a machine
 406 gun as defined in s. 790.001(9), an additional twenty-five (25)
 407 sentence points are assessed.

408 Sentencing multipliers:

409 Drug trafficking: If the primary offense is drug trafficking
 410 under s. 893.135, the subtotal sentence points are multiplied,
 411 at the discretion of the court, for a level 7 or level 8

412 offense, by 1.5. The state attorney may move the sentencing
 413 court to reduce or suspend the sentence of a person convicted of
 414 a level 7 or level 8 offense, if the offender provides
 415 substantial assistance as described in s. 893.135(4).

416 Law enforcement protection: If the primary offense is a
 417 violation of the Law Enforcement Protection Act under s.
 418 775.0823(2), (3), or (4), the subtotal sentence points are
 419 multiplied by 2.5. If the primary offense is a violation of s.
 420 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
 421 are multiplied by 2.0. If the primary offense is a violation of
 422 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
 423 Protection Act under s. 775.0823(10) or (11), the subtotal
 424 sentence points are multiplied by 1.5.

425 Grand theft of a motor vehicle: If the primary offense is grand
 426 theft of the third degree involving a motor vehicle and in the
 427 offender's prior record, there are three or more grand thefts of
 428 the third degree involving a motor vehicle, the subtotal
 429 sentence points are multiplied by 1.5.

430 Offense related to a criminal gang: If the offender is convicted
 431 of the primary offense and committed that offense for the
 432 purpose of benefiting, promoting, or furthering the interests of
 433 a criminal gang as defined in s. 874.03, the subtotal sentence
 434 points are multiplied by 1.5. If applying the multiplier results
 435 in the lowest permissible sentence exceeding the statutory

436 maximum sentence for the primary offense under chapter 775, the
 437 court may not apply the multiplier and must sentence the
 438 defendant to the statutory maximum sentence.

439 Domestic violence in the presence of a child: If the offender is
 440 convicted of the primary offense and the primary offense is a
 441 crime of domestic violence, as defined in s. 741.28, which was
 442 committed in the presence of a child under 16 years of age who
 443 is a family or household member as defined in s. 741.28(3) with
 444 the victim or perpetrator, the subtotal sentence points are
 445 multiplied by 1.5.

446 Adult-on-minor sex offense: If the offender was 18 years of age
 447 or older and the victim was younger than 18 years of age at the
 448 time the offender committed the primary offense, and if the
 449 primary offense was an offense committed on or after October 1,
 450 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
 451 violation involved a victim who was a minor and, in the course
 452 of committing that violation, the defendant committed a sexual
 453 battery under chapter 794 or a lewd act under s. 800.04 or s.
 454 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
 455 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
 456 800.04; or s. 847.0135(5), the subtotal sentence points are
 457 multiplied by 2.0. If applying the multiplier results in the
 458 lowest permissible sentence exceeding the statutory maximum
 459 sentence for the primary offense under chapter 775, the court
 460 may not apply the multiplier and must sentence the defendant to

461 the statutory maximum sentence.

462 Section 6. For the purpose of incorporating the amendment
 463 made by this act to section 775.087, Florida Statutes, in a
 464 reference thereto, paragraph (b) of subsection (3) of section
 465 947.146, Florida Statutes, is reenacted to read:

466 947.146 Control Release Authority.-

467 (3) Within 120 days prior to the date the state
 468 correctional system is projected pursuant to s. 216.136 to
 469 exceed 99 percent of total capacity, the authority shall
 470 determine eligibility for and establish a control release date
 471 for an appropriate number of parole ineligible inmates committed
 472 to the department and incarcerated within the state who have
 473 been determined by the authority to be eligible for
 474 discretionary early release pursuant to this section. In
 475 establishing control release dates, it is the intent of the
 476 Legislature that the authority prioritize consideration of
 477 eligible inmates closest to their tentative release date. The
 478 authority shall rely upon commitment data on the offender
 479 information system maintained by the department to initially
 480 identify inmates who are to be reviewed for control release
 481 consideration. The authority may use a method of objective risk
 482 assessment in determining if an eligible inmate should be
 483 released. Such assessment shall be a part of the department's
 484 management information system. However, the authority shall have
 485 sole responsibility for determining control release eligibility,
 486 establishing a control release date, and effectuating the

487 release of a sufficient number of inmates to maintain the inmate
 488 population between 99 percent and 100 percent of total capacity.
 489 Inmates who are ineligible for control release are inmates who
 490 are parole eligible or inmates who:

491 (b) Are serving the mandatory minimum portion of a
 492 sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);
 493

494 In making control release eligibility determinations under this
 495 subsection, the authority may rely on any document leading to or
 496 generated during the course of the criminal proceedings,
 497 including, but not limited to, any presentence or postsentence
 498 investigation or any information contained in arrest reports
 499 relating to circumstances of the offense.

500 Section 7. This act shall take effect July 1, 2016.