



Justice Appropriations Subcommittee

Meeting Packet

**March 25, 2015
9:00 a.m. – 11:00 a.m.
Morris Hall**



The Florida House of Representatives

APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

Steve Crisafulli
Speaker

Larry Metz
Chair

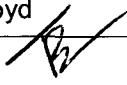
MEETING AGENDA

Morris Hall
March 25, 2015

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following bill(s):
 - CS/HB 151 - Sexual Cyberharrassment by Criminal Justice; Rep. Goodson
 - HB 755 - Convenience Business Security by Rep. Stone
 - CS/HB 845 - Sexting by Criminal Justice Subcommittee; Rep. DuBose
 - CS/HB 897 - Controlled Substances by Criminal Justice Subcommittee;
Rep. Ingram
 - CS/HB 967 - Trespass on Airport Property by Criminal Justice Subcommittee;
Rep. Cortes, B.
 - CS/HB 1037 Electronic Monitoring Devices by Criminal Justice Subcommittee;
Reps. Torres, Plakon
 - CS/HB 1069 - Defendants in Specialized Courts by Criminal Justice Subcommittee;
Rep. Perry
 - HB 7063 - Child Pornography by Criminal Justice Subcommittee, Rep. Spano
- IV.** Closing Remarks
- V.** Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 151 Sexual Cyberharassment
SPONSOR(S): Goodson and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N, As CS	Keegan	Cunningham
2) Justice Appropriations Subcommittee		Schrader	Lloyd
3) Judiciary Committee		JSS	

SUMMARY ANALYSIS

The bill creates s. 784.049, F.S., to prohibit a person from willfully and maliciously sexually cyberharassing another person. "Sexually cyberharass" is defined as publishing a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without such person's consent, for no legitimate purpose, and with the intent to cause substantial emotional distress to such person.

The bill provides that a person who commits sexual cyberharassment commits a first degree misdemeanor. However, a second or subsequent violation by a person with a prior conviction for sexual cyberharassment is a third degree felony.

The bill amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant when there is probable cause to believe that the person has committed sexual cyberharassment. Additionally, the bill permits a search warrant to be issued for a private dwelling if evidence relevant to proving sexual cyberharassment is contained therein.

The bill authorizes an aggrieved person to initiate a civil action against a person who commits sexual cyberharassment to obtain all appropriate relief in order to prevent or remedy a violation. This relief includes:

- Injunctive relief; monetary damages to include five thousand dollars or actual damages incurred, whichever is greater; and reasonable attorney fees and costs.

The bill specifies that sexual cyberharassment is considered to be committed in Florida if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within the state.

The Criminal Justice Impact Conference met on March 11, 2015, and determined that this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the Department of Corrections prison bed population by less than 10 inmates annually.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Internet security company McAfee recently published the results of a survey conducted in 2012, which explored the connection between romantic breakups and the loss of privacy online.¹ Among other results, the survey found that one in ten ex-partners have threatened to expose risqué photos online, and that these threats were carried out nearly 60 percent of the time.² Men reported being threatened with such exposure more often than women.³

In 2004, New Jersey⁴ passed a law prohibiting unlicensed distribution of sexually explicit photos online, and California followed suit in 2013.⁵ Since then, a number of other states have enacted similar legislation.⁶ However, because such statutes restrict speech, they raise constitutional concerns. In September, 2014, a lawsuit was filed challenging the constitutionality of one such law passed in Arizona, but no ruling has yet been issued.⁷

Florida law does not currently prohibit a person from posting on the Internet nude photos of adults that were taken consensually. However, in some circumstances, posting such pictures could be an element of stalking or cyberstalking (s. 784.048, F.S.), or extortion (s. 836.05, F.S.). Additionally, s. 817.568(4), F.S., makes the non-consensual use of a person's personal identification information a first degree misdemeanor⁸ if used to harass⁹ that person. "Personal identification information" is defined as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

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

¹ McAfee, Inc., *Lovers Beware: Scorned Exes May Share Intimate Data and Images Online*, MCAFEE.COM (Feb. 4, 2013), <http://www.mcafee.com/us/about/news/2013/q1/20130204-01.aspx>. (last visited March 14, 2015).

² *Id.*

³ *Id.*

⁴ N.J. Stat. § 2C:14-9 (2004).

⁵ Cal. Penal Code § 647 (2013).

⁶ See, e.g., Ariz. Rev. Stat. §13-1425 (Arizona); CRSA §18-7-107 (Colorado); Ga. Code Ann. §16-11-90 (Georgia); §711-1110.9 (Hawaii); §18-66009 (Idaho).

⁷ *Antigone Books, L.L.C. v. Horne*, 2014 WL 4784248 (D. Ariz. filed Sept. 23, 2014).

⁸ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁹ Section 817.568, F.S., defines "harass" as engaging in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose.

¹⁰ s. 817.568(1)(f), F.S.

Effect of the Bill

The bill provides the following legislative findings:

- The Legislature finds that a person depicted in a sexually explicit image that was taken with such person's consent has a reasonable expectation that such image will remain private.
- The Legislature finds that it is becoming a common practice for persons to publish a sexually explicit image of another to Internet websites without the depicted person's consent, for no legitimate purpose, and with the intent to cause substantial emotional distress to the depicted person.
- The Legislature finds that when such images are published on Internet websites, they are able to be viewed indefinitely and by persons worldwide, and are able to be easily reproduced and shared.
- The Legislature finds that the publication of such images on Internet websites creates a permanent record of the depicted person's private nudity or private sexually explicit conduct.
- The Legislature finds that the existence of such images on Internet websites causes those depicted in such images significant psychological harm.
- The Legislature further finds that safeguarding the psychological well-being of persons depicted in such images is compelling.

The bill creates s. 784.049, F.S., to prohibit a person from willfully and maliciously sexually cyberharassing another person. "Sexually cyberharass" is defined as publishing a sexually explicit image¹¹ of a person that contains or conveys the personal identification information¹² of the depicted person to an Internet website without such person's consent, for no legitimate purpose, and with the intent to cause substantial emotional distress to such person.

A person who commits sexual cyberharassment commits a first degree misdemeanor. However, a second or subsequent violation by a person with a prior conviction for sexual cyberharassment is a third degree felony.¹³

The bill amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant when there is probable cause to believe that the person has committed sexual cyberharassment. Additionally, the bill permits a search warrant to be issued for a private dwelling if an instrumentality or means by which a violation of s. 784.049, F.S., has been committed, is contained therein, or if evidence relevant to proving sexual cyberharassment is contained therein.

The bill authorizes an aggrieved person to initiate a civil action against a person who commits sexual cyberharassment to obtain all appropriate relief in order to prevent or remedy a violation. This relief includes:

- Injunctive relief;
- Monetary damages to include five thousand dollars or actual damages incurred, whichever is greater; and
- Reasonable attorney fees and costs.

The bill exempts the following from the above-described criminal penalties and civil remedies:

- A provider of an interactive computer service as defined in 47 U.S.C. § 230(f), information service as defined in 47 U.S.C. § 153, or communications service as defined in s. 202.11, F.S., that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person; or

¹¹ The bill defines "sexually explicit image" to mean any image depicting nudity, as defined in s. 847.001, F.S., or depicting a person engaging in sexual conduct, as defined in s. 847.001, F.S. "Image" includes but is not limited to, any photograph, picture, motion picture, film, video, or representation.

¹² The bill defines "personal identifying information" in accordance with s. 817.568, F.S.

¹³ 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.

- A law enforcement officer as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that publishes a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer, or law enforcement agency.

The bill specifies that sexual cyberharassment is considered to be committed in Florida if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within the state.

B. SECTION DIRECTORY:

Section 1. Creates s. 784.049, F.S., relating to sexual cyberharassment.

Section 2. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 3. Amends s. 933.18, F.S., relating to when warrant may be issued for search of private dwelling.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on March 11, 2015, and determined that this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the Department of Corrections prison bed population by less than 10 inmates annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may have a positive jail bed impact on local governments because it creates a new first degree misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private individuals or companies who engage in the behavior prohibited by the bill may be subject to civil action for doing so.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Overbreadth

The First Amendment to the United States Constitution and article I, section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. These protections safeguard speech, the written word, and any conduct intended to communicate. When lawmakers attempt to restrict or burden First Amendment rights such as these, the laws must not only be directed toward a legitimate state interest,¹⁴ but they must be drawn as narrowly as possible.¹⁵ As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."¹⁶ Put another way, statutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct.¹⁷

When legislation is drafted to apply to conduct that is protected by the First Amendment, it is said to be unconstitutionally overbroad.¹⁸ The overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially "because it also threatens others not before the court – those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid."¹⁹ The doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected speech.²⁰ If statutes are not narrowly constructed they may be challenged as being overbroad.

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

[T]he growth of the Internet has been and continues to be phenomenal. As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.²¹

The bill makes it a crime to publish a sexually explicit image of a person in specified circumstances. To the extent that the bill regulates speech protected by the First Amendment, it could be challenged as being unconstitutionally overbroad.

Content Based Regulation

A regulation that abridges speech because of the content of the speech is subject to the strict scrutiny standard of judicial review.²² In order for a statute to meet the strict scrutiny test, it must be narrowly tailored to promote a compelling state interest, where there is no other less-restrictive

¹⁴ *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973); *Bates v. City of Little Rock*, 361 U.S. 516, 523-24 (1960).

¹⁵ *NAACP v. Button*, 371 U.S. 415 (1963).

¹⁶ *Id.* at 433.

¹⁷ *Sult v. Florida*, 906 So. 2d 1013 (Fla. 1963).

¹⁸ *Id.*

¹⁹ *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503 (1985).

²⁰ *Sult*, 906 So. 2d at 1018.

²¹ 521 U.S. 844, 885 (1997).

²² *United States v. Playboy Ent'mt Grp., Inc.*, 529 U.S. 803, 812 (2000).

option available to accomplish the state interest.²³ The strict scrutiny test applies to content-based regulation of Internet speech,²⁴ including speech that involves or communicates sexual content.²⁵ It is very uncommon for the courts to uphold regulations that forbid or limit the communication of specific ideas or viewpoints.

The bill makes it a crime to publish certain images partially because of the content of the images. To the extent that the bill regulates speech protected by the First Amendment based on its content, it could be challenged as being unconstitutional.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2015, the Criminal Justice Subcommittee adopted one proposed committee substitute and reported the bill as favorable as a committee substitute. The committee substitute:

- Provides legislative findings regarding the need to criminalize sexual cyberharassment;
- Prohibits a person from willfully and maliciously sexually cyberharassing another person;
- Defines “sexually cyberharass” to mean publishing a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without such person’s consent, for no legitimate purpose, and with the intent to cause substantial emotional distress to such person;
- Creates a civil cause of action and civil remedies for violations of sexual cyberharassment; and
- Creates an exception for law enforcement officers and law enforcement agencies acting in connection with official law enforcement duties.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

²³ *Id.* at 813.

²⁴ *Reno v. ACLU*, 521 U.S. 844, 870 (1997) (stating that “our cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.”)

²⁵ *Sable Commc’ns of Cal., Inc., v. F.C.C.*, 492 U.S. 115, 126 (1989).

1 A bill to be entitled
 2 An act relating to sexual cyberharassment; creating s.
 3 784.049, F.S.; providing legislative findings;
 4 providing definitions; prohibiting a person from
 5 willfully and maliciously sexually cyberharassing
 6 another person; providing penalties; authorizing a law
 7 enforcement officer to arrest, without a warrant, any
 8 person that he or she has probable cause to believe
 9 has committed sexual cyberharassment; authorizing a
 10 search warrant to be issued in specified instances;
 11 providing civil remedies; providing exceptions;
 12 specifying the circumstances in which a violation
 13 occurs in this state; amending s. 901.15, F.S.;
 14 authorizing a law enforcement officer to arrest,
 15 without a warrant, any person that he or she has
 16 probable cause to believe has committed sexual
 17 cyberharassment; amending s. 933.18, F.S.; providing
 18 an exception to the prohibition on search warrants
 19 being issued to search private dwellings; providing an
 20 effective date.

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

23
 24 Section 1. Section 784.049, Florida Statutes, is created
 25 to read:

26 784.049 Sexual cyberharassment.—

27 (1) The Legislature finds that:

28 (a) A person depicted in a sexually explicit image taken
 29 with the person's consent has a reasonable expectation that the
 30 image will remain private.

31 (b) It is becoming a common practice for persons to
 32 publish a sexually explicit image of another to Internet
 33 websites without the depicted person's consent, for no
 34 legitimate purpose, with the intent of causing substantial
 35 emotional distress to the depicted person.

36 (c) When such images are published on Internet websites,
 37 they are able to be viewed indefinitely by persons worldwide and
 38 are able to be easily reproduced and shared.

39 (d) The publication of such images on Internet websites
 40 creates a permanent record of the depicted person's private
 41 nudity or private sexually explicit conduct.

42 (e) The existence of such images on Internet websites
 43 causes those depicted in such images significant psychological
 44 harm.

45 (f) Safeguarding the psychological well-being of persons
 46 depicted in such images is compelling.

47 (2) As used in this section, the term:

48 (a) "Image" includes, but is not limited to, any
 49 photograph, picture, motion picture, film, video, or
 50 representation.

51 (b) "Personal identification information" has the same
 52 meaning as provided in s. 817.568.

53 (c) "Sexually cyberharass" means to publish a sexually
 54 explicit image of a person that contains or conveys the personal
 55 identification information of the depicted person to an Internet
 56 website without the depicted person's consent, for no legitimate
 57 purpose, with the intent of causing substantial emotional
 58 distress to the depicted person.

59 (d) "Sexually explicit image" means any image depicting
 60 nudity, as defined in s. 847.001, or depicting a person engaging
 61 in sexual conduct, as defined in s. 847.001.

62 (3) (a) Except as provided in paragraph (b), a person who
 63 willfully and maliciously sexually cyberharasses another person
 64 commits a misdemeanor of the first degree, punishable as
 65 provided in s. 775.082 or s. 775.083.

66 (b) A person who has one prior conviction for sexual
 67 cyberharassment and who commits a second or subsequent sexual
 68 cyberharassment commits a felony of the third degree, punishable
 69 as provided in s. 775.082, s. 775.083, or s. 775.084.

70 (4) (a) A law enforcement officer may arrest, without a
 71 warrant, any person that he or she has probable cause to believe
 72 has violated this section.

73 (b) Upon proper affidavits being made, a search warrant
 74 may be issued to further investigate violations of this section,
 75 including warrants issued to search a private dwelling.

76 (5) An aggrieved person may initiate a civil action
 77 against a person who violates this section to obtain all
 78 appropriate relief in order to prevent or remedy a violation of

79 | this section, including the following:

80 | (a) Injunctive relief.

81 | (b) Monetary damages to include \$5,000 or actual damages
 82 | incurred as a result of a violation of this section, whichever
 83 | is greater.

84 | (c) Reasonable attorney fees and costs.

85 | (6) The criminal and civil penalties of this section do
 86 | not apply to:

87 | (a) A provider of an interactive computer service as
 88 | defined in 47 U.S.C. s. 230(f), information service as defined
 89 | in 47 U.S.C. s. 153, or communications service as defined in s.
 90 | 202.11, that provides the transmission, storage, or caching of
 91 | electronic communications or messages of others; other related
 92 | telecommunications or commercial mobile radio service; or
 93 | content provided by another person; or

94 | (b) A law enforcement officer, as defined in s. 943.10, or
 95 | any local, state, federal, or military law enforcement agency,
 96 | that publishes a sexually explicit image in connection with the
 97 | performance of his or her duties as a law enforcement officer,
 98 | or law enforcement agency.

99 | (7) A violation of this section is committed within this
 100 | state if any conduct that is an element of the offense, or any
 101 | harm to the depicted person resulting from the offense, occurs
 102 | within this state.

103 | Section 2. Subsection (16) is added to section 901.15,
 104 | Florida Statutes, to read:

105 901.15 When arrest by officer without warrant is lawful.—A
 106 law enforcement officer may arrest a person without a warrant
 107 when:

108 (16) There is probable cause to believe that the person
 109 has committed a criminal act of sexual cyberharassment as
 110 described in s. 784.049.

111 Section 3. Subsections (9) and (10) of section 933.18,
 112 Florida Statutes, are amended, and subsection (11) is added to
 113 that section, to read:

114 933.18 When warrant may be issued for search of private
 115 dwelling.—No search warrant shall issue under this chapter or
 116 under any other law of this state to search any private dwelling
 117 occupied as such unless:

118 (9) It is being used for the unlawful sale, possession, or
 119 purchase of wildlife, saltwater products, or freshwater fish
 120 being unlawfully kept therein; ~~or~~

121 (10) The laws in relation to cruelty to animals, as
 122 provided in chapter 828, have been or are being violated
 123 therein; or

124 (11) An instrumentality or means by which sexual
 125 cyberharassment has been committed in violation of s. 784.049,
 126 or evidence relevant to proving that sexual cyberharassment has
 127 been committed in violation of s. 784.049, is contained therein.

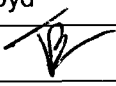
128
 129 If, during a search pursuant to a warrant issued under this
 130 section, a child is discovered and appears to be in imminent

131 | danger, the law enforcement officer conducting such search may
132 | remove the child from the private dwelling and take the child
133 | into protective custody pursuant to chapter 39. The term
134 | "private dwelling" shall be construed to include the room or
135 | rooms used and occupied, not transiently but solely as a
136 | residence, in an apartment house, hotel, boardinghouse, or
137 | lodginghouse. No warrant shall be issued for the search of any
138 | private dwelling under any of the conditions hereinabove
139 | mentioned except on sworn proof by affidavit of some creditable
140 | witness that he or she has reason to believe that one of said
141 | conditions exists, which affidavit shall set forth the facts on
142 | which such reason for belief is based.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 755 Convenience Business Security
SPONSOR(S): Stone
TIED BILLS: None **IDEN./SIM. BILLS:** SB 684

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		Schrader	Lloyd
3) Judiciary Committee		JSS	

SUMMARY ANALYSIS

The Convenience Business Security Act (Act) requires a convenience business to be equipped with a variety of security devices and standards (e.g., a security camera system, a drop safe for restricted access to cash receipts, a notice at the entrance stating that the cash register contains \$50 or less, height markers at the entrance; a cash management policy that limits cash on hand after 11 p.m., a silent alarm, etc.).

The Act also requires any convenience business at which a specified crime has occurred, to implement enhanced security measures. These measures must be in place between 11 p.m. and 5 a.m., and include:

- Providing at least two employees on the premises, installing a transparent secured safety enclosure for use by the employees; providing a security guard on the premises; locking the premises and transacting business through an indirect pass-through window; or closing the business.

The Act also requires all employees to receive robbery deterrence and safety training within 60 days of employment. Convenience businesses must submit a proposed training curriculum to the Department of Legal Affairs (Department), along with an administrative fee not to exceed \$100, for review and approval. The training curriculum must be submitted to the Department biennially, along with the appropriate administrative fee, for reapproval.

Currently, the term "convenience business" is defined to exclude *any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.*

The bill amends the definition of "convenience business" so that it does not exclude businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. As a result, all of the above-described security and training requirements (except the ones noted below) will apply to convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

The bill continues to exempt convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. from the enhanced security standards required after a crime has occurred on the property (described above).

The bill removes the requirement that convenience businesses must submit a safety training curriculum and associated administrative fee to the Department. The Department reports that they are not currently collecting the fee. The bill does not appear to have a fiscal impact on state or local government.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Convenience Business Security Act

In 1990, the Legislature passed the Convenience Business Security Act (Act)¹ to prevent violent crime and provide uniform statewide security standards for late night convenience businesses.² The provisions of the Act are enforced by the Department of Legal Affairs (Department).³

Minimum Security Standards

The Act requires convenience businesses to have the following security devices and standards:

- A security camera system that is capable of recording and retrieving an image to assist in offender identification and apprehension;
- A drop safe or cash management device for restricted access to cash receipts;
- A lighted parking lot illuminated at a specified intensity;
- A conspicuous notice at the entrance stating that the cash register contains \$50 or less;
- Window signage that allows a clear and unobstructed view from outside the building and in a normal line of sight of the cash register and sales transaction area;
- Height markers at the entrance of the convenience business that display height measures;
- A cash management policy that limits cash on hand after 11 p.m.;
- Windows that are not tinted in a way that reduces exterior or interior view; and
- A silent alarm to law enforcement or a private security agency.⁴

Enhanced Security Standards

The Act requires any convenience business at which a murder, robbery, sexual battery, aggravated assault, aggravated battery, kidnapping, or false imprisonment has occurred, to implement additional security measures. These additional security measures must be in place at all times between 11 p.m. and 5 a.m., and include:

- Providing at least two employees on the premises;
- Installing a transparent secured safety enclosure for use by the employees;
- Providing a security guard on the premises;
- Locking the premises and transacting business through an indirect pass-through window; or
- Closing the business.⁵

After complying with these provisions for 24 months with no additional occurrences of the above-described crimes, a convenience business may file a notice of exemption from the enhanced security measures with the Department.⁶

Training Requirements

The Act requires all employees to receive robbery deterrence and safety training within 60 days of employment.⁷ Convenience businesses must submit a proposed training curriculum to the Department, along with an administrative fee not to exceed \$100, for review and approval.⁸ The training curriculum must be submitted to the Department biennially, along with the appropriate administrative fee, for reapproval.⁹

¹ Ch. 90-346, Laws of Florida.

² s. 812.172, F.S.

³ s. 812.175, F.S. The Department may also enter into agreements with local governments to assist in enforcement. s. 812.175(4), F.S.

⁴ s. 812.173(1), (2), and (3), F.S.

⁵ s. 812.173(4), F.S.

⁶ s. 812.173(5), F.S.

⁷ s. 812.174, F.S.

⁸ *Id.*

⁹ *Id.*

Enforcement

The Department enforces the provisions of the Act. Upon learning of a violation, the Department must provide the convenience business a notice of violation which the business has 30 days to correct.¹⁰ If the convenience business fails to correct the violation within 30 days, the Department may impose a civil fine of up to \$5,000.¹¹ If the violation is determined to be a threat to health, safety, and public welfare, the Department is authorized to pursue an injunction against the convenience business.¹²

Currently, the term "convenience business" is defined as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m.¹³ The term does not include:

- A business that is solely or primarily a restaurant;
- A business that always has at least five employees on the premises after 11 p.m. and before 5 a.m.; or
- A business that has at least 10,000 square feet of retail floor space.¹⁴

The term also does not include any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.¹⁵

Effect of the Bill

The bill amends the definition of "convenience business" so that it does not exclude any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. As a result, all of the above-described security and training requirements (except the ones noted below) will apply to convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

The bill continues to exempt convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. from the enhanced security standards required after a crime has occurred on the property (described above).

The bill also removes the requirement that convenience businesses submit a safety training curriculum to the Department.

B. SECTION DIRECTORY:

Section 1. Amends s. 812.171, F.S., relating to definition.

Section 2. Amends s. 812.173, F.S., relating to convenience business security.

Section 3. Amends s. 812.174, F.S., relating to training of employees.

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

¹⁰ s. 812.175(1), F.S.

¹¹ *Id.*

¹² s. 812.175(3), F.S.

¹³ s. 812.171, F.S.

¹⁴ *Id.*

¹⁵ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill removes the requirement that convenience businesses must submit a safety training curriculum and associated administrative fee to the Department. The Department reports that they are not currently collecting the fee, and that the bill will not have a fiscal impact.¹⁶

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on convenience businesses, as they will no longer be required to submit a safety training curriculum and associated fee to the Department.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

¹⁶ E-mail from Andrew Fay, Florida Department of Legal Affairs, March 11, 2015 (on file with the Criminal Justice Subcommittee).

1 A bill to be entitled
 2 An act relating to convenience business security;
 3 amending s. 812.171, F.S.; revising the definition of
 4 the term "convenience business" to delete an exception
 5 for certain businesses in which the owner or family
 6 members work between specified hours; amending s.
 7 812.173, F.S.; exempting certain businesses in which
 8 the owner or family members work between specified
 9 hours from specified requirements; amending s.
 10 812.174, F.S.; deleting obsolete provisions; deleting
 11 administrative fees required to be submitted to the
 12 Attorney General with proposed and biennial robbery
 13 deterrence and safety training curriculum for
 14 convenience store employees; deleting a requirement
 15 for the Attorney General to biennially reapprove such
 16 curriculum; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 812.171, Florida Statutes, is amended
 21 to read:

22 812.171 Definition.—As used in ss. 812.1701-812.175 ~~this~~
 23 ~~act~~, the term "convenience business" means any place of business
 24 that is primarily engaged in the retail sale of groceries, or
 25 both groceries and gasoline, and that is open for business at
 26 any time between the hours of 11 p.m. and 5 a.m. The term

27 "convenience business" does not include:

28 (1) A business that is solely or primarily a restaurant.

29 (2) A business that always has at least five employees on
30 the premises after 11 p.m. and before 5 a.m.

31 (3) A business that has at least 10,000 square feet of
32 retail floor space.

33

34 ~~The term "convenience business" does not include any business in~~
35 ~~which the owner or members of his or her family work between the~~
36 ~~hours of 11 p.m. and 5 a.m.~~

37 Section 2. Subsection (4) of section 812.173, Florida
38 Statutes, is amended to read:

39 812.173 Convenience business security.-

40 (4) If a murder, robbery, sexual battery, aggravated
41 assault, aggravated battery, or kidnapping or false
42 imprisonment, as those crimes are identified and defined by
43 Florida Statutes, occurs or has occurred at a convenience
44 business since July 1, 1989, and arises out of the operation of
45 the convenience business, that convenience business, unless it
46 is a convenience business in which the owner or members of his
47 or her family work between the hours of 11 p.m. and 5 a.m.,
48 shall implement at least one of the following security measures:

49 (a) Provide at least two employees on the premises at all
50 times after 11 p.m. and before 5 a.m.;

51 (b) Install for use by employees at all times after 11
52 p.m. and before 5 a.m. a secured safety enclosure of transparent

53 polycarbonate or other material that meets at least one of the
 54 following minimum standards:

55 1. American Society for Testing and Materials Standard
 56 D3935 (classification PC110 B 3 0800700) and that has a
 57 thickness of at least 0.375 inches and has an impact strength of
 58 at least 200 foot pounds; or

59 2. Underwriters Laboratory Standard UL 752 for medium
 60 power small arms (level one), Bullet Resisting Equipment;

61 (c) Provide a security guard on the premises at all times
 62 after 11 p.m. and before 5 a.m.;

63 (d) Lock the business premises throughout the hours of 11
 64 p.m. to 5 a.m., and only transact business through an indirect
 65 pass-through trough, trapdoor, or window; or

66 (e) Close the business at all times after 11 p.m. and
 67 before 5 a.m.

68 Section 3. Section 812.174, Florida Statutes, is amended
 69 to read:

70 812.174 Training of employees.-

71 (1) The owner or principal operator of a convenience
 72 business or convenience businesses shall provide proper robbery
 73 deterrence and safety training by an approved curriculum to its
 74 retail employees within 60 days after of employment. ~~Existing~~
 75 ~~retail employees shall receive training within 6 months of April~~
 76 ~~8, 1992.~~

77 (2) A proposed curriculum shall be submitted in writing to
 78 the Attorney General ~~with an administrative fee not to exceed~~

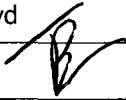

79 ~~\$100.~~ The Attorney General shall review and approve or
 80 disapprove the curriculum in writing within 60 days after
 81 receipt. The state shall have no liability for approving or
 82 disapproving a training curriculum under this section. Approval
 83 shall be given to a curriculum that ~~which~~ trains and
 84 familiarizes retail employees with the security principles,
 85 devices, and measures required by s. 812.173. Disapproval of a
 86 curriculum shall be subject to ~~the provisions of~~ chapter 120.

87 (3) A ~~No~~ person shall not be liable for ordinary
 88 negligence due to implementing an approved curriculum if the
 89 training was actually provided. ~~A curriculum shall be submitted~~
 90 ~~for reapproval biennially with an administrative fee not to~~
 91 ~~exceed \$100. Any curriculum approved by the Attorney General~~
 92 ~~since September 1990 shall be subject to reapproval 2 years from~~
 93 ~~the anniversary of initial approval and biennially thereafter.~~

94 Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 845 Sexting
SPONSOR(S): Criminal Justice Subcommittee; DuBose and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		Schrader	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill amends s. 847.0141 F.S., which specifies that a minor commits sexting if he or she knowingly;

- Uses a computer, or any other electronic device, to transmit or distribute to another minor any photograph or video of any person which depicts nudity and is harmful to minors; or
- Possess a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to minors.

The bill amends s. 985.0301 F.S., to specify that that a circuit court has exclusive original jurisdiction of proceedings in which a child is alleged to have committed a noncriminal violation that has been assigned to juvenile court by law.

The bill changes penalties associated with first-time violations of the sexting statute and;

- Specifies that first-time sexting violations remain a noncriminal violation;
- Provides that a minor who commits a first-time sexting violation must sign and accept a citation indicating a promise to appear before the juvenile court.
- Provides that in lieu of appearing in court, the minor may complete 8 hours of community service work, pay a \$60 civil penalty, or participate in a cyber-safety program, if such program is locally available.
- Provides that the minor must satisfy any penalty within 30 days after receipt of the citation. A minor who fails to comply with the citation waives his or her right to contest it, and authorizes the court to: order the minor to perform 8 hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof); or issue an order to show cause.

If the minor opts to appear in court (rather than complete community service, etc.) and the court finds that the minor committed the noncriminal violation, the court may order the minor to perform eight hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof).

Upon a finding of contempt, the court may impose additional penalties, which may include issuance of an order to the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend the driver license or driving privilege of, the minor for 30 consecutive days. The court may not impose incarceration.

The bill may have a positive fiscal impact on state and local government because it allocates specified percentages of all civil penalties received by a juvenile court pursuant to the citation process to the clerk of court and to the county commission.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Sexting

The act of electronically sending sexually explicit messages or photos of oneself to another is generally referred to as sexting. Sexting among youth is more prevalent than previously thought, according to a new study from Drexel University that was based on a survey of undergraduate students at a large northeastern university.¹ More than 50 percent of those surveyed reported that they had exchanged sexually explicit text messages, with or without photographic images, as minors.

2011 Legislation

In 2011, the Legislature passed HB 75,² which created s. 847.0141, F.S., relating to sexting. This statute specifies that a minor commits sexting if he or she knowingly:

- Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity³ and is harmful to minors⁴; or
- Possess a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to minors.

A minor who *possesses* a prohibited photograph or video does not commit sexting if:

- The minor did not solicit the photograph or video;
- The minor took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official; and
- The minor did not transmit or distribute the photograph or video to a third party.⁵

The statute specifies that the transmission or distribution of multiple photographs or videos is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period. Additionally, the possession of multiple photographs or videos that were transmitted or distributed by a minor is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period.⁶

The following penalties apply to sexting:

- A minor's first violation is a noncriminal violation punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. Additionally, the court may order the minor to participate in suitable training or instruction in lieu of, or in addition to, community service or a fine.

¹ *Sexting among youth more prevalent than thought? Minors unaware of harsh legal consequences, survey shows*, Science Daily, June 18, 2014, <http://www.sciencedaily.com/releases/2014/06/140618122259.htm> (last visited March 13, 2015).

² Ch. 2011-180, Laws of Florida.

³ Section 847.001(9), F.S., defines the term "nudity" as "the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute 'nudity,' irrespective of whether or not the nipple is covered during or incidental to feeding."

⁴ The term "harmful to minors" is defined by s. 847.001, F.S., as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it predominantly appeals to a prurient, shameful, or morbid interest; is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

⁵ s. 847.0141(1)(b), F.S.

⁶ s. 847.0141(2), F.S.

- A minor commits a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine, for a violation that occurs after being found to have committed⁷ a noncriminal sexting offense.
- A minor commits a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine, for a violation that occurs after being found to have committed a first degree misdemeanor sexting offense.⁸

State v. C.M.

In January 2015, Florida's Fourth District Court of Appeal (DCA) decided *State v. C.M.*⁹ The case involved a minor who was charged via a delinquency petition with committing a first-time violation of the sexting statute – a noncriminal violation. At trial, the defense filed a motion to dismiss arguing that because the minor did not commit a delinquent act, she could not be subject to prosecution through a petition for delinquency. The trial court agreed and granted the motion.¹⁰

On appeal, the Fourth DCA recognized that under the delinquency statutes, the state attorney files a petition for delinquency to obtain a finding that a child has committed a delinquent act or violation of law.¹¹ The court held that because a first offense of sexting (a noncriminal violation) does not fit within the definition of “delinquent act” or “violation of law,” a petition for delinquency was not the proper method to prosecute such offense.¹²

The state argued that the trial court's dismissal left them without a remedy, and asserted that the court should authorize the use of a petition for delinquency because it was the only method to determine if a noncriminal first offense of sexting occurred.¹³ The Fourth DCA disagreed reasoning that courts “are not at liberty to add words to statutes that were not placed there by the Legislature.”¹⁴ The court went on to state:

[O]nly the legislature can add to the sexting statute to set out the procedure for the prosecution and determination if there has been a violation of the first offense. Until that is effectuated by the legislature, we are bound to the letter of the law and “must apply a statute as [we] find it, leaving to the legislature the correction of assorted inconsistencies and inequalities in its operation.”¹⁵

Effect of the Bill

The bill addresses the holding in *State v. C.M.* by amending s. 985.0301, F.S., to specify that a circuit court has exclusive original jurisdiction of proceedings in which a child is alleged to have committed a noncriminal violation that has been assigned to juvenile court by law.

The bill also addresses the holding in *State v. C.M.* by making a multitude of changes to the penalties associated with a first-time violation of the sexting statute.¹⁶ For example, the bill specifies that first-time sexting violations remain a noncriminal violation. However, the bill requires a minor who commits a first-time sexting violation to sign and accept a citation indicating a promise to appear before the juvenile court. If the citation is contested and the court determines that the minor committed a noncriminal violation, the court may order the minor to perform eight hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof).

⁷ Section 847.0141(5), F.S., defines the term “found to have committed” as a determination of guilt that is the result of a plea or trial, or a finding of delinquency that is the result of a plea or an adjudicatory hearing, regardless of whether adjudication is withheld.

⁸ s. 847.0141(3), F.S.

⁹ 154 So. 3d 1177 (Fla. 4th DCA 2015).

¹⁰ *Id.*

¹¹ *Id.* at 1179.

¹² *Id.* at 1179-1180.

¹³ *Id.* at 1180.

¹⁴ *Id.*, (citing *Bay Holdings, Inc. v. 2000 Island Blvd. Condo. Ass'n*, 895 So. 2d 1197, 1197 (Fla. 3d DCA 2005)).

¹⁵ *Id.* (citing *Guilder v. State*, 899 So. 2d 412, 419 (Fla. 4th DCA 2005) (quoting *State v. Aiuppa*, 298 So. 2d 391, 404 (Fla. 1974)).

¹⁶ The penalties associated with second and subsequent sexting offenses remain unchanged.

In lieu of appearing in court, the minor may:

- Complete 8 hours of community service work;
- Pay a \$60 civil penalty; or
- Participate in a cyber-safety program, if such a program is locally available.

The minor must satisfy any penalty within 30 days after receipt of the citation. A minor who fails to comply with the citation waives his or her right to contest it, and authorizes the court to:

- Order the minor to perform 8 hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof); or
- Issue an order to show cause.

Upon a finding of contempt, the court may impose additional age-appropriate penalties, which may include issuance of an order to the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend the driver license or driving privilege of, the minor for 30 consecutive days. The bill prohibits the court from imposing incarceration.

The bill requires the citation issued to a minor to be in a form prescribed by the issuing law enforcement agency, be signed by the minor, and to contain:

- The date and time of issuance;
- The name and address of the minor to whom the citation is issued;
- A thumbprint of the minor to whom the citation is issued;
- Identification of the noncriminal violation and the time it was committed;
- The facts constituting reasonable cause;
- The specific section of law violated;
- The name and authority of the citing officer; and
- The procedures that the minor must follow to contest the citation, perform the required community service, pay the civil penalty, and participate in a cyber-safety program.

The bill requires 80 percent of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors. The remaining 20 percent must remain with the clerk of the court to defray administrative costs.

B. SECTION DIRECTORY:

Section 1. Amends s. 847.0141, F.S., relating to sexting; prohibited acts; penalties.

Section 2. Amends s. 985.0301, F.S., relating to jurisdiction.

Section 3. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires 20 percent of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be retained by the clerk of the court to defray administrative costs.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill requires 80 percent of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill as favorable as a committee substitute. The amendment removed the provision requiring records relating to noncriminal sexting violations to be confidential. The amendment also made the bill effective upon becoming a law.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
2 An act relating to sexting; amending s. 847.0141,
3 F.S.; removing the court's discretion to impose a
4 specified penalty for a first violation of sexting;
5 requiring a minor cited for a first violation to sign
6 and accept a citation to appear before juvenile court
7 or, in lieu of appearing in court, to complete
8 community service work, pay a civil penalty, or
9 participate in a cyber-safety program within a certain
10 period of time, if such program is locally available;
11 requiring the citation to be in a form prescribed by
12 the issuing law enforcement agency; requiring such
13 citation to include certain information; authorizing a
14 court to order certain penalties under certain
15 circumstances; authorizing a court to order specified
16 additional penalties in certain circumstances;
17 prohibiting the court from imposing incarceration;
18 conforming provisions to changes made by the act;
19 requiring that a specified percentage of civil
20 penalties received by a juvenile court be remitted by
21 the clerk of court to the county commission to provide
22 cyber-safety training for minors; requiring that the
23 remaining percentage remain with the clerk of the
24 court to cover administrative costs; amending s.
25 985.0301, F.S.; creating exclusive original
26 jurisdiction in the circuit court when a child is

27 | alleged to have committed a noncriminal violation that
 28 | is assigned to juvenile court; providing an effective
 29 | date.

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

32 |
 33 | Section 1. Subsections (3) and (5) of section 847.0141,
 34 | Florida Statutes, are amended, and subsection (6) is added to
 35 | that section, to read:

36 | 847.0141 Sexting; prohibited acts; penalties.—

37 | (3) A minor who violates subsection (1):

38 | (a) Commits a noncriminal violation for a first violation,
 39 | ~~punishable by 8 hours of community service or, if ordered by the~~
 40 | ~~court in lieu of community service, a \$60 fine. The court may~~
 41 | ~~also order the minor to participate in suitable training or~~
 42 | ~~instruction in lieu of, or in addition to, community service or~~
 43 | ~~a fine. The minor must sign and accept a citation indicating a~~
 44 | promise to appear before the juvenile court. In lieu of
 45 | appearing in court, the minor may complete 8 hours of community
 46 | service work, pay a \$60 civil penalty, or participate in a
 47 | cyber-safety program, if such a program is locally available.
 48 | The minor must satisfy any penalty within 30 days after receipt
 49 | of the citation.

50 | 1. A citation issued to a minor under this subsection must
 51 | be in a form prescribed by the issuing law enforcement agency,
 52 | must be signed by the minor, and must contain all of the

53 following:

54 a. The date and time of issuance.

55 b. The name and address of the minor to whom the citation
 56 is issued.

57 c. A thumbprint of the minor to whom the citation is
 58 issued.

59 d. Identification of the noncriminal violation and the
 60 time it was committed.

61 e. The facts constituting reasonable cause.

62 f. The specific section of law violated.

63 g. The name and authority of the citing officer.

64 h. The procedures that the minor must follow to contest
 65 the citation, perform the required community service, pay the
 66 civil penalty, and participate in a cyber-safety program.

67 2. If the citation is contested and the court determines
 68 that the minor committed a noncriminal violation under this
 69 section, the court may order the minor to perform 8 hours of
 70 community service, pay a \$60 civil penalty, or participate in a
 71 cyber-safety program, or any combination thereof.

72 3. A minor who fails to comply with the citation waives
 73 his or her right to contest it, and the court may impose any of
 74 the penalties identified in subparagraph 2. or issue an order to
 75 show cause. Upon a finding of contempt, the court may impose
 76 additional age-appropriate penalties, which may include issuance
 77 of an order to the Department of Highway Safety and Motor
 78 Vehicles to withhold issuance of, or suspend the driver license

79 or driving privilege of, the minor for 30 consecutive days.
 80 However, the court may not impose incarceration.

81 (b) Commits a misdemeanor of the first degree for a
 82 violation that occurs after the minor has been ~~being~~ found to
 83 have committed a noncriminal violation for sexting or has
 84 satisfied the penalty imposed in lieu of a court appearance as
 85 provided in paragraph (a), punishable as provided in s. 775.082
 86 or s. 775.083.

87 (c) Commits a felony of the third degree for a violation
 88 that occurs after the minor has been ~~being~~ found to have
 89 committed a misdemeanor of the first degree for sexting,
 90 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

91 (5) As used in this section, the term "found to have
 92 committed" means a determination of guilt that is the result of
 93 a plea or trial, or a finding of delinquency that is the result
 94 of a plea or an adjudicatory hearing, regardless of whether
 95 adjudication is withheld.

96 (6) Eighty percent of all civil penalties received by a
 97 juvenile court pursuant to this section shall be remitted by the
 98 clerk of the court to the county commission to provide training
 99 on cyber safety for minors. The remaining 20 percent shall
 100 remain with the clerk of the court to defray administrative
 101 costs.

102 Section 2. Subsection (1) of section 985.0301, Florida
 103 Statutes, is amended to read:

104 985.0301 Jurisdiction.—

105 (1) The circuit court has exclusive original jurisdiction
106 of proceedings in which a child is alleged to have committed:

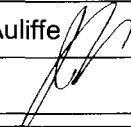
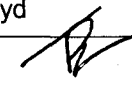
107 (a) ~~to have committed~~ A delinquent act or violation of
108 law.

109 (b) A noncriminal violation that has been assigned to
110 juvenile court by law.

111 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

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

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

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

The Criminal Justice Impact Conference (CJIC) met March 11, 2015 and determined this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually. This bill may increase the number of offenders sentenced to local jail beds because the bill provides possession of three grams or less of the new Schedule I substances is a first degree misdemeanor.

While this bill may also impact the Florida Department of Law Enforcement Crime Laboratory workload because the lab may see a rise in evidence submissions associated with the newly added substances, the department states the workload can be absorbed within existing resources.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Scheduling Synthetic Drugs

Background

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

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

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

Synthetic Cannabinoids

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

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

² See s. 893.03, F.S.

³ *Id.*

⁴ *Id.*

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

⁶ OFFICE OF NATIONAL DRUG CONTROL POLICY, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*,

<http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited March 7, 2015).

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

⁸ OFFICE OF NATIONAL DRUG CONTROL POLICY, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*,

<http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited March 7, 2015).

⁹ *Id.*

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

¹¹ *Id.*

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

Synthetic Drugs Legislation

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

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

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

Effect of the Bill

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

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

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

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

B. SECTION DIRECTORY:

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

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

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

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

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

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

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

¹⁷ s. 893.13(6)(b), F.S.

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

¹⁹ s. 893.13(1)(a), F.S.

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

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

Section 4. Reenacts s. 322.2616, F.S., relating to suspension of license; persons under 21 years of age; right to review.

Section 5. Reenacts s. 327.35, F.S., relating to boating under the influence; penalties; "designated drivers."

Section 6. Reenacts s. 440.102, F.S., relating to drug-free workplace program requirements.

Section 7. Reenacts s. 458.3265, F.S., relating to pain-management clinics.

Section 8. Reenacts s. 459.0137, F.S., relating to pain-management clinics.

Section 9. Reenacts s. 782.04, F.S., relating to murder.

Section 10. Reenacts s. 893.0356, F.S., relating to control of new substances; findings of fact; "controlled substance analog" defined.

Section 11. Reenacts s. 893.05, F.S., relating to practitioners and persons administering controlled substances in their absence.

Section 12. Reenacts s. 893.12, F.S., relating to contraband; seizure, forfeiture, sale.

Section 13. Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 14. Reenacts s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 15. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 16. Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met March 11, 2015 and determined this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually.

While this bill may also impact the Florida Department of Law Enforcement Crime Laboratory workload because the lab may see a rise in evidence submissions associated with the newly added substances, the department states the workload can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

This bill may increase the number of offenders sentenced to local jail beds because the bill provides possession of three grams or less of the new Schedule I substances is a first degree misdemeanor.

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2015, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorable as a committee substitute. Amendment 1 made technical corrections to the names of two chemical substances included in the bill, and Amendment 2 changed the effective date to be effective upon becoming a law.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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

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

29

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

31

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

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

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

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

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

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

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

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

108 37. Tetrahydrocannabinols.

109 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
 110 (Thiophene analog of phencyclidine).

111 39. 3,4,5-Trimethoxyamphetamine.

112 40. 3,4-Methylenedioxymethcathinone.

113 41. 3,4-Methylenedioxypropylvalerone (MDPV).

114 42. Methylenedioxypropylvalerone.

115 43. Methoxymethcathinone.

116 44. Fluoromethcathinone.

117 45. Methylethcathinone.

118 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
 119 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
 120 homologue.

121 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
 122 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
 123 also known as HU-210.

124 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.

125 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.

126 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole,
 127 also known as JWH-200.

128 51. BZP (Benzylpiperazine).

129 52. Fluorophenylpiperazine.

130 53. Methylphenylpiperazine.

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

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

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

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

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

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

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

313 carboxamido)-3-methylbutanoate.

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

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

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

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

324 (a) Inflicts or allows to be inflicted upon the child
 325 physical, mental, or emotional injury. In determining whether
 326 harm has occurred, the following factors must be considered in
 327 evaluating any physical, mental, or emotional injury to a child:
 328 the age of the child; any prior history of injuries to the
 329 child; the location of the injury on the body of the child; the
 330 multiplicity of the injury; and the type of trauma inflicted.
 331 Such injury includes, but is not limited to:

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

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

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

346

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

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

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

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

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

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

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

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

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

396

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

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

405 316.193 Driving under the influence; penalties.—

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

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

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

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

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

459 (2)

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

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

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

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

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

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

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

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

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

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

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

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

523 458.3265 Pain-management clinics.—

524 (1) REGISTRATION.—

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

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

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

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

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

543 459.0137 Pain-management clinics.—

544 (1) REGISTRATION.—

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

547 relationship with a physician:

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

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

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

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

564 782.04 Murder.—

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

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

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

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

571 b. Arson,

572 c. Sexual battery,

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

599
 600 is murder in the first degree and constitutes a capital felony,
 601 punishable as provided in s. 775.082.
 602 (4) The unlawful killing of a human being, when
 603 perpetrated without any design to effect death, by a person
 604 engaged in the perpetration of, or in the attempt to perpetrate,
 605 any felony other than any:
 606 (a) Trafficking offense prohibited by s. 893.135(1),
 607 (b) Arson,
 608 (c) Sexual battery,
 609 (d) Robbery,
 610 (e) Burglary,
 611 (f) Kidnapping,
 612 (g) Escape,
 613 (h) Aggravated child abuse,
 614 (i) Aggravated abuse of an elderly person or disabled
 615 adult,
 616 (j) Aircraft piracy,
 617 (k) Unlawful throwing, placing, or discharging of a
 618 destructive device or bomb,
 619 (l) Unlawful distribution of any substance controlled
 620 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,
 621 or opium or any synthetic or natural salt, compound, derivative,
 622 or preparation of opium by a person 18 years of age or older,
 623 when such drug is proven to be the proximate cause of the death
 624 of the user,

625 (m) Carjacking,
 626 (n) Home-invasion robbery,
 627 (o) Aggravated stalking,
 628 (p) Murder of another human being,
 629 (q) Aggravated fleeing or eluding with serious bodily
 630 injury or death,
 631 (r) Resisting an officer with violence to his or her
 632 person, or
 633 (s) Felony that is an act of terrorism or is in
 634 furtherance of an act of terrorism,
 635
 636 is murder in the third degree and constitutes a felony of the
 637 second degree, punishable as provided in s. 775.082, s. 775.083,
 638 or s. 775.084.

639 Section 10. For the purpose of incorporating the amendment
 640 made by this act to section 893.03, Florida Statutes, in
 641 references thereto, paragraph (a) of subsection (2) and
 642 subsection (5) of section 893.0356, Florida Statutes, are
 643 reenacted to read:

644 893.0356 Control of new substances; findings of fact;
 645 "controlled substance analog" defined.—

646 (2)(a) As used in this section, "controlled substance
 647 analog" means a substance which, due to its chemical structure
 648 and potential for abuse, meets the following criteria:

649 1. Is substantially similar to that of a controlled
 650 substance listed in Schedule I or Schedule II of s. 893.03; and

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

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

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

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

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

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

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

682 893.12 Contraband; seizure, forfeiture, sale.-

683 (2)

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

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

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

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

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

727 893.13 Prohibited acts; penalties.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

910 4. Distribute a controlled substance named or described in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

973 893.03(1)(c):

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

989 p. 3,4-Methylenedioxymethcathinone;
 990 q. 3,4-Methylenedioxypropylvalerone (MDPV); or
 991 r. Methylenedioxymethcathinone,
 992
 993 individually or analogs thereto or isomers thereto or in any
 994 combination of or any mixture containing any substance listed in
 995 sub-subparagraphs a.-r., commits a felony of the first degree,
 996 which felony shall be known as "trafficking in Phenethylamines,"
 997 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 998 2. If the quantity involved:
 999 a. Is 10 grams or more, but less than 200 grams, such
 1000 person shall be sentenced to a mandatory minimum term of
 1001 imprisonment of 3 years and shall be ordered to pay a fine of
 1002 \$50,000.
 1003 b. Is 200 grams or more, but less than 400 grams, such
 1004 person shall be sentenced to a mandatory minimum term of
 1005 imprisonment of 7 years and shall be ordered to pay a fine of
 1006 \$100,000.
 1007 c. Is 400 grams or more, such person shall be sentenced to
 1008 a mandatory minimum term of imprisonment of 15 years and shall
 1009 be ordered to pay a fine of \$250,000.
 1010 3. A person who knowingly manufactures or brings into this
 1011 state 30 kilograms or more of any of the following substances
 1012 described in s. 893.03(1)(c):
 1013 a. 3,4-Methylenedioxymethamphetamine (MDMA);
 1014 b. 4-Bromo-2,5-dimethoxyamphetamine;

- 1015 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 1016 d. 2,5-Dimethoxyamphetamine;
- 1017 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 1018 f. N-ethylamphetamine;
- 1019 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 1020 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 1021 i. 4-methoxyamphetamine;
- 1022 j. 4-methoxymethamphetamine;
- 1023 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 1024 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 1025 m. 3,4-Methylenedioxyamphetamine;
- 1026 n. N,N-dimethylamphetamine;
- 1027 o. 3,4,5-Trimethoxyamphetamine;
- 1028 p. 3,4-Methylenedioxymethcathinone;
- 1029 q. 3,4-Methylenedioxypyrovalerone (MDPV); or
- 1030 r. Methylnmethcathinone,
- 1031
- 1032 individually or analogs thereto or isomers thereto or in any
- 1033 combination of or any mixture containing any substance listed in
- 1034 sub-subparagraphs a.-r., and who knows that the probable result
- 1035 of such manufacture or importation would be the death of any
- 1036 person commits capital manufacture or importation of
- 1037 Phenethylamines, a capital felony punishable as provided in ss.
- 1038 775.082 and 921.142. A person sentenced for a capital felony
- 1039 under this paragraph shall also be sentenced to pay the maximum
- 1040 fine provided under subparagraph 1.

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

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

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

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

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

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

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

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

1078 (3) OFFENSE SEVERITY RANKING CHART

1079 (b) LEVEL 2

1080

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

1081

1082

1083	403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
1084	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
1085	590.28(1)	3rd	Intentional burning of lands.
1086	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
1087	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
1088			

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

CS/HB 897

2015

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

use of an antishoplifting or
inventory control device
countermeasure.

1094

817.234(1)(a)2.

3rd False statement in
support of insurance
claim.

1095

817.481(3)(a)

3rd Obtain credit or purchase
with false, expired,
counterfeit, etc., credit
card, value over \$300.

1096

817.52(3)

3rd Failure to redeliver
hired vehicle.

1097

817.54

3rd With intent to defraud, obtain
mortgage note, etc., by false
representation.

1098

817.60(5)

3rd Dealing in credit cards
of another.

1099

817.60(6)(a)

3rd Forgery; purchase
goods, services with
false card.

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

CS/HB 897

2015

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

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

CS/HB 897

2015

1108	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
1109	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
1110	843.08	3rd	Falsely impersonating an officer.
1111	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
1112	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
1113	(c) LEVEL 3		
1114	Florida	Felony	
1115	Statute	Degree	Description

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

			on stolen vehicle.
1122	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
1123	327.35(2)(b)	3rd	Felony BUI.
1124	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
1125	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
1126	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
1127	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring,

selling, offering to sell,
molesting, or harassing marine
turtles, marine turtle eggs, or
marine turtle nests in violation
of the Marine Turtle Protection
Act.

1128

379.2431
(1) (e) 6.

3rd Soliciting to commit or
conspiring to commit a
violation of the Marine
Turtle Protection Act.

1129

400.9935 (4)

3rd Operating a clinic without
a license or filing false
license application or
other required information.

1130

440.1051 (3)

3rd False report of workers'
compensation fraud or
retaliation for making such
a report.

1131

501.001 (2) (b)

2nd Tamper with a consumer
product or the container using
materially false/misleading
information.

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

CS/HB 897

2015

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

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

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

CS/HB 897

2015

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

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

CS/HB 897

2015

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

1158	870.01(2)	3rd	Riot; inciting or encouraging.
1159	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
1160	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
1160	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,

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

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

1166

893.13(8)(a)1.

3rd

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

1167

893.13(8)(a)2.

3rd

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

1168

893.13(8)(a)3.

3rd

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

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

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

CS/HB 897

2015

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

CS/HB 897

2015

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

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

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

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

CS/HB 897

2015

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

entries of material fact
or false statements
regarding property values
relating to the solvency
of an insuring entity.

1206

817.568 (2) (b)

2nd

Fraudulent use of personal
identification information;
value of benefit, services
received, payment avoided,
or amount of injury or
fraud, \$5,000 or more or use
of personal identification
information of 10 or more
individuals.

1207

817.625 (2) (b)

2nd

Second or subsequent
fraudulent use of
scanning device or
reencoder.

1208

825.1025 (4)

3rd

Lewd or lascivious
exhibition in the
presence of an elderly
person or disabled adult.

1209

1210	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1211	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
1212	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
1213	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
1213	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.

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

CS/HB 897

2015

1214	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
1215	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
1216	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
1217	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
1218	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
1219	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other

s. 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3.,
 (2)(c)5., (2)(c)6.,
 (2)(c)7., (2)(c)8.,
 (2)(c)9., (3), or (4)
 drugs) within 1,000 feet
 of a child care facility,
 school, or state, county,
 or municipal park or
 publicly owned
 recreational facility or
 community center.

1220

893.13(1)(d)1.

1st

Sell, manufacture, or
 deliver cocaine (or other
 s. 893.03(1)(a), (1)(b),
 (1)(d), (2)(a), (2)(b), or
 (2)(c)4. drugs) within
 1,000 feet of university.

1221

893.13(1)(e)2.

2nd

Sell, manufacture, or
 deliver cannabis or other
 drug prohibited under s.
 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3.,
 (2)(c)5., (2)(c)6.,

(2)(c)7., (2)(c)8.,
 (2)(c)9., (3), or (4)
 within 1,000 feet of
 property used for
 religious services or a
 specified business site.

1222

893.13(1)(f)1.

1st

Sell, manufacture, or
 deliver cocaine (or other
 s. 893.03(1)(a), (1)(b),
 (1)(d), or (2)(a), (2)(b),
 or (2)(c)4. drugs) within
 1,000 feet of public
 housing facility.

1223

893.13(4)(b)

2nd

Deliver to minor cannabis
 (or other s. 893.03(1)(c),
 (2)(c)1., (2)(c)2.,
 (2)(c)3., (2)(c)5.,
 (2)(c)6., (2)(c)7.,
 (2)(c)8., (2)(c)9., (3), or
 (4) drugs).

1224

893.1351(1)

3rd

Ownership, lease, or rental
 for trafficking in or
 manufacturing of controlled

substance.

1225

1226

1227

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 967 Trespass on Airport Property
SPONSOR(S): Criminal Justice Subcommittee; Cortes and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1174

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	Cunningham
2) Justice Appropriations Subcommittee		Schrader	Lloyd
3) Judiciary Committee		JSS	B

SUMMARY ANALYSIS

The bill amends s. 810.09, F.S., to increase criminal penalties from a first degree misdemeanor to a third degree felony where an offender trespasses on the operational area of an airport with the intent to:

- Injure another person;
- Damage property; or
- Impede the operation or use of an aircraft, runway, taxiway, ramp or apron area.

The bill defines "operational area of an airport" as any portion of an airport to which access by the public is prohibited by fences or appropriate signs and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenances areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

The bill requires that a sign with language similar to the following be posted in order for a trespasser to be prosecuted: "THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

The Criminal Justice Impact Conference met on March 11, 2015, and determined that this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the Department of Corrections prison bed population by less than 10 inmates annually. The bill may also have a negative county jail bed impact.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Trespass

Florida law currently prohibits a variety of acts relating to trespassing in or on the property of others.

For example:

- Section 810.08, F.S., makes it a second degree misdemeanor¹ to willfully enter or remain in any structure² or conveyance,³ without being authorized, licensed, or invited, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.⁴
- Section 810.09, F.S., makes it a first degree misdemeanor⁵ to willfully enter upon or remain in any property other than a structure or conveyance, without being authorized, licensed, or invited:
 - Where notice against entering or remaining is given either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, F.S.; or
 - If the property is the unenclosed curtilage of a dwelling⁶ and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Generally, trespass offenses are misdemeanors. However, the penalties relating to trespass offenses are often increased when the offense involves specified types of property. For example, it is a third degree felony⁷ to trespass on designated construction sites, commercial horticulture properties, and agricultural chemicals manufacturing facilities.⁸ These properties must have posted warnings that contain specific language identifying the property as a protected type.⁹

Airport Security

Air travel security first gained national attention in the 1960s because of a rash of airplane hijackings.¹⁰ In response to this new threat, Congress made aircraft piracy and carrying a “concealed deadly or dangerous weapon” on an aircraft without authorization a federal crime.¹¹ This law did little to slow the rate of hijacking attempts, and in 1970, the first federal airport screening and security program was put in place at airports nationwide to fight increasing security hazards.¹² Airport security measures have been added over the past fifteen years as new threats arise.¹³

In recent years, there have been a number of reports of individuals trespassing into security screening areas, taxiways, and other restricted areas at airports.¹⁴ Small breaches of airport security can cause

¹ 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.

² Section 810.011(1), F.S., defines “structure” as a building of any kind.

³ Section 810.011(3), F.S., defines “conveyance” as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

⁴ This section increases the penalties to a first degree misdemeanor or a third degree felony in specified circumstances.

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

⁶ Section 810.011(2), F.S., defines “dwelling” as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.

⁷ 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.

⁸ ss. 810.09(2)(d)(1), (e), and (i), F.S.

⁹ s. 810.09(2), F.S.

¹⁰ Daniel S. Harawa, *The Post-TSA Airport: A Constitution Free Zone?*, 41 PEPP. L. REV. 1, 4 (2013).

¹¹ Act of Jan. 3, 1961, Pub. L. No. 87-197, 75 Stat. 466-68.

¹² Statement Announcing a Program to Deal with Airport Hijacking, 1 PUB. PAPERS 742 (Sept. 11, 1970), <http://www.presidency.ucsb.edu/ws/index.php?pid=2659> (last visited March 10, 2015); see also Harawa, *supra* note 9, at 4.

¹³ See Exec. Order No. 13,228, 66 Fed. Reg. 51,812 (Oct. 10, 2001).

¹⁴ See Peter D’Oench, *Police: Woman Arrested for Scaling Miami Airport Fence*, CSB MIAMI (March 2, 2015),

<http://miami.cbslocal.com/2015/03/02/police-woman-arrested-for-scaling-miami-airport-fence/> (last visited March 10, 2015); Ray

major delays and security risks. One incident at Newark Liberty International Airport involved a young man who slipped under a security rope into a secured passenger area to give his girlfriend a goodbye kiss.¹⁵ This brief security breach caused a six-hour terminal shutdown, stranded thousands of passengers, and delayed flights continuing into the next day.¹⁶

Federal law currently prohibits any person from knowingly and willfully entering any aircraft or airport area in violation of specified security requirements.¹⁷ An offender who acts with the intent to evade security procedures or with the intent to commit a felony in the aircraft or airport area may face up to twenty years in federal prison.¹⁸

Currently, Florida law does not specifically prohibit trespassing in any portion of an airport. Therefore, trespassing on airport property is a first degree misdemeanor.¹⁹

Effect of the Bill

The bill amends s. 810.09, F.S., to make it a third degree felony for a person to trespass on the operational area of an airport with the intent to injure another person; damage property; or impede the operation or use of an aircraft, runway, taxiway, ramp or apron area.

The bill defines “operational area of an airport” as any portion of an airport to which access by the public is prohibited by fences or appropriate signs and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenances areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

The bill requires that a sign with language similar to the following be posted in order for a trespasser to be prosecuted: “THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”

B. SECTION DIRECTORY:

Section 1. Amends s. 810.09, F.S., relating to trespass on property other than structure or conveyance.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

Sanchez, *Man Walks onto Newark Airport Runways; Authorities Reviewing Security Video*, FOX 13 (Dec. 26, 2013), <http://fox13now.com/2013/12/26/new-jersey-airports-multimillion-dollar-detection-system-fails/> (last visited March 10, 2015); Sarah Wheaton, *Man is Held in Security Breach at Newark*, THE NEW YORK TIMES (Jan. 8, 2010),

http://www.nytimes.com/2010/01/09/nyregion/09newark.html?_r=0 (last visited March 10, 2015).

¹⁵ Sarah Wheaton, *Man is Held in Security Breach at Newark*, THE NEW YORK TIMES (Jan. 8, 2010),

http://www.nytimes.com/2010/01/09/nyregion/09newark.html?_r=0 (last visited March 10, 2015); Al Baker & Liz Robbins, *A ‘Romantic’ Now in Trouble over an Airport Kiss*, THE NEW YORK TIMES (Jan. 9, 2010)

<http://www.nytimes.com/2010/01/10/nyregion/10newark.html> (last visited March 9, 2015).

¹⁶ *Id.*

¹⁷ 49 U.S.C. § 46314 (2015).

¹⁸ 49 U.S.C. § 46314 (2015).

¹⁹ While Florida law does not specifically prohibit trespassing in any portion of an airport, s. 901.15, F.S., allows a law enforcement officer to arrest a person for misdemeanor trespass without a warrant when there is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas.

2. Expenditures:

The Criminal Justice Impact Conference met on March 11, 2015, and determined that this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the Department of Corrections prison bed population by less than 10 inmates annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

To the extent persons who trespass on the operational area of an airport are charged with a felony rather than a misdemeanor, the bill may have a negative jail bed impact (i.e., it will decrease the need for jail beds).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill as favorable as a committee substitute. The amendment creates the requirement that the operational area of an airport is posted with signs identifying the area in a specified manner in order to prosecute an offender for trespass.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
2 An act relating to trespass on airport property;
3 amending s. 810.09, F.S.; providing enhanced criminal
4 penalties for a trespass upon the operational area of
5 an airport with specified intent if specified signage
6 is posted; providing a definition; providing an
7 effective date.

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

10
11 Section 1. Paragraph (j) is added to subsection (2) of
12 section 810.09, Florida Statutes, to read:

13 810.09 Trespass on property other than structure or
14 conveyance.—

15 (1)(a) A person who, without being authorized, licensed,
16 or invited, willfully enters upon or remains in any property
17 other than a structure or conveyance:

18 1. As to which notice against entering or remaining is
19 given, either by actual communication to the offender or by
20 posting, fencing, or cultivation as described in s. 810.011; or

21 2. If the property is the unenclosed curtilage of a
22 dwelling and the offender enters or remains with the intent to
23 commit an offense thereon, other than the offense of trespass,

24
25 commits the offense of trespass on property other than a
26 structure or conveyance.

27 (2)
 28 (j)1. The offender commits a felony of the third degree,
 29 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 30 if the offender trespasses with the intent to injure another
 31 person, damage property, or impede the operation or use of an
 32 aircraft, runway, taxiway, ramp, or apron area, and the property
 33 trespassed upon is the operational area of an airport that is
 34 legally posted and identified in substantially the following
 35 manner: "THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN
 36 AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A
 37 FELONY."

38 2. For purposes of this paragraph, the term "operational
 39 area of an airport" means any portion of an airport to which
 40 access by the public is prohibited by fences or appropriate
 41 signs and includes runways, taxiways, ramps, apron areas,
 42 aircraft parking and storage areas, fuel storage areas,
 43 maintenance areas, and any other area of an airport used or
 44 intended to be used for landing, takeoff, or surface maneuvering
 45 of aircraft.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1037 Electronic Monitoring Devices
SPONSOR(S): Criminal Justice Subcommittee; Torres, Jr.; Plakon and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

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, or conditional release (community supervision).

Currently, 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.

Section 948.11(7), F.S., makes it 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 may electronically monitor offenders sentenced to community control when the court has imposed electronic monitoring as a condition of community control.

The Criminal Justice Impact Conference (CJIC) met on March 11, 2015, and determined that the bill will have an insignificant prison bed impact on the Department of Corrections. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually. Since that date, the bill has been amended to expand certain criminal acts. However, it is unlikely that these changes will alter the CJIC's determination. See Fiscal Impact Section.

The bill is effective October 1, 2015.

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). Florida has used EMDs to keep track of released felons for years, and over 5 million offenders are monitored in some form throughout the United States.³

Judges generally have discretion to require criminal defendants and offenders on community supervision to wear an EMD.⁴ However, 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).⁵

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.⁶ 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.⁷

In 2005, the Florida Legislature made it a crime to interfere with an EMD.⁸ Section 948.11(7), F.S., makes it a third degree felony⁹ for a person to intentionally alter, tamper with, damage or destroy any electronic monitoring equipment pursuant to court or commission¹⁰ order, unless that person is:

- The owner of the equipment or an agent of the owner; and
- Performing ordinary maintenance and repairs.¹¹

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, 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 knowingly 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.

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.ncjrs.gov> (last visited March 11, 2015).

⁴ See, e.g., ss. 907.041, 947.1405, 948.101, 948.03, and 948.30, F.S.

⁵ s. 948.30(2)(e), F.S.

⁶ s. 907.041(4)(c)(7), F.S.

⁷ s. 948.06, F.S.; *Lawson v. State*, 969 So. 2d 222 (Fla. 2007); *State v. Meeks*, 789 So. 2d 982 (Fla. 2001).

⁸ Ch. 2005-28, Laws of Florida.

⁹ 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.

¹⁰ The "commission" is the Florida Commission on Offender Review.

¹¹ s. 948.11(7), F.S.

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, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met on March 11, 2015, and determined that the bill will have an insignificant prison bed impact on the Department of Corrections (i.e., an increase of less than 10 prison beds). Since that date, the bill has been amended to expand the prohibited acts in s. 843.23, F.S., to include altering, tampering with, and damaging an EMD (or asking someone else to do the same). The previous provision only included the removal, destruction or circumvention of an EMD, therefore it is unlikely that these changes will alter the CJIC's determination.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill 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 a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill as favorable as a committee substitute. The amendment:

- Repeals s. 948.11(7), F.S., and moves its provisions into newly-created s. 843.23, F.S.;
- Expands the prohibited acts in s. 843.23, F.S., to include altering, tampering with, and damaging an EMD (or asking someone else to do the same) that the person is required to wear pursuant to a court order or an order by the Commission on Offender Review; and
- 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.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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 requesting
 10 or soliciting 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
 33 that 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~~

CS/HB 1037



2015

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, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1069 Defendants in Specialized Courts
SPONSOR(S): Criminal Justice Subcommittee; Perry and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	Cunningham
2) Justice Appropriations Subcommittee		Schrader	Lloyd 
3) Judiciary Committee		JSS 	

SUMMARY ANALYSIS

Currently, s. 910.035(5), F.S., allows any person who is eligible for participation in a preadjudicatory drug court program to have the case transferred to a county other than that in which the charge arose if;

- The representative of the drug court program of the county requesting to transfer the case consults with the representative of the drug court program in the county to which transfer is desired; and all parties approve the transfer.

If the above requirements are met, the trial court must accept a plea of nolo contendere and enter a transfer order directing the clerk to transfer the case to the county which has accepted the defendant into its drug court. Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred must dispose of the case.

The bill expands s. 910.035(5), F.S., so that a person eligible to participate in *any type of* problem solving courts PSC (not just a preadjudicatory drug court) may have their case transferred to another county if:

- The defendant agrees to the transfer;
- The authorized representative of the trial court consults with the authorized representative of the PSC in the county to which transfer is requested; and
- Both authorized representatives agree to the transfer.

The bill defines "problem-solving court" to include preadjudicatory and postadjudicatory drug courts pursuant to s. 948.01, s. 17 948.06, s. 948.08, s. 948.16, or s. 948.20; preadjudicatory and postadjudicatory veterans' courts pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; and mental health courts.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Preadjudicatory Diversion Programs

A variety of programs currently exist that offer criminal defendants an alternative to prosecution by diverting their cases into pretrial diversion programs. For example, Pretrial Intervention (PTI) programs allow defendants with pending felony or misdemeanor charges the opportunity to have their charges dismissed if they successfully complete PTI program requirements.¹ The purpose of these programs is to provide defendants with services such as counseling, education programs, and psychological treatment.² Generally, PTI programs accept defendants charged with a misdemeanor or third degree felony so long as the defendant, PTI program administrator, victim, prosecutor, and presiding judge agree.³

Postadjudicatory Diversion Programs

Florida law also establishes postadjudicatory programs designed to provide supervised community treatment services in lieu of incarceration for criminal defendants who have entered a guilty or nolo contendere plea to a crime.⁴ For example, postadjudicatory drug court programs serve non-violent, drug addicted offenders who typically have prior convictions. Upon successful completion of the program, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.⁵

Problem-Solving Courts

Florida law authorizes specialty preadjudicatory and postadjudicatory programs for military service members and veterans (veterans' courts),⁶ as well as for defendants with a high risk of substance abuse (drug courts).⁷ These specialty programs, often referred to as problem-solving courts (PSCs) focus on sobriety, counseling, and the unique needs of the specialty groups served by the program.⁸ In addition, while not codified in statute, many judicial circuits have created what are often referred to as mental health courts. Mental health courts are diversionary programs for persons diagnosed with a severe mental illness or developmental disability.

Transferring Criminal Cases to Other Counties

Florida law currently authorizes criminal cases to be transferred between counties in limited circumstances. For example:

¹ See, e.g., ss. 948.08, 948.16, and 985.345, F.S.

² George E. Tragos & Peter A. Sartes, *Diversion Programs: PTI...Dismissal...Problem Solved...or Is It?*, 82 THE FLA. BAR J. 73 (Oct. 2008).

³ See, e.g., ss. 948.08, 948.16, and 985.345, F.S.

⁴ See, e.g., ss. 394.47891, 948.01, 948.06, 948.20, and 948.21, F.S. See also, Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

⁵ Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

⁶ ss. 948.08(7) and 948.16(2) and (3), F.S.

⁷ ss. 948.16(1)(a) and 985.345, F.S.

⁸ See, e.g., EIGHTEENTH JUDICIAL CIRCUIT COURTS, *Court Programs – Seminole Drug Court*, <http://www.flcourts18.org/page.php?109> (last visited March 13, 2015); Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

- When a defendant is arrested or held in a county other than the county where the defendant's criminal charges are pending, the criminal case may be transferred to the county where the defendant is being held.⁹
- When a defendant does not have criminal charges pending, but is arrested on a warrant issued in a county other than the county where the defendant was arrested, the criminal case may be transferred to the county where the defendant was arrested.¹⁰

In addition, s. 910.035(5), F.S., allows the transfer of a criminal case involving a PSC. This statute allows any person who is eligible for participation in a preadjudicatory drug court program¹¹ to have the case transferred to a county other than that in which the charge arose if:

- The authorized representative of the drug court program of the county requesting to transfer the case consults with the authorized representative of the drug court program in the county to which transfer is desired; and
- All parties approve the transfer.

If the above requirements are met, the trial court must accept a plea of nolo contendere and enter a transfer order¹² directing the clerk to transfer the case to the county which has accepted the defendant into its drug court.¹³ After the transfer takes place, the clerk must set the matter for a hearing before the drug court judge and the court must ensure the defendant's entry into the drug court.¹⁴

Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred must dispose of the case pursuant to s. 948.08(6), F.S. If the defendant does not complete the drug court program successfully, the jurisdiction to which the case has been transferred must dispose of the case within the guidelines of the Criminal Punishment Code.¹⁵

Effect of the Bill

The bill expands s. 910.035(5), F.S., to allow a person eligible to participate in a preadjudicatory or postadjudicatory PSC to have their case transferred to another county. Specifically, the bill requires a person who is eligible to participate in a PSC to have his or her case transferred to another county upon request by the person or the court, if:

- The person agrees to the transfer;
- The authorized representative of the trial court consults with the authorized representative of the PSC in the county to which transfer is requested; and
- Both authorized representatives agree to the transfer.

If the above requirements are met, the trial court must enter a transfer order directing the clerk to transfer the case. Any transfer order must include specified documents depending on whether the case

⁹ Section 910.035(1), F.S., permits the criminal case to be transferred if the defendant states in writing that he or she 1) wishes to plead guilty or nolo contendere, 2) to waive trial in the county in which the indictment or information is pending, and 3) to consent to disposition of the case in the county in which the defendant was arrested or is held, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending.

¹⁰ Section 910.035(2), F.S., permits the criminal case to be transferred if the defendant states in writing that he or she 1) wishes to plead guilty or nolo contendere, 2) to waive trial in the county in which the warrant was issued, and 3) to consent to disposition of the case in the county in which the defendant was arrested, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending.

¹¹ Section 948.08(6), F.S., sets forth the eligibility criteria for participation in such programs.

¹² The transfer order must include a copy of the probable cause affidavit; any charging documents in the case; all reports, witness statements, test results, evidence lists, and other documents in the case; the defendant's mailing address and phone number; and the defendant's written consent to abide by the rules and procedures of the receiving county's drug court program. s. 910.035(5)(c), F.S.

¹³ s. 910.035(5)(b), F.S.

¹⁴ s. 910.035(5)(d), F.S.

¹⁵ s. 910.035(5)(e), F.S.

is postadjudicatory or preadjudicatory.¹⁶ After the transfer takes place, the clerk must set the matter for a hearing before the PSC judge to ensure the defendant's entry into the PSC.

Upon successful completion of the PSC, the jurisdiction to which the case has been transferred must dispose of the case. If the defendant does not complete the PSC successfully, the jurisdiction to which the case has been transferred must dispose of the case within the guidelines of the Criminal Punishment Code.¹⁷

The bill defines "problem-solving court" to mean a preadjudicatory or postadjudicatory drug court pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a preadjudicatory or postadjudicatory veterans' court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or a mental health court.

B. SECTION DIRECTORY:

Section 1. Amends s. 910.035, F.S., relating to transfer from county for plea and sentence.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may have a minimal fiscal impact on local government expenditures because counties will be required to take administrative and procedural steps to transfer criminal cases between counties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹⁶ A transfer order for a pretrial case must include: a copy of the probable cause affidavit; any case charging documents; all case reports, witness statements, test results, evidence lists, and other documents; the defendant's mailing address and telephone number; and the defendant's written consent to abide by the rules and procedures of the receiving county's problem-solving court. A transfer order for a postadjudication case must include: the case charging documents; the final disposition; all case reports, test results, and other documents; the defendant's mailing address and telephone number; and the defendant's written consent to abide by the rules and procedures of the receiving county's problem-solving court.

¹⁷ s. 910.035(5)(e), F.S.

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

On March 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill as favorable as a committee substitute. The amendment:

- Expands the transfer process to allow a person eligible to participate in a preadjudicatory or postadjudicatory PSC to have their case transferred to another county;
- Adds a requirement that the defendant must consent to any transfer; and
- Provides separate requirements for the transfer orders for preadjudicatory and postadjudicatory cases.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

A bill to be entitled
 An act relating to defendants in specialized courts;
 amending s. 910.035, F.S.; providing a definition;
 requiring a trial court to transfer certain criminal
 cases involving participants in specified programs to
 another jurisdiction having such a program under
 certain conditions; providing an effective date.

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

Section 1. Subsection (5) of section 910.035, Florida
 Statutes, is amended to read:

910.035 Transfer from county for plea, and sentence, or
participation in a problem-solving court.-

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING
COURT.-

(a) For purposes of this subsection, the term "problem-
solving court" means a drug court pursuant to s. 948.01, s.
948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans' court
pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or
a mental health court.

(b) Any person eligible for participation in a problem-
solving drug court shall, upon request by the person or a court,
~~treatment program pursuant to s. 948.08(6) may be eligible to~~
 have the case transferred to a county other than that in which
 the charge arose if the person agrees to the transfer, ~~the drug~~

27 ~~court program agrees and if the following conditions are met:~~

28 ~~(a) the authorized representative of the trial drug court~~
 29 ~~consults program of the county requesting to transfer the case~~
 30 ~~shall consult~~ with the authorized representative of the problem-
 31 solving drug court program in the county to which transfer is
 32 desired, and both representatives agree to the transfer.

33 ~~(b)~~ (c) If all parties agree to the transfer as required by
 34 paragraph (b), approval for transfer is received from all
 35 parties, the trial court shall ~~accept a plea of nolo contendere~~
 36 ~~and~~ enter a transfer order directing the clerk to transfer the
 37 case to the county which has accepted the defendant into its
 38 problem-solving drug court program.

39 ~~(d)1.(c)~~ 1. (c) When transferring a pretrial problem-solving
 40 court case, the transfer order shall include a copy of the
 41 probable cause affidavit; any charging documents in the case;
 42 all reports, witness statements, test results, evidence lists,
 43 and other documents in the case; the defendant's mailing address
 44 and telephone ~~phone~~ number; and the defendant's written consent
 45 to abide by the rules and procedures of the receiving county's
 46 problem-solving drug court program.

47 2. When transferring a postadjudicatory problem-solving
 48 court case, the transfer order shall include a copy of the
 49 charging documents in the case; the final disposition; all
 50 reports, test results, and other documents in the case; the
 51 defendant's mailing address and telephone number; and the
 52 defendant's written consent to abide by the rules and procedures

53 of the receiving county's problem-solving court.


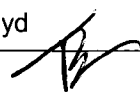
54 ~~(e)(d)~~ After the transfer takes place, the clerk shall set
 55 the matter for a hearing before the problem-solving ~~drug~~ court
 56 ~~to program judge and the court shall~~ ensure the defendant's
 57 entry into the problem-solving ~~drug~~ court ~~program~~.

58 ~~(f)(e)~~ Upon successful completion of the problem-solving
 59 ~~drug~~ court program, the jurisdiction to which the case has been
 60 transferred shall dispose of the case ~~pursuant to s. 948.08(6)~~.
 61 If the defendant does not complete the problem-solving ~~drug~~
 62 court program successfully, the jurisdiction to which the case
 63 has been transferred shall dispose of the case within the
 64 guidelines of the Criminal Punishment Code.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7063 PCB CRJS 15-02 Child Pornography
SPONSOR(S): Criminal Justice Subcommittee, Spano
TIED BILLS: HB 7065 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
1) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
2) Judiciary Committee			

SUMMARY ANALYSIS

"Morphing" refers to a process in which a computer user distorts or transforms one picture into another. It is a relatively simple technique using inexpensive and readily available software. In recent years, individuals have started using this technique to create "morphed" child pornography (e.g., images depicting sexually explicit conduct in which an actual child's head has been superimposed onto an adult's body).

While the possession, distribution, transmission, etc., of traditional child pornography has long been illegal, criminalizing such acts that involve morphed child pornography has been more problematic. Congress first attempted to do so in 1996, when they passed the Child Pornography Prevention Action (CPPA). In the years that followed, portions of the CPPA were deemed unconstitutional as violating one's First Amendment rights. Congress's latest attempt to criminalize morphed child pornography came in 2003, with the passage of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (Protect Act). While this legislation has been challenged, it has thus far been upheld by the courts.

In upholding the federal legislation, courts cite the exceptionally detailed definitions and prohibitions contained in the Protect Act. These provisions specifically refer to computer-generated images and images that have been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

Unlike the federal statutes, Florida's child pornography laws are not as specific in addressing morphed child pornography. As a result, courts have determined that persons that possess, distribute, transmit, etc. such images cannot be held criminally liable.

The bill amends the definitions of the terms "sexual conduct" and "child pornography" in ch. 847, F.S., to include morphed images of child pornography. As a result, persons who possess, promote, transmit, etc., morphed child pornography can be held criminally liable.

The bill also reorganizes Florida's laws relating to "sexual performance by a child" and Florida's child pornography laws so that they are all located in ch. 847, F.S.

The Criminal Justice Impact Conference met March 11, 2015, and determined this bill will have an indeterminate impact on state prison beds. This means this bill may increase the number of offenders sentenced to state prison beds but the extent is unquantifiable. This bill may increase the number of offenders sentenced to local jail beds because the bill expands the definition of "sexual conduct," and expands the application of numerous misdemeanor offenses. See Fiscal Comments section.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Morphed Child Pornography

“Morphing,” which refers to a process in which a computer user distorts or transforms one picture into another, is a relatively simple technique using inexpensive and readily available software. In recent years, individuals have started using this technique to create “morphed” child pornography (e.g., images depicting sexually explicit conduct in which an actual child’s head has been superimposed onto an adult’s body).

Federal Statutes and Case Law

Generally speaking, the First Amendment does not protect child pornography. In *New York v. Ferber*,¹ the United States Supreme Court recognized that states have a compelling interest in safeguarding the physical and psychological well-being of minors and in preventing their sexual exploitation and abuse. The Court noted that it was “unlikely that visual depictions of children ... lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work.”² Under these principles, states have constitutionally been able to criminalize the possession, distribution, etc., of child pornography. However, the constitutionality of criminalizing such acts is less clear when the images at issue are morphed pornography.

Child Pornography Prevention Action of 1996

Prior to 1996, federal law criminalized a variety of acts relating to child pornography.³ At that time, the statutes described such material as images created using an actual minor.⁴ In 1996, Congress passed the Child Pornography Prevention Action of 1996 (CPPA),⁵ which created a definition of “child pornography” that for the first time criminalized acts relating to morphed child pornography. Under the CPPA, “child pornography” was defined as:

- (8) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct,⁶ where:
 - (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
 - (B) Such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct (i.e., virtual child pornography – created without using an actual child);
 - (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor⁷ is engaging in sexually explicit conduct (i.e., morphed child pornography); or

¹ 458 U.S. 747 (1982).

² *Id.* at 762-763.

³ *See, e.g.*, 18 U.S.C. §2252 (1994 ed.).

⁴ *U.S. v. Hotaling*, 599 F.Supp.2d 306, 309 (N.D.N.Y. 2008); *see also* 18 U.S.C. §§ 2252 and 2256 (1994 ed.).

⁵ Pub. L. No. 104-208.

⁶ 18 U.S.C. §2256(2) (1996 ed.) defined the term “sexually explicit conduct” as actual or simulated sexual intercourse (including genital-genital, oral-genital, anal-genital, or oral-anal) whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person.

⁷ 18 U.S.C. §2556(9) (1996 ed.) defined the term “identifiable minor” as a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, and:

- Who was a minor at the time the visual depiction was created, adapted, or modified; or
- Whose image as a minor was used in creating, adapting, or modifying the visual depiction.

The term was not to be construed to require proof of the actual identity of the identifiable minor.

(D) Such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.⁸

Caselaw Subsequent to the Passage of the CPPA

In 2002, the United States Supreme Court decided *Ashcroft v. Free Speech Coalition*,⁹ a case in which a California trade association for the adult-entertainment industry challenged section 2256(8)(B) of the CPPA as unconstitutionally overbroad. As noted above, section 2256(8)(B) made it a crime to possess or distribute images depicting sexually explicit conduct which could be created by using advanced computer imaging techniques to “create realistic images of children who do not exist” (i.e., virtual child pornography).¹⁰ The court held that the “speech” criminalized in the challenged provision of the CPPA violated the First Amendment since it extended the federal prohibition against child pornography to sexually explicit images that “appeared to” depict minors but were “produced without using any real children.”¹¹ The court decided that “by prohibiting child pornography that did not depict an actual child,” section 2256(8)(B) of the CPPA “abridged the freedom to engage in a substantial amount of lawful speech” and was therefore overbroad and unconstitutional.¹²

While the *Ashcroft* decision did not specifically address the constitutionality of 18 U.S.C. 2256(8)(C) (prohibiting *morphed* child pornography), it did note, in dictum, that “[a]lthough morphed images may fall within the definition of virtual child pornography, they implicate the interests of real children...”¹³ This suggests that the *Ashcroft* court would have deemed morphed child pornography as not protected by the First Amendment.¹⁴

Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act

Congress attempted to remedy the constitutional issues raised in *Ashcroft* by passing the “Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act” (Protect Act) in 2003.¹⁵ The Protect Act, in part, narrowed the definition of “virtual” child pornography in section (8)(B) of the CPPA to include virtual or computer-generated images that are “indistinguishable from” images of actual minors engaging in sexually explicit conduct.¹⁶

Notably, the definition of “morphed” child pornography contained in section 2256(8)(C) remained unchanged between the CPPA and the Protect Act.

Federal Case Law since the Passage of the Protect Act

To date, the federal statutes relating to morphed child pornography have been upheld.¹⁷ In *United States v. Bach*,¹⁸ the defendant was convicted of possessing morphed child pornography. The image at issue showed a young nude boy sitting in a tree, grinning, with his pelvis tilted upward, his legs opened wide, and a full erection.¹⁹ The photograph of a well-known child entertainer’s head had been “skillfully inserted onto the photograph of the nude boy so that the resulting image appeared to be a nude picture of the child entertainer sitting in the tree.”²⁰ The defendant appealed arguing that his conviction was invalid because the definition of morphed child pornography violated the First

⁸ 18 U.S.C. §2556(8) (1996 ed.).

⁹ 535 U.S. §234 (2002).

¹⁰ 535 U.S. §240 (2002).

¹¹ *Id.*

¹² 535 U.S. §256 (2002).

¹³ 535 U.S. §242 (2002).

¹⁴ *McFadden v. Alabama*, 67 So.3d 169, 181-182 (Ala. Crim. App. 2010).

¹⁵ Pub. L. No. 108-21.

¹⁶ 18 U.S.C. §2256(8)(B).

¹⁷ See *United States v. Ramos*, 685 F.3d 120, 134 (2d Cir. 2012), *cert. denied*, 133 S.Ct. 567 (2012); see also *Doe v. Boland*, 630 F.3d 491, 497 (6th Cir. 2011).

¹⁸ 400 F.3d 622 (8th Cir. 2005).

¹⁹ *Id.* at 625.

²⁰ *Id.* at 625.

Amendment. The United States Court of Appeals for the Eighth Circuit disagreed holding that morphed child pornography “implicate the interests of real children,” and creates a lasting record of an identifiable minor child seemingly engaged in sexually explicit activity.²¹ However, the court noted that:

Although there may well be instances in which the application of § 2256(8)(C) violates the First Amendment, this is not such a case. The interests of real children are implicated in the image received by Bach showing a boy with the identifiable face of AC in a lascivious pose. This image involves the type of harm which can constitutionally be prosecuted under *Free Speech Coalition and Ferber*.²²

Subsequent to the *Bach* decision, the United States Court of Appeals for the Second Circuit heard a case with a similar fact pattern. In *United States v. Hotaling*,²³ the defendant was charged with possession of morphed child pornography relating to images in which the heads of minor females had been cut from their original, non-pornographic photographs and superimposed over the heads of images of nude and partially nude adult females engaged in sexually explicit conduct.²⁴ The defendant argued that the definition of morphed child pornography was unconstitutionally vague and overbroad, and that because no actual minor was harmed by the creation of the images, they were protected speech under the First Amendment.²⁵ The court, citing the decision in *Bach*, disagreed and held that “child pornography created by digitally altering sexually explicit photographs of adults to display the face of a child is not protected expressive speech under the First Amendment.”²⁶

Most recently, the United States Court of Appeals for the Eighth Circuit decided *United States v. Anderson*.²⁷ In *Anderson*, the defendant was charged with distribution of morphed child pornography relating to an image in which the face of a minor female was superimposed over the face of an adult female engaging in sex with an adult male.²⁸ The defendant moved to dismiss the charge, arguing that the definition of morphed child pornography was unconstitutionally overbroad.²⁹ The court noted that the image at issue was different than the one in *Bach* in that “no minor was sexually abused.”³⁰ However, the court held that because such images falsely portray identifiable children engaging in sexual activity, such images implicate the government’s compelling interest in protecting minors.³¹ Using this reasoning, the court held that the definition of morphed child pornography was constitutional.

Florida Statutes

Florida law currently contains a variety of statutes that prohibit acts relating to child pornography. Currently, these statutes are found in two different chapters. A summary of these laws follows.

Section 827.071, F.S. - Sexual Performance by a Child

Section 827.071(4), F.S., makes it a second degree felony³² for a person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.³³

²¹ *Id.* at 632.

²² *Id.*

²³ 634 F.3d 725 (2d Cir. 2008), *cert. denied*, 132 S.Ct. 843 (2011).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 726.

²⁷ 759 F.3d 891 (8th Cir. 2014).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 895.

³¹ *Id.* at 896.

³² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

³³ Possession of 3 or more copies of such photographs, etc., is prima facie evidence of intent to promote.

Section 827.071(5), F.S., makes it a third degree felony³⁴ for any person to knowingly possess, control, or intentionally view³⁵ a photograph, motion picture, etc., which, in whole or in part, he or she knows to include any sexual conduct by a child.³⁶

The following definitions apply to the above-described offenses:

- “Child” means any person under the age of 18 years;
- “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same;
- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed; and
- “Simulated” means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.³⁷

Section 847.0137, F.S. – Transmitting Child Pornography Electronically

Section 847.0137, F.S., specifies that any person who knew or reasonably should have known that he or she was transmitting child pornography to another person commits a third degree felony.

The following definitions apply to the above-described offense:

- “Child pornography” means any image depicting a minor engaged in sexual conduct;
- “Minor” means any person under the age of 18 years;
- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed; and
- “Simulated” means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.³⁸

Notably, the terms used in the above-described statutes do not specifically include morphed pornography.

Florida Case Law

In 2010, Florida’s Second District Court of Appeal (DCA) decided *Stelmack v. State*,³⁹ a case in which the defendant was charged with violating s. 827.071(5), F.S. (possession of child pornography). The images at issue showed the faces and heads of two girls, ages 11 and 12, which were cut and pasted onto images of a 19-year old woman lewdly exhibiting her genitals.⁴⁰ The court closely examined the definition of “sexual conduct,” and determined that it requires images to include actual lewd exhibition of

³⁴ 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.

³⁵ Section 827.071(1)(b), F.S., defines “intentionally view” as to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

³⁶ The statute also specifies that the possession, control, or intentional viewing of each such photograph, etc., is a separate offense. If such photograph, etc., includes sexual conduct by more than one child, then each child in each photograph, etc., that is knowingly possessed, controlled, or intentionally viewed is a separate offense.

³⁷ ss. 827.01(2) and 827.071(1), F.S.

³⁸ s. 847.001, F.S.

³⁹ 58 So. 3d 874 (Fla. 2d DCA 2010).

⁴⁰ *Id.* at 875.

the genitals *by a child*.⁴¹ Because the only sexual conduct in the images at issue was performed by an adult, the court held that the images were not prohibited by s. 827.071(5), F.S.⁴²

The court also noted that the images depicted *simulated* lewd exhibition of the genitals by a child. The state, citing the *Bach* decision (discussed above), argued that s. 827.071(5), F.S., proscribed such images because they were photographs or representations “which ... *in part* ... include ... sexual conduct by a child.”⁴³ The court disagreed and noted that the legislature specifically excluded *simulated* lewd exhibition from the definition of “sexual conduct.” In discussing this point, the court stated:

We do not mean to suggest that the possession of composite images of real children that simulate lewd and lascivious exhibition of the children’s genitals should not be criminalized. However, there is no indication in either the plain language of section 827.071(5) or its legislative history that the legislature intended to do so. If the legislature had intended to proscribe the possession of composite images that simulate lewd and lascivious exhibition of the genitals, it could have included a provision doing so.⁴⁴ In fact, child pornography has been defined in the federal statutes to specifically include composite images...⁴⁵

Shortly after the *Stelmack* decision, the Second DCA reviewed another case in which the defendant was convicted of possessing child pornography in violation of s. 827.071(5), F.S.⁴⁶ In this case, the images at issue were morphed images in which photographs of children’s heads were pasted onto photographs of nude women engaged in sexual intercourse, deviate sexual intercourse, or masturbation. After extensively reviewing the definition of “sexual conduct” and the elements of the offense, the court reversed the lower court’s decision holding that “no child engaged in the sexual conduct” and that “no matter how one parses the words, section 827.071 requires that the depicted sexual conduct be that of a child.”⁴⁷

In reversing the trial court’s decision, the Second District Court of Appeal also reviewed the legislative history of the relevant federal statutes. The court noted that Congress had enacted child pornography legislation three times (in 1994, 1996, and 2003), each time broadening the definition of child pornography.⁴⁸ The latest iteration, the Protect Act, defines child pornography to include not only images of actual children engaged in sexually explicit conduct, but also images created by computer that are “indistinguishable” from images of actual minors engaging in such conduct and images that are created or modified to appear as though an identifiable minor was involved in the production of the depiction.⁴⁹ After noting that Congress specifically removed the defense that no actual minor was involved in the production of the depiction, the court stated that “if our legislature wants to follow Congress’s example and prohibit the possession of the types of photographs involved here, we are confident that it can, and perhaps should, craft an appropriate statute.”⁵⁰

Effect of the Bill

As noted above, s. 827.071, F.S., currently contains provisions relating to sexual performance by a child, as well as provisions relating to child pornography. The bill repeals this section of statute and moves all of its provisions to statutes in ch. 847, F.S. (relating to obscenity and child pornography).

⁴¹ *Id.* at 877

⁴² *Id.*

⁴³ *Id.*

⁴⁴ In a footnote, the court noted that they would “leave for another day a discussion of the constitutionality of such a provision.” *Id.* at 876.

⁴⁵ *Id.*

⁴⁶ *Parker v. State*, 81 So. 3d 451 (Fla. 2d DCA 2011).

⁴⁷ *Id.* at 453.

⁴⁸ *Id.* at 455-57.

⁴⁹ *Id.*

⁵⁰ *Id.* at 457.

The bill moves the provisions of s. 827.071(2) and (3), F.S. (relating to sexual performance by a child), to s. 847.003, F.S. The bill does not change the elements of these offenses.

The bill moves the provisions of s. 827.071(4) and (5), F.S. (criminalizing the possession and promotion of child pornography), into s. 847.0137, F.S., and defines a variety of terms in accordance with federal law to include morphed images. For example:

- "Child pornography" is defined as a visual depiction of sexual conduct, where:
 - The production of such visual depiction involves the use of a minor engaging in sexual conduct; or
 - Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.
- "Identifiable minor" is defined as a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature and:
 - Who was a minor at the time the visual depiction was created, adapted, or modified; or
 - Whose image as a minor was used in creating, adapting, or modifying the visual depiction.
- "Visual depiction" is defined to include any photograph, picture, motion picture, film, video, representation, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means. The term also includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format.

The bill also expands the definition of "sexual conduct" applicable to all of ch. 847, F.S., to include "simulated" lewd exhibition of the genitals.

Cumulatively, the above-described changes make it a crime to possess, promote, and transmit morphed child pornography in Florida.

The bill also makes a multitude of conforming changes that reflect the repeal of s. 827.071, F.S., the creation of s. 847.003, F.S., and the expansion of s. 847.0137, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 16.56, relating to Office of Statewide Prosecution.

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

Section 3. Amends s. 39.0132, F.S., relating to oaths, records, and confidential information.

Section 4. Amends s. 39.0139, F.S., relating to visitation or other contact; restrictions.

Section 5. Amends s. 39.301, F.S., relating to initiation of protective investigations.

Section 6. Amends s. 39.509, F.S., relating to grandparents rights.

Section 7. Amends s. 90.404, F.S., relating to character evidence; when admissible.

Section 8. Amends s. 92.56, F.S., relating to judicial proceedings and court records involving sexual offenses and human trafficking.

Section 9. Amends s. 92.561, F.S., relating to prohibition on reproduction of child pornography.

- Section 10. Amends s. 92.565, F.S., relating to admissibility of confession in sexual abuse cases.
- Section 11. Amends s. 435.04, F.S., relating to level 2 screening standards.
- Section 12. Amends s. 456.074, F.S., relating to certain health care practitioners; immediate suspension of license.
- Section 13. Amends s. 480.041, F.S., relating to massage therapists; qualifications; licensure; endorsement.
- Section 14. Amends s. 480.043, F.S., relating to message establishments; requisites; licensure; inspection.
- Section 15. Amends s. 743.067, F.S., relating to unaccompanied homeless youths.
- Section 16. Amends s. 772.102, F.S., relating to definitions.
- Section 17. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.
- Section 18. Amends s. 775.0847, F.S., relating to possession or promotion of certain images of child pornography; reclassification.
- Section 19. Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.
- Section 20. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.
- Section 21. Amends s. 775.215, F.S., relating to residency restrictions for persons convicted of certain sex offenses.
- Section 22. Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.
- Section 23. Amends s. 794.0115, F.S., relating to dangerous sexual felony offender; mandatory sentencing.
- Section 24. Amends s. 794.024, F.S., relating to unlawful to disclose identifying information.
- Section 25. Amends s. 794.056, F.S., relating to Rape Crisis Program Trust Fund.
- Section 26. Amends s. 796.001, F.S., relating to offenses by adults involving minors; intent.
- Section 27. Repeals s. 827.071, F.S., relating to sexual performance by a child; penalties.
- Section 28. Amends s. 847.001, F.S., relating to definitions.
- Section 29. Creates s. 847.003, F.S., relating to sexual performance by a child; penalties.
- Section 30. Amends s. 847.0135, F.S., relating to computer pornography; prohibited computer usage; traveling to meet minor; penalties.
- Section 31. Amends s. 847.01357, F.S., relating to exploited children's civil remedy.

Section 32. Amends s. 847.0137, F.S., relating to transmission of pornography by electronic device or equipment prohibited; penalties.

Section 33. Amends s. 856.022, F.S., relating to loitering or prowling by certain offenders in close proximity to children; penalty.

Section 34. Amends s. 895.02, F.S., relating to definitions.

Section 35. Amends s. 905.34, F.S., relating to powers and duties; law applicable.

Section 36. Amends s. 934.07, F.S., relating to authorization for interception of wire, oral, or electronic communications.

Section 37. Amends s. 938.085, F.S., relating to additional cost to fund rape crisis centers.

Section 38. Amends s. 938.10, F.S., relating to additional court cost imposed in cases of certain crimes.

Section 39. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 40. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 41. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 42. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 43. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 44. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 45. Amends s. 947.1405, F.S., relating to conditional release program.

Section 46. Amends s. 948.013, F.S., relating to administrative probation.

Section 47. Amends s. 948.03, F.S., relating to terms and conditions of probation.

Section 48. Amends s. 948.04, F.S., relating to period of probation; duty of probationer; early termination.

Section 49. Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 50. Amends s. 948.062, F.S., relating to reviewing and reporting serious offenses committed by offenders placed on probation or community control.

Section 51. Amends s. 948.101, F.S., relating to terms and conditions of community control.

Section 52. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 53. Amends s. 948.32, F.S., relating to requirements of law enforcement agency upon arrest of persons for certain sex offenses.

Section 54. Amends s. 960.03, F.S., relating to definitions; ss 960.01-960.28.

Section 55. Amends s. 960.197, F.S., relating to assistance to victims of online sexual exploitation and child pornography.

Section 56. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 57. Amends s. 985.475, F.S., relating to juvenile sexual offenders.

Section 58. Amends s. 1012.315, F.S., relating to disqualification from employment.

Section 59. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 60. Reenacts s. 944.11, F.S., relating to department to regulate admission of books.

Section 61. Directs the Division of Law Revision and Information to rename chapter 847, F.S., as "Obscenity; Child Pornography".

Section 62. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met March 11, 2015, and determined this bill will have an indeterminate impact on state prison beds. This means this bill may increase the number of offenders sentenced to state prison beds but the extent is unquantifiable.

This bill repeals s. 827.071, F.S., and moves the provisions relating to sexual performance by a child and child pornography into ch. 847, F.S., this bill also defines a variety of terms to include "morphing," conforming to those in federal law. This expands the definition of both "sexual conduct," through "simulated" lewd expression of the genitals, and child pornography, through a visual depiction that has been "created, adapted, or modified." By including this type of conduct and these types of images for violations such as producing, directing, possession, transmission, there is potential for additional offenders to be prosecuted for the felonies currently in place.

According to the Department of Corrections, in Fiscal Year 2013-14, there were 234 offenders sentenced under both s. 827.071, F.S., and s. 847.0137, F.S., and 230 of these offenders were sentenced to prison (mean sentence length is 74.4 months, incarceration rate is 68.4%).

It is unknown how many more offenders will be included with the addition of "morphing."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

This bill may increase the number of offenders sentenced to local jail beds because the bill expands the definition of "sexual conduct," and expands the application of numerous misdemeanor offenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to child pornography; amending ss.
3 16.56, 39.01, 39.0132, 39.0139, 39.301, 39.509,
4 90.404, 92.56, 92.561, 92.565, 435.04, 456.074,
5 480.041, 480.043, 743.067, 772.102, and 775.082, F.S.;
6 conforming provisions to changes made by the act;
7 amending s. 775.0847, F.S.; revising definitions;
8 conforming provisions to changes made by the act;
9 amending ss. 775.0877, 775.21, 775.215, 784.046,
10 794.0115, 794.024, 794.056, and 796.001, F.S.;
11 conforming provisions to changes made by the act;
12 repealing s. 827.071, F.S., relating to sexual
13 performance by a child; amending s. 847.001, F.S.;
14 revising definitions; creating s. 847.003, F.S.;
15 providing definitions; prohibiting a person from using
16 a child in a sexual performance or promoting a sexual
17 performance by a child; providing penalties; amending
18 ss. 847.0135 and 847.01357, F.S.; conforming
19 provisions to changes made by the act; amending s.
20 847.0137, F.S.; revising and providing definitions;
21 prohibiting a person from possessing, with the intent
22 to promote, child pornography; prohibiting a person
23 from knowingly possessing, controlling, or
24 intentionally viewing child pornography; providing
25 penalties; providing application and construction;
26 amending ss. 856.022, 895.02, 905.34, 934.07, 938.085,

27 938.10, 943.0435, 943.04354, 943.0585, 943.059,
 28 944.606, and 944.607, F.S.; conforming provisions to
 29 changes made by the act; amending s. 947.1405, F.S.;
 30 requiring certain conditions of supervision to be
 31 imposed on conditional releasees convicted of
 32 specified offenses; amending s. 948.013, F.S.;
 33 prohibiting certain offenders from being placed on
 34 administrative probation; amending ss. 948.03, 948.04,
 35 948.06, 948.062, and 948.101, F.S.; conforming
 36 provisions to changes made by the act; amending s.
 37 948.30, F.S.; requiring that certain conditions of
 38 supervision be imposed on offenders convicted of
 39 specified offenses; amending ss. 948.32, 960.03,
 40 960.197, 985.04, 985.475, 1012.315, and 921.0022,
 41 F.S.; conforming provisions to changes made by the
 42 act; reenacting s. 944.11(2), F.S., to incorporate the
 43 amendment made by the act to s. 847.001, F.S., in a
 44 reference thereto; providing a directive to the
 45 Division of Law Revision and Information; providing an
 46 effective date.

47
 48 Be It Enacted by the Legislature of the State of Florida:

49
 50 Section 1. Paragraph (a) of subsection (1) of section
 51 16.56, Florida Statutes, is amended to read:
 52 16.56 Office of Statewide Prosecution.—

53 (1) There is created in the Department of Legal Affairs an
 54 Office of Statewide Prosecution. The office shall be a separate
 55 "budget entity" as that term is defined in chapter 216. The
 56 office may:

57 (a) Investigate and prosecute the offenses of:

58 1. Bribery, burglary, criminal usury, extortion, gambling,
 59 kidnapping, larceny, murder, prostitution, perjury, robbery,
 60 carjacking, and home-invasion robbery;

61 2. Any crime involving narcotic or other dangerous drugs;

62 3. Any violation of ~~the provisions of~~ the Florida RICO
 63 (Racketeer Influenced and Corrupt Organization) Act, including
 64 any offense listed in the definition of racketeering activity in
 65 s. 895.02(1)(a), providing such listed offense is investigated
 66 in connection with a violation of s. 895.03 and is charged in a
 67 separate count of an information or indictment containing a
 68 count charging a violation of s. 895.03, the prosecution of
 69 which listed offense may continue independently if the
 70 prosecution of the violation of s. 895.03 is terminated for any
 71 reason;

72 4. Any violation of ~~the provisions of~~ the Florida Anti-
 73 Fencing Act;

74 5. Any violation of ~~the provisions of~~ the Florida
 75 Antitrust Act of 1980, as amended;

76 6. Any crime involving, or resulting in, fraud or deceit
 77 upon any person;

78 7. Any violation of s. 847.0135, relating to computer

79 | pornography and child exploitation prevention, or any offense
 80 | related to a violation of former s. 827.071, s. 847.003, s.
 81 | 847.0135, or s. 847.0137 ~~any violation of chapter 827~~ where the
 82 | crime is facilitated by or connected to the use of the Internet
 83 | or any device capable of electronic data storage or
 84 | transmission;

- 85 | 8. Any violation of ~~the provisions of~~ chapter 815;
- 86 | 9. Any criminal violation of part I of chapter 499;
- 87 | 10. Any violation of ~~the provisions of~~ the Florida Motor
 88 | Fuel Tax Relief Act of 2004;
- 89 | 11. Any criminal violation of s. 409.920 or s. 409.9201;
- 90 | 12. Any crime involving voter registration, voting, or
 91 | candidate or issue petition activities;
- 92 | 13. Any criminal violation of the Florida Money Laundering
 93 | Act;
- 94 | 14. Any criminal violation of the Florida Securities and
 95 | Investor Protection Act; or
- 96 | 15. Any violation of ~~the provisions of~~ chapter 787, as
 97 | well as any and all offenses related to a violation of ~~the~~
 98 | ~~provisions of~~ chapter 787;

99 |
 100 | or any attempt, solicitation, or conspiracy to commit any of the
 101 | crimes specifically enumerated above. The office shall have such
 102 | power only when any such offense is occurring, or has occurred,
 103 | in two or more judicial circuits as part of a related
 104 | transaction, or when any such offense is connected with an

105 organized criminal conspiracy affecting two or more judicial
 106 circuits. Informations or indictments charging such offenses
 107 shall contain general allegations stating the judicial circuits
 108 and counties in which crimes are alleged to have occurred or the
 109 judicial circuits and counties in which crimes affecting such
 110 circuits or counties are alleged to have been connected with an
 111 organized criminal conspiracy.

112 Section 2. Paragraph (c) of subsection (30) and paragraph
 113 (g) of subsection (69) of section 39.01, Florida Statutes, are
 114 amended to read:

115 39.01 Definitions.—When used in this chapter, unless the
 116 context otherwise requires:

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

119 (c) Allows, encourages, or forces the sexual exploitation
 120 of a child, which includes allowing, encouraging, or forcing a
 121 child to:

- 122 1. Solicit for or engage in prostitution; or
- 123 2. Engage in a sexual performance, as defined by former s.
 124 827.081 or s. 847.003 ~~chapter 827.~~

125 (69) "Sexual abuse of a child" for purposes of finding a
 126 child to be dependent means one or more of the following acts:

127 (g) The sexual exploitation of a child, which includes the
 128 act of a child offering to engage in or engaging in
 129 prostitution, provided that the child is not under arrest or is
 130 not being prosecuted in a delinquency or criminal proceeding for

131 a violation of any offense in chapter 796 based on such
 132 behavior; or allowing, encouraging, or forcing a child to:

- 133 1. Solicit for or engage in prostitution;
- 134 2. Engage in a sexual performance, as defined by former s.
 135 827.071 or s. 847.003 ~~chapter 827~~; or
- 136 3. Participate in the trade of human trafficking as
 137 provided in s. 787.06(3)(g).

138 Section 3. Paragraph (b) of subsection (4) of section
 139 39.0132, Florida Statutes, is amended to read:

140 39.0132 Oaths, records, and confidential information.—
 141 (4)

142 (b) The department shall disclose to the school
 143 superintendent the presence of any child in the care and custody
 144 or under the jurisdiction or supervision of the department who
 145 has a known history of criminal sexual behavior with other
 146 juveniles; is an alleged juvenile sex offender, as defined in s.
 147 39.01; or has pled guilty or nolo contendere to, or has been
 148 found to have committed, a violation of chapter 794, chapter
 149 796, chapter 800, former s. 827.071, s. 847.003, ~~or s. 847.0133,~~
 150 or s. 847.0137, regardless of adjudication. Any employee of a
 151 district school board who knowingly and willfully discloses such
 152 information to an unauthorized person commits a misdemeanor of
 153 the second degree, punishable as provided in s. 775.082 or s.
 154 775.083.

155 Section 4. Paragraph (a) of subsection (3) of section
 156 39.0139, Florida Statutes, is amended to read:

157 39.0139 Visitation or other contact; restrictions.—
 158 (3) PRESUMPTION OF DETRIMENT.—
 159 (a) A rebuttable presumption of detriment to a child is
 160 created when:
 161 1. A court of competent jurisdiction has found probable
 162 cause exists that a parent or caregiver has sexually abused a
 163 child as defined in s. 39.01;
 164 2. A parent or caregiver has been found guilty of,
 165 regardless of adjudication, or has entered a plea of guilty or
 166 nolo contendere to, charges under the following statutes or
 167 substantially similar statutes of other jurisdictions:
 168 a. Section 787.04, relating to removing minors from the
 169 state or concealing minors contrary to court order;
 170 b. Section 794.011, relating to sexual battery;
 171 c. Section 798.02, relating to lewd and lascivious
 172 behavior;
 173 d. Chapter 800, relating to lewdness and indecent
 174 exposure;
 175 e. Section 826.04, relating to incest; ~~or~~
 176 f. Chapter 827, relating to the abuse of children; ~~or~~
 177 g. Section 847.003, relating to sexual performance by a
 178 child; or
 179 h. Section 847.0137, relating to child pornography; or
 180 3. A court of competent jurisdiction has determined a
 181 parent or caregiver to be a sexual predator as defined in s.
 182 775.21 or a parent or caregiver has received a substantially

183 similar designation under laws of another jurisdiction.

184 Section 5. Paragraph (b) of subsection (2) of section
185 39.301, Florida Statutes, is amended to read:

186 39.301 Initiation of protective investigations.—

187 (2)

188 (b) As used in this subsection, the term "criminal
189 conduct" means:

190 1. A child is known or suspected to be the victim of child
191 abuse, as defined in s. 827.03, or of neglect of a child, as
192 defined in s. 827.03.

193 2. A child is known or suspected to have died as a result
194 of abuse or neglect.

195 3. A child is known or suspected to be the victim of
196 aggravated child abuse, as defined in s. 827.03.

197 4. A child is known or suspected to be the victim of
198 sexual battery, as defined in s. 847.001 ~~827.071~~, or of sexual
199 abuse, as defined in s. 39.01.

200 5. A child is known or suspected to be the victim of
201 institutional child abuse or neglect, as defined in s. 39.01,
202 and as provided for in s. 39.302(1).

203 6. A child is known or suspected to be a victim of human
204 trafficking, as provided in s. 787.06.

205 Section 6. Paragraph (a) of subsection (6) of section
206 39.509, Florida Statutes, is amended to read:

207 39.509 Grandparents rights.—Notwithstanding any other
208 provision of law, a maternal or paternal grandparent as well as

209 a stepgrandparent is entitled to reasonable visitation with his
 210 or her grandchild who has been adjudicated a dependent child and
 211 taken from the physical custody of the parent unless the court
 212 finds that such visitation is not in the best interest of the
 213 child or that such visitation would interfere with the goals of
 214 the case plan. Reasonable visitation may be unsupervised and,
 215 where appropriate and feasible, may be frequent and continuing.
 216 Any order for visitation or other contact must conform to the
 217 provisions of s. 39.0139.

218 (6) In determining whether grandparental visitation is not
 219 in the child's best interest, consideration may be given to the
 220 following:

221 (a) The finding of guilt, regardless of adjudication, or
 222 entry or plea of guilty or nolo contendere to charges under the
 223 following statutes, or similar statutes of other jurisdictions:
 224 s. 787.04, relating to removing minors from the state or
 225 concealing minors contrary to court order; s. 794.011, relating
 226 to sexual battery; s. 798.02, relating to lewd and lascivious
 227 behavior; chapter 800, relating to lewdness and indecent
 228 exposure; s. 826.04, relating to incest; ~~or~~ chapter 827,
 229 relating to the abuse of children, s. 847.003, relating to
 230 sexual performance by a child; or s. 847.0137, relating to child
 231 pornography.

232 Section 7. Paragraphs (b) and (c) of subsection (2) of
 233 section 90.404, Florida Statutes, are amended to read:

234 90.404 Character evidence; when admissible.-

235 (2) OTHER CRIMES, WRONGS, OR ACTS.—

236 (b)1. In a criminal case in which the defendant is charged
 237 with a crime involving child molestation, evidence of the
 238 defendant's commission of other crimes, wrongs, or acts of child
 239 molestation is admissible and may be considered for its bearing
 240 on any matter to which it is relevant.

241 2. For the purposes of this paragraph, the term "child
 242 molestation" means conduct proscribed by s. 787.025(2)(c), s.
 243 787.06(3)(g), former s. 787.06(3)(h), s. 794.011, excluding s.
 244 794.011(10), s. 794.05, former s. 796.03, former s. 796.035, s.
 245 800.04, former s. 827.071, s. 847.003, s. 847.0135(5), s.
 246 847.0137, s. 847.0145, or s. 985.701(1) when committed against a
 247 person 16 years of age or younger.

248 (c)1. In a criminal case in which the defendant is charged
 249 with a sexual offense, evidence of the defendant's commission of
 250 other crimes, wrongs, or acts involving a sexual offense is
 251 admissible and may be considered for its bearing on any matter
 252 to which it is relevant.

253 2. For the purposes of this paragraph, the term "sexual
 254 offense" means conduct proscribed by s. 787.025(2)(c), s.
 255 787.06(3)(b), (d), (f), or (g), former s. 787.06(3)(h), s.
 256 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03,
 257 former s. 796.035, s. 825.1025(2)(b), former s. 827.071, s.
 258 847.003, s. 847.0135(5), s. 847.0137, s. 847.0145, or s.
 259 985.701(1).

260 Section 8. Subsections (2), (3), and (5) of section 92.56,

HB 7063

2015

261 Florida Statutes, are amended to read:

262 92.56 Judicial proceedings and court records involving
263 sexual offenses and human trafficking.—

264 (2) A defendant charged with a crime described in s.
265 787.06(3)(a)1., (c)1., or (e)1.; s. 787.06(3)(b), (d), (f), or
266 (g); chapter 794; or chapter 800; ~~or~~ with child abuse or
267 aggravated child abuse, ~~or sexual performance by a child~~ as
268 described in chapter 827; or with sexual performance by a child
269 as described in former s. 827.071 or s. 847.003; may apply to
270 the trial court for an order of disclosure of information in
271 court records held confidential and exempt pursuant to s.
272 119.0714(1)(h) or maintained as confidential and exempt pursuant
273 to court order under this section. Such identifying information
274 concerning the victim may be released to the defendant or his or
275 her attorney in order to prepare the defense. The confidential
276 and exempt status of this information may not be construed to
277 prevent the disclosure of the victim's identity to the
278 defendant; however, the defendant may not disclose the victim's
279 identity to any person other than the defendant's attorney or
280 any other person directly involved in the preparation of the
281 defense. A willful and knowing disclosure of the identity of the
282 victim to any other person by the defendant constitutes
283 contempt.

284 (3) The state may use a pseudonym instead of the victim's
285 name to designate the victim of a crime described in s.
286 787.06(3)(a)1., (c)1., or (e)1.; ~~in~~ s. 787.06(3)(b), (d), (f),

287 or (g); ~~or in~~ chapter 794; or chapter 800; ~~or~~ of child abuse
 288 ~~or~~ aggravated child abuse, ~~or sexual performance by a child as~~
 289 described in chapter 827; of sexual performance by a child as
 290 described in former s. 827.071 or s. 847.003; ~~or~~ of any crime
 291 involving the production, possession, or promotion of child
 292 pornography as described in chapter 847, in all court records
 293 and records of court proceedings, both civil and criminal.

294 (5) This section does not prohibit the publication or
 295 broadcast of the substance of trial testimony in a prosecution
 296 for an offense described in s. 787.06(3)(a)1., (c)1., or (e)1.; ~~or~~
 297 s. 787.06(3)(b), (d), (f), or (g); ~~or~~ chapter 794; ~~or~~ chapter
 298 800; ~~or~~ a crime of child abuse ~~or~~ aggravated child abuse, ~~or~~
 299 ~~sexual performance by a child,~~ as described in chapter 827; or
 300 sexual performance by a child as described in former s. 827.071
 301 or s. 847.003, but the publication or broadcast may not include
 302 an identifying photograph, an identifiable voice, or the name or
 303 address of the victim, unless the victim has consented in
 304 writing to the publication and filed such consent with the court
 305 or unless the court has declared such records not confidential
 306 and exempt as provided for in subsection (1).

307 Section 9. Subsection (1) of section 92.561, Florida
 308 Statutes, is amended to read:

309 92.561 Prohibition on reproduction of child pornography.—

310 (1) In a criminal proceeding, any property or material
 311 that portrays sexual performance by a child as defined in former
 312 s. 827.071 or s. 847.003, or constitutes child pornography as

313 defined in s. 847.0137 ~~847.001~~, must remain secured or locked in
 314 the care, custody, and control of a law enforcement agency, the
 315 state attorney, or the court.

316 Section 10. Subsection (2) of section 92.565, Florida
 317 Statutes, is amended to read:

318 92.565 Admissibility of confession in sexual abuse cases.—

319 (2) In any criminal action in which the defendant is
 320 charged with a crime against a victim under s. 794.011; s.
 321 794.05; s. 800.04; s. 826.04; s. 827.03, involving sexual abuse;
 322 s. 827.04, involving sexual abuse; former s. 827.071; s.
 323 847.003; ~~or~~ s. 847.0135(5); or s. 847.0137, or any other crime
 324 involving sexual abuse of another, or with any attempt,
 325 solicitation, or conspiracy to commit any of these crimes, the
 326 defendant's memorialized confession or admission is admissible
 327 during trial without the state having to prove a corpus delicti
 328 of the crime if the court finds in a hearing conducted outside
 329 the presence of the jury that the state is unable to show the
 330 existence of each element of the crime, and having so found,
 331 further finds that the defendant's confession or admission is
 332 trustworthy. Factors which may be relevant in determining
 333 whether the state is unable to show the existence of each
 334 element of the crime include, but are not limited to, the fact
 335 that, at the time the crime was committed, the victim was:

- 336 (a) Physically helpless, mentally incapacitated, or
- 337 mentally defective, as those terms are defined in s. 794.011;
- 338 (b) Physically incapacitated due to age, infirmity, or any

339 other cause; or

340 (c) Less than 12 years of age.

341 Section 11. Paragraphs (ll) and (qq) of subsection (2) of
 342 section 435.04, Florida Statutes, are amended to read:

343 435.04 Level 2 screening standards.—

344 (2) The security background investigations under this
 345 section must ensure that no persons subject to the provisions of
 346 this section have been arrested for and are awaiting final
 347 disposition of, have been found guilty of, regardless of
 348 adjudication, or entered a plea of nolo contendere or guilty to,
 349 or have been adjudicated delinquent and the record has not been
 350 sealed or expunged for, any offense prohibited under any of the
 351 following provisions of state law or similar law of another
 352 jurisdiction:

353 (ll) Former s. Section 827.071, relating to sexual
 354 performance by a child.

355 (qq) Chapter 847, relating to obscenity and child
 356 pornography ~~obscene literature~~.

357 Section 12. Paragraph (o) of subsection (5) of section
 358 456.074, Florida Statutes, is amended, paragraphs (r) and (s) of
 359 that subsection are redesignated as paragraphs (s) and (t),
 360 respectively, and a new paragraph (r) is added to that
 361 subsection, to read:

362 456.074 Certain health care practitioners; immediate
 363 suspension of license.—

364 (5) The department shall issue an emergency order

365 suspending the license of a massage therapist or establishment
 366 as defined in chapter 480 upon receipt of information that the
 367 massage therapist, a person with an ownership interest in the
 368 establishment, or, for a corporation that has more than \$250,000
 369 of business assets in this state, the owner, officer, or
 370 individual directly involved in the management of the
 371 establishment has been convicted or found guilty of, or has
 372 entered a plea of guilty or nolo contendere to, regardless of
 373 adjudication, a felony offense under any of the following
 374 provisions of state law or a similar provision in another
 375 jurisdiction:

376 (o) Former s. Section 827.071 or s. 847.003, relating to
 377 sexual performance by a child.

378 (r) Section 847.0137, relating to child pornography.

379 Section 13. Paragraph (o) of subsection (7) of section
 380 480.041, Florida Statutes, is amended, paragraphs (r) and (s) of
 381 that subsection are redesignated as paragraphs (s) and (t),
 382 respectively, and a new paragraph (r) is added to that
 383 subsection, to read:

384 480.041 Massage therapists; qualifications; licensure;
 385 endorsement.—

386 (7) The board shall deny an application for a new or
 387 renewal license if an applicant has been convicted or found
 388 guilty of, or enters a plea of guilty or nolo contendere to,
 389 regardless of adjudication, a felony offense under any of the
 390 following provisions of state law or a similar provision in

391 another jurisdiction:

392 (o) Former s. Section 827.071 or s. 847.003, relating to
 393 sexual performance by a child.

394 (r) Section 847.0137, relating to child pornography.

395 Section 14. Paragraph (o) of subsection (8) of section
 396 480.043, Florida Statutes, is amended, paragraphs (r) and (s) of
 397 that subsection are redesignated as paragraphs (s) and (t),
 398 respectively, and a new paragraph (r) is added to that
 399 subsection, to read:

400 480.043 Massage establishments; requisites; licensure;
 401 inspection.—

402 (8) The department shall deny an application for a new or
 403 renewal license if a person with an ownership interest in the
 404 establishment or, for a corporation that has more than \$250,000
 405 of business assets in this state, the owner, officer, or
 406 individual directly involved in the management of the
 407 establishment has been convicted or found guilty of, or entered
 408 a plea of guilty or nolo contendere to, regardless of
 409 adjudication, a felony offense under any of the following
 410 provisions of state law or a similar provision in another
 411 jurisdiction:

412 (o) Former s. Section 827.071 or s. 847.003, relating to
 413 sexual performance by a child.

414 (r) Section 847.0137, relating to child pornography.

415 Section 15. Paragraph (b) of subsection (3) of section
 416 743.067, Florida Statutes, is amended to read:

417 743.067 Unaccompanied homeless youths.-

418 (3) An unaccompanied homeless youth may:

419 (b) Notwithstanding s. 394.4625(1), consent to medical,
 420 dental, psychological, substance abuse, and surgical diagnosis
 421 and treatment, including preventative care and care by a
 422 facility licensed under chapter 394, chapter 395, or chapter 397
 423 and any forensic medical examination for the purpose of
 424 investigating any felony offense under chapter 784, chapter 787,
 425 chapter 794, chapter 800, ~~or~~ chapter 827, s. 847.003, or s.
 426 847.0137, for:

- 427 1. Himself or herself; or
- 428 2. His or her child, if the unaccompanied homeless youth
- 429 is unmarried, is the parent of the child, and has actual custody
- 430 of the child.

431 Section 16. Paragraph (a) of subsection (1) of section
 432 772.102, Florida Statutes, is amended to read:

433 772.102 Definitions.—As used in this chapter, the term:

434 (1) "Criminal activity" means to commit, to attempt to
 435 commit, to conspire to commit, or to solicit, coerce, or
 436 intimidate another person to commit:

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

- 439 1. Section 210.18, relating to evasion of payment of
- 440 cigarette taxes.
- 441 2. Section 414.39, relating to public assistance fraud.
- 442 3. Section 440.105 or s. 440.106, relating to workers'

- 443 compensation.
- 444 4. Part IV of chapter 501, relating to telemarketing.
- 445 5. Chapter 517, relating to securities transactions.
- 446 6. Section 550.235 or s. 550.3551, relating to dogracing
- 447 and horseracing.
- 448 7. Chapter 550, relating to jai alai frontons.
- 449 8. Chapter 552, relating to the manufacture, distribution,
- 450 and use of explosives.
- 451 9. Chapter 562, relating to beverage law enforcement.
- 452 10. Section 624.401, relating to transacting insurance
- 453 without a certificate of authority, s. 624.437(4)(c)1., relating
- 454 to operating an unauthorized multiple-employer welfare
- 455 arrangement, or s. 626.902(1)(b), relating to representing or
- 456 aiding an unauthorized insurer.
- 457 11. Chapter 687, relating to interest and usurious
- 458 practices.
- 459 12. Section 721.08, s. 721.09, or s. 721.13, relating to
- 460 real estate timeshare plans.
- 461 13. Chapter 782, relating to homicide.
- 462 14. Chapter 784, relating to assault and battery.
- 463 15. Chapter 787, relating to kidnapping or human
- 464 trafficking.
- 465 16. Chapter 790, relating to weapons and firearms.
- 466 17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07,
- 467 relating to prostitution.
- 468 18. Chapter 806, relating to arson.

469 19. Section 810.02(2)(c), relating to specified burglary
470 of a dwelling or structure.

471 20. Chapter 812, relating to theft, robbery, and related
472 crimes.

473 21. Chapter 815, relating to computer-related crimes.

474 22. Chapter 817, relating to fraudulent practices, false
475 pretenses, fraud generally, and credit card crimes.

476 23. Former s. Section 827.071, relating to commercial
477 sexual exploitation of children.

478 24. Chapter 831, relating to forgery and counterfeiting.

479 25. Chapter 832, relating to issuance of worthless checks
480 and drafts.

481 26. Section 836.05, relating to extortion.

482 27. Chapter 837, relating to perjury.

483 28. Chapter 838, relating to bribery and misuse of public
484 office.

485 29. Chapter 843, relating to obstruction of justice.

486 30. Section 847.003, relating to sexual performance by a
487 child.

488 ~~31.30.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
489 or s. 847.07, relating to obscene literature and profanity.

490 ~~32.31.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or
491 s. 849.25, relating to gambling.

492 ~~33.32.~~ Chapter 893, relating to drug abuse prevention and
493 control.

494 ~~34.33.~~ Section 914.22 or s. 914.23, relating to witnesses,

495 victims, or informants.

496 ~~35.34-~~ Section 918.12 or s. 918.13, relating to tampering
497 with jurors and evidence.

498 Section 17. Paragraph (a) of subsection (9) of section
499 775.082, Florida Statutes, is amended to read:

500 775.082 Penalties; applicability of sentencing structures;
501 mandatory minimum sentences for certain reoffenders previously
502 released from prison.-

503 (9)(a)1. "Prison releasee reoffender" means any defendant
504 who commits, or attempts to commit:

- 505 a. Treason;
- 506 b. Murder;
- 507 c. Manslaughter;
- 508 d. Sexual battery;
- 509 e. Carjacking;
- 510 f. Home-invasion robbery;
- 511 g. Robbery;
- 512 h. Arson;
- 513 i. Kidnapping;
- 514 j. Aggravated assault with a deadly weapon;
- 515 k. Aggravated battery;
- 516 l. Aggravated stalking;
- 517 m. Aircraft piracy;
- 518 n. Unlawful throwing, placing, or discharging of a
519 destructive device or bomb;
- 520 o. Any felony that involves the use or threat of physical

521 force or violence against an individual;

522 p. Armed burglary;

523 q. Burglary of a dwelling or burglary of an occupied

524 structure; or

525 r. Any felony violation of s. 790.07, s. 800.04, s.

526 827.03, former s. 827.071, s. 847.003, ~~or~~ s. 847.0135(5), or s.

527 847.0137;

528

529 within 3 years after being released from a state correctional

530 facility operated by the Department of Corrections or a private

531 vendor or within 3 years after being released from a

532 correctional institution of another state, the District of

533 Columbia, the United States, any possession or territory of the

534 United States, or any foreign jurisdiction, following

535 incarceration for an offense for which the sentence is

536 punishable by more than 1 year in this state.

537 2. "Prison releasee reoffender" also means any defendant

538 who commits or attempts to commit any offense listed in sub-

539 subparagraphs (a)1.a.-r. while the defendant was serving a

540 prison sentence or on escape status from a state correctional

541 facility operated by the Department of Corrections or a private

542 vendor or while the defendant was on escape status from a

543 correctional institution of another state, the District of

544 Columbia, the United States, any possession or territory of the

545 United States, or any foreign jurisdiction, following

546 incarceration for an offense for which the sentence is

547 punishable by more than 1 year in this state.

548 3. If the state attorney determines that a defendant is a
 549 prison releasee reoffender as defined in subparagraph 1., the
 550 state attorney may seek to have the court sentence the defendant
 551 as a prison releasee reoffender. Upon proof from the state
 552 attorney that establishes by a preponderance of the evidence
 553 that a defendant is a prison releasee reoffender as defined in
 554 this section, such defendant is not eligible for sentencing
 555 under the sentencing guidelines and must be sentenced as
 556 follows:

557 a. For a felony punishable by life, by a term of
 558 imprisonment for life;

559 b. For a felony of the first degree, by a term of
 560 imprisonment of 30 years;

561 c. For a felony of the second degree, by a term of
 562 imprisonment of 15 years; and

563 d. For a felony of the third degree, by a term of
 564 imprisonment of 5 years.

565 Section 18. Paragraphs (b) and (f) of subsection (1) and
 566 subsection (2) of section 775.0847, Florida Statutes, are
 567 amended to read:

568 775.0847 Possession or promotion of certain visual
 569 depictions ~~images~~ of child pornography; reclassification.—

570 (1) For purposes of this section:

571 (b) "Child pornography" has the same meaning as provided
 572 in s. 847.0137 ~~means any image depicting a minor engaged in~~

573 | ~~sexual conduct.~~

574 | (f) "Sexual conduct" means actual or simulated sexual
 575 | intercourse, deviate sexual intercourse, sexual bestiality,
 576 | masturbation, or sadomasochistic abuse; actual or simulated lewd
 577 | exhibition of the genitals; actual physical contact with a
 578 | person's clothed or unclothed genitals, pubic area, buttocks,
 579 | or, if such person is a female, breast with the intent to arouse
 580 | or gratify the sexual desire of either party; or any act or
 581 | conduct which constitutes sexual battery or simulates that
 582 | sexual battery is being or will be committed. A mother's
 583 | breastfeeding of her baby does not under any circumstance
 584 | constitute "sexual conduct."

585 | (2) A violation of former s. 827.071, s. 847.003, s.
 586 | 847.0135, s. 847.0137, or s. 847.0138 shall be reclassified to
 587 | the next higher degree as provided in subsection (3) if:

588 | (a) The offender possesses 10 or more visual depictions or
 589 | images of any form of child pornography regardless of content;
 590 | and

591 | (b) The content of at least one visual depiction or image
 592 | contains one or more of the following:

- 593 | 1. A child who is younger than the age of 5.
- 594 | 2. Sadomasochistic abuse involving a child.
- 595 | 3. Sexual battery involving a child.
- 596 | 4. Sexual bestiality involving a child.
- 597 | 5. Any movie involving a child, regardless of length and
- 598 | regardless of whether the movie contains sound.

599 Section 19. Paragraph (1) of subsection (1) of section
600 775.0877, Florida Statutes, is amended to read:

601 775.0877 Criminal transmission of HIV; procedures;
602 penalties.-

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

608 (1) Former s. Section 827.071 or s. 847.003, relating to
609 sexual performance by a child ~~person less than 18 years of age;~~

610
611 the court shall order the offender to undergo HIV testing, to be
612 performed under the direction of the Department of Health in
613 accordance with s. 381.004, unless the offender has undergone
614 HIV testing voluntarily or pursuant to procedures established in
615 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or
616 rule providing for HIV testing of criminal offenders or inmates,
617 subsequent to her or his arrest for an offense enumerated in
618 paragraphs (a)-(n) for which she or he was convicted or to which
619 she or he pled nolo contendere or guilty. The results of an HIV
620 test performed on an offender pursuant to this subsection are
621 not admissible in any criminal proceeding arising out of the
622 alleged offense.

623 Section 20. Paragraph (a) of subsection (4) and paragraph
624 (b) of subsection (10) of section 775.21, Florida Statutes, are

625 amended to read:

626 775.21 The Florida Sexual Predators Act.—

627 (4) SEXUAL PREDATOR CRITERIA.—

628 (a) For a current offense committed on or after October 1,
 629 1993, upon conviction, an offender shall be designated as a
 630 "sexual predator" under subsection (5), and subject to
 631 registration under subsection (6) and community and public
 632 notification under subsection (7) if:

633 1. The felony is:

634 a. A capital, life, or first degree felony violation, or
 635 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 636 is a minor and the defendant is not the victim's parent or
 637 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
 638 violation of a similar law of another jurisdiction; or

639 b. Any felony violation, or any attempt thereof, of s.
 640 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 641 787.025(2)(c), where the victim is a minor and the defendant is
 642 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
 643 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.
 644 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.
 645 800.04; s. 810.145(8)(b); s. 825.1025; former s. 827.071; s.
 646 847.003; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
 647 847.0145; s. 916.1075(2); or s. 985.701(1); or a violation of a
 648 similar law of another jurisdiction, and the offender has
 649 previously been convicted of or found to have committed, or has
 650 pled nolo contendere or guilty to, regardless of adjudication,

651 any violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s.
 652 787.02, or s. 787.025(2)(c), where the victim is a minor and the
 653 defendant is not the victim's parent or guardian; s.
 654 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 655 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 656 former s. 796.035; s. 800.04; s. 825.1025; former s. 827.071; s.
 657 847.003; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 658 847.0137; s. 847.0145; s. 916.1075(2); or s. 985.701(1); or a
 659 violation of a similar law of another jurisdiction;

660 2. The offender has not received a pardon for any felony
 661 or similar law of another jurisdiction that is necessary for the
 662 operation of this paragraph; and

663 3. A conviction of a felony or similar law of another
 664 jurisdiction necessary to the operation of this paragraph has
 665 not been set aside in any postconviction proceeding.

666 (10) PENALTIES.—

667 (b) A sexual predator who has been convicted of or found
 668 to have committed, or has pled nolo contendere or guilty to,
 669 regardless of adjudication, any violation, or attempted
 670 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 671 the victim is a minor and the defendant is not the victim's
 672 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
 673 794.05; former s. 796.03; former s. 796.035; s. 800.04; former
 674 s. 827.071; s. 847.003; s. 847.0133; s. 847.0135(5); s.
 675 847.0137; s. 847.0145; or s. 985.701(1); or a violation of a
 676 similar law of another jurisdiction when the victim of the

677 offense was a minor, and who works, whether for compensation or
 678 as a volunteer, at any business, school, child care facility,
 679 park, playground, or other place where children regularly
 680 congregate, commits a felony of the third degree, punishable as
 681 provided in s. 775.082, s. 775.083, or s. 775.084.

682 Section 21. Subsection (2) and paragraphs (a) and (c) of
 683 subsection (3) of section 775.215, Florida Statutes, are amended
 684 to read:

685 775.215 Residency restriction for persons convicted of
 686 certain sex offenses.—

687 (2)(a) A person who has been convicted of a violation of
 688 s. 794.011, s. 800.04, former s. 827.071, s. 847.003, s.
 689 847.0135(5), or s. 847.0145, regardless of whether adjudication
 690 has been withheld, in which the victim of the offense was less
 691 than 16 years of age, may not reside within 1,000 feet of any
 692 school, child care facility, park, or playground. However, a
 693 person does not violate this subsection and may not be forced to
 694 relocate if he or she is living in a residence that meets the
 695 requirements of this subsection and a school, child care
 696 facility, park, or playground is subsequently established within
 697 1,000 feet of his or her residence.

698 (b) A person who violates this subsection and whose
 699 conviction under s. 794.011, s. 800.04, former s. 827.071, s.
 700 847.003, s. 847.0135(5), or s. 847.0145 was classified as a
 701 felony of the first degree or higher commits a felony of the
 702 third degree, punishable as provided in s. 775.082 or s.

703 775.083. A person who violates this subsection and whose
 704 conviction under s. 794.011, s. 800.04, former s. 827.071, s.
 705 847.003, s. 847.0135(5), or s. 847.0145 was classified as a
 706 felony of the second or third degree commits a misdemeanor of
 707 the first degree, punishable as provided in s. 775.082 or s.
 708 775.083.

709 (c) This subsection applies to any person convicted of a
 710 violation of s. 794.011, s. 800.04, former s. 827.071, s.
 711 847.003, s. 847.0135(5), or s. 847.0145 for offenses that occur
 712 on or after October 1, 2004, excluding persons who have been
 713 removed from the requirement to register as a sexual offender or
 714 sexual predator pursuant to s. 943.04354.

715 (3) (a) A person who has been convicted of an offense in
 716 another jurisdiction that is similar to a violation of s.
 717 794.011, s. 800.04, former s. 827.071, s. 847.003, s.
 718 847.0135(5), or s. 847.0145, regardless of whether adjudication
 719 has been withheld, in which the victim of the offense was less
 720 than 16 years of age, may not reside within 1,000 feet of any
 721 school, child care facility, park, or playground. However, a
 722 person does not violate this subsection and may not be forced to
 723 relocate if he or she is living in a residence that meets the
 724 requirements of this subsection and a school, child care
 725 facility, park, or playground is subsequently established within
 726 1,000 feet of his or her residence.

727 (c) This subsection applies to any person convicted of an
 728 offense in another jurisdiction that is similar to a violation

729 of s. 794.011, s. 800.04, former s. 827.071, s. 847.003, s.
 730 847.0135(5), or s. 847.0145 if such offense occurred on or after
 731 May 26, 2010, excluding persons who have been removed from the
 732 requirement to register as a sexual offender or sexual predator
 733 pursuant to s. 943.04354.

734 Section 22. Paragraph (c) of subsection (1) of section
 735 784.046, Florida Statutes, is amended to read:

736 784.046 Action by victim of repeat violence, sexual
 737 violence, or dating violence for protective injunction; dating
 738 violence investigations, notice to victims, and reporting;
 739 pretrial release violations; public records exemption.—

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

741 (c) "Sexual violence" means any one incident of:

- 742 1. Sexual battery, as defined in chapter 794;
- 743 2. A lewd or lascivious act, as defined in chapter 800,
 744 committed upon or in the presence of a person younger than 16
 745 years of age;
- 746 3. Luring or enticing a child, as described in chapter
 747 787;
- 748 4. Sexual performance by a child, as described in former
 749 s. 827.071 or s. 847.003 ~~chapter 827~~; or
- 750 5. Any other forcible felony wherein a sexual act is
 751 committed or attempted,

752
 753 regardless of whether criminal charges based on the incident
 754 were filed, reduced, or dismissed by the state attorney.

755 Section 23. Subsection (2) of section 794.0115, Florida
756 Statutes, is amended to read:

757 794.0115 Dangerous sexual felony offender; mandatory
758 sentencing.-

759 (2) Any person who is convicted of a violation of s.
760 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
761 800.04(4) or (5); s. 825.1025(2) or (3); former s. 827.071(2),
762 (3), or (4); s. 847.003; s. 847.0137(2)(a); or s. 847.0145; or
763 of any similar offense under a former designation, which offense
764 the person committed when he or she was 18 years of age or
765 older, and the person:

766 (a) Caused serious personal injury to the victim as a
767 result of the commission of the offense;

768 (b) Used or threatened to use a deadly weapon during the
769 commission of the offense;

770 (c) Victimized more than one person during the course of
771 the criminal episode applicable to the offense;

772 (d) Committed the offense while under the jurisdiction of
773 a court for a felony offense under the laws of this state, for
774 an offense that is a felony in another jurisdiction, or for an
775 offense that would be a felony if that offense were committed in
776 this state; or

777 (e) Has previously been convicted of a violation of s.
778 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
779 800.04(4) or (5); s. 825.1025(2) or (3); former s. 827.071(2),
780 (3), or (4); s. 847.003; s. 847.0137(2)(a); or s. 847.0145; of

781 any offense under a former statutory designation which is
 782 similar in elements to an offense described in this paragraph;
 783 or of any offense that is a felony in another jurisdiction, or
 784 would be a felony if that offense were committed in this state,
 785 and which is similar in elements to an offense described in this
 786 paragraph,

787
 788 is a dangerous sexual felony offender, who must be sentenced to
 789 a mandatory minimum term of 25 years imprisonment up to, and
 790 including, life imprisonment. If the offense described in this
 791 subsection was committed on or after October 1, 2014, a person
 792 who qualifies as a dangerous sexual felony offender pursuant to
 793 this subsection must be sentenced to a mandatory minimum term of
 794 50 years imprisonment up to, and including, life imprisonment.

795 Section 24. Subsection (1) of section 794.024, Florida
 796 Statutes, is amended to read:

797 794.024 Unlawful to disclose identifying information.—

798 (1) A public employee or officer who has access to the
 799 photograph, name, or address of a person who is alleged to be
 800 the victim of an offense described in this chapter, chapter 800,
 801 s. 827.03, s. 827.04, former ~~s. 827.071~~, s. 847.003, or s.
 802 847.0137 may not willfully and knowingly disclose it to a person
 803 who is not assisting in the investigation or prosecution of the
 804 alleged offense or to any person other than the defendant, the
 805 defendant's attorney, a person specified in an order entered by
 806 the court having jurisdiction of the alleged offense, or

807 organizations authorized to receive such information made exempt
 808 by s. 119.071(2)(h), or to a rape crisis center or sexual
 809 assault counselor, as defined in s. 90.5035(1)(b), who will be
 810 offering services to the victim.

811 Section 25. Subsection (1) of section 794.056, Florida
 812 Statutes, is amended to read:

813 794.056 Rape Crisis Program Trust Fund.—

814 (1) The Rape Crisis Program Trust Fund is created within
 815 the Department of Health for the purpose of providing funds for
 816 rape crisis centers in this state. Trust fund moneys shall be
 817 used exclusively for the purpose of providing services for
 818 victims of sexual assault. Funds credited to the trust fund
 819 consist of those funds collected as an additional court
 820 assessment in each case in which a defendant pleads guilty or
 821 nolo contendere to, or is found guilty of, regardless of
 822 adjudication, an offense provided in s. 775.21(6) and (10)(a),
 823 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
 824 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
 825 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
 826 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
 827 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.
 828 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.
 829 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
 830 825.1025; former s. 827.071; s. 836.10; s. 847.003; s. 847.0133;
 831 s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c),
 832 (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1). Funds

833 credited to the trust fund also shall include revenues provided
 834 by law, moneys appropriated by the Legislature, and grants from
 835 public or private entities.

836 Section 26. Section 796.001, Florida Statutes, is amended
 837 to read:

838 796.001 Offenses by adults involving minors; intent.—It is
 839 the intent of the Legislature that adults who involve minors in
 840 any behavior prohibited under this chapter be prosecuted under
 841 other laws of this state, such as, but not limited to, s.
 842 787.06, chapter 794, chapter 800, s. 810.145, former s. 827.071
 843 ~~chapter 827~~, and chapter 847. The Legislature finds that
 844 prosecution of such adults under this chapter is inappropriate
 845 since a minor is unable to consent to such behavior.

846 Section 27. Section 827.071, Florida Statutes, is
 847 repealed.

848 Section 28. Subsections (3) and (16) of section 847.001,
 849 Florida Statutes, are amended to read:

850 847.001 Definitions.—As used in this chapter, the term:

851 (3) "Child pornography" has the same meaning as provided
 852 in s. 847.0137 ~~means any image depicting a minor engaged in~~
 853 ~~sexual conduct.~~

854 (16) "Sexual conduct" means actual or simulated sexual
 855 intercourse, deviate sexual intercourse, sexual bestiality,
 856 masturbation, or sadomasochistic abuse; actual or simulated lewd
 857 exhibition of the genitals; actual physical contact with a
 858 person's clothed or unclothed genitals, pubic area, buttocks,

859 or, if such person is a female, breast with the intent to arouse
 860 or gratify the sexual desire of either party; or any act or
 861 conduct which constitutes sexual battery or simulates that
 862 sexual battery is being or will be committed. A mother's
 863 breastfeeding of her baby does not under any circumstance
 864 constitute "sexual conduct."

865 Section 29. Section 847.003, Florida Statutes, is created
 866 to read:

867 847.003 Sexual performance by a child; penalties.-

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

869 (a) "Performance" means any play, motion picture,
 870 photograph, or dance or any other visual representation
 871 exhibited before an audience.

872 (b) "Promote" means to procure, manufacture, issue, sell,
 873 give, provide, lend, mail, deliver, transfer, transmute,
 874 publish, distribute, circulate, disseminate, present, exhibit,
 875 or advertise or to offer or agree to do the same.

876 (c) "Sexual performance" means any performance or part
 877 thereof which includes sexual conduct by a minor.

878 (2) A person who, knowing the character and content
 879 thereof, employs, authorizes, or induces a minor to engage in a
 880 sexual performance or, being a parent, legal guardian, or
 881 custodian of such minor, consents to the participation by such
 882 minor in a sexual performance commits the offense of use of a
 883 child in a sexual performance, a felony of the second degree,
 884 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

885 (3) A person who, knowing the character and content
 886 thereof, produces, directs, or promotes any performance that
 887 includes sexual conduct by a minor commits the offense of
 888 promoting a sexual performance by a child, a felony of the
 889 second degree, punishable as provided in s. 775.082, s. 775.083,
 890 or s. 775.084.

891 Section 30. Subsections (3) and (4) of section 847.0135,
 892 Florida Statutes, are amended to read:

893 847.0135 Computer pornography; prohibited computer usage;
 894 traveling to meet minor; penalties.-

895 (3) CERTAIN USES OF COMPUTER SERVICES OR DEVICES
 896 PROHIBITED.-Any person who knowingly uses a computer online
 897 service, Internet service, local bulletin board service, or any
 898 other device capable of electronic data storage or transmission
 899 to:

900 (a) Seduce, solicit, lure, or entice, or attempt to
 901 seduce, solicit, lure, or entice, a child or another person
 902 believed by the person to be a child, to commit any illegal act
 903 described in chapter 794, chapter 800, former s. 827.071 ~~or~~
 904 ~~chapter 827,~~ s. 847.003, or s. 847.0137 or to otherwise engage
 905 in any unlawful sexual conduct with a child or with another
 906 person believed by the person to be a child; or

907 (b) Solicit, lure, or entice, or attempt to solicit, lure,
 908 or entice a parent, legal guardian, or custodian of a child or a
 909 person believed to be a parent, legal guardian, or custodian of
 910 a child to consent to the participation of such child in any act

911 described in chapter 794, chapter 800, former s. 827.071 ~~or~~
 912 ~~chapter 827, s. 847.003, or s. 847.0137,~~ or to otherwise engage
 913 in any sexual conduct,
 914
 915 commits a felony of the third degree, punishable as provided in
 916 s. 775.082, s. 775.083, or s. 775.084. Any person who, in
 917 violating this subsection, misrepresents his or her age, commits
 918 a felony of the second degree, punishable as provided in s.
 919 775.082, s. 775.083, or s. 775.084. Each separate use of a
 920 computer online service, Internet service, local bulletin board
 921 service, or any other device capable of electronic data storage
 922 or transmission wherein an offense described in this section is
 923 committed may be charged as a separate offense.

924 (4) TRAVELING TO MEET A MINOR.—Any person who travels any
 925 distance either within this state, to this state, or from this
 926 state by any means, who attempts to do so, or who causes another
 927 to do so or to attempt to do so for the purpose of engaging in
 928 any illegal act described in chapter 794, chapter 800, former s.
 929 827.071 ~~or chapter 827, s. 847.003, or s. 847.0137,~~ or to
 930 otherwise engage in other unlawful sexual conduct with a child
 931 or with another person believed by the person to be a child
 932 after using a computer online service, Internet service, local
 933 bulletin board service, or any other device capable of
 934 electronic data storage or transmission to:

935 (a) Seduce, solicit, lure, or entice or attempt to seduce,
 936 solicit, lure, or entice a child or another person believed by

937 the person to be a child, to engage in any illegal act described
 938 in chapter 794, chapter 800, former s. 827.071 ~~or chapter 827,~~
 939 s. 847.003, or s. 847.0137, or to otherwise engage in other
 940 unlawful sexual conduct with a child; or

941 (b) Solicit, lure, or entice or attempt to solicit, lure,
 942 or entice a parent, legal guardian, or custodian of a child or a
 943 person believed to be a parent, legal guardian, or custodian of
 944 a child to consent to the participation of such child in any act
 945 described in chapter 794, chapter 800, former s. 827.071 ~~or~~
 946 ~~chapter 827,~~ s. 847.003, or s. 847.0137, or to otherwise engage
 947 in any sexual conduct,

948
 949 commits a felony of the second degree, punishable as provided in
 950 s. 775.082, s. 775.083, or s. 775.084.

951 Section 31. Subsection (1) of section 847.01357, Florida
 952 Statutes, is amended to read:

953 847.01357 Exploited children's civil remedy.-

954 (1) Any person who, while under the age of 18, was a
 955 victim of a sexual abuse crime listed in chapter 794, chapter
 956 800, former s. 827.071 ~~chapter 827,~~ or chapter 847, where any
 957 portion of such abuse was used in the production of child
 958 pornography, and who suffers personal or psychological injury as
 959 a result of the production, promotion, or possession of such
 960 images or movies, may bring an action in an appropriate state
 961 court against the producer, promoter, or possessor of such
 962 images or movies, regardless of whether the victim is now an

963 adult. In any action brought under this section, a prevailing
 964 plaintiff shall recover the actual damages such person sustained
 965 and the cost of the suit, including reasonable attorney
 966 ~~attorney's~~ fees. Any victim who is awarded damages under this
 967 section shall be deemed to have sustained damages of at least
 968 \$150,000.

969 Section 32. Section 847.0137, Florida Statutes, is amended
 970 to read:

971 847.0137 Child pornography; Transmission of pornography by
 972 ~~electronic device or equipment~~ prohibited acts; penalties.-

973 (1) For purposes of this section:

974 (a) "Child pornography" means a visual depiction of sexual
 975 conduct, where:

976 1. The production of such visual depiction involves the
 977 use of a minor engaging in sexual conduct; or

978 2. Such visual depiction has been created, adapted, or
 979 modified to appear that an identifiable minor is engaging in
 980 sexual conduct.

981 (b) "Identifiable minor" means a person who is
 982 recognizable as an actual person by the person's face, likeness,
 983 or other distinguishing characteristic, such as a unique
 984 birthmark, or other recognizable feature and:

985 1. Who was a minor at the time the visual depiction was
 986 created, adapted, or modified; or

987 2. Whose image as a minor was used in creating, adapting,
 988 or modifying the visual depiction.

989 (c) "Intentionally view" means to deliberately,
 990 purposefully, and voluntarily view. Proof of intentional viewing
 991 requires establishing that a person deliberately, purposefully,
 992 and voluntarily viewed more than one visual depiction over any
 993 period of time.

994 (d) ~~(a)~~ "Minor" means any person less than 18 years of age.

995 (e) "Promote" means to procure, manufacture, issue, sell,
 996 give, provide, lend, mail, deliver, transfer, transmute,
 997 publish, distribute, circulate, disseminate, present, exhibit,
 998 or advertise or to offer or agree to do the same.

999 (f) ~~(b)~~ "Transmit" means the act of sending and causing to
 1000 be delivered any visual depiction image, information, or data
 1001 from one or more persons or places to one or more other persons
 1002 or places over or through any medium, including the Internet, by
 1003 use of any electronic equipment or device.

1004 (g) "Visual depiction" includes, but is not limited to,
 1005 any photograph, picture, motion picture, film, video,
 1006 representation, or computer or computer-generated image or
 1007 picture, whether made or produced by electronic, mechanical, or
 1008 other means. The term also includes undeveloped film and
 1009 videotape, data stored on computer disk or by electronic means
 1010 which is capable of conversion into a visual image, and data
 1011 that is capable of conversion into a visual image that has been
 1012 transmitted by any means, whether stored in a permanent or
 1013 nonpermanent format.

1014 (2) (a) It is unlawful for a person to possess, with the

1015 intent to promote, child pornography. The possession of three or
 1016 more visual depictions of child pornography is prima facie
 1017 evidence of an intent to promote. A person who violates this
 1018 paragraph commits a felony of the second degree, punishable as
 1019 provided in s. 775.082, s. 775.083, or s. 775.084.

1020 (b) It is unlawful for a person to knowingly possess,
 1021 control, or intentionally view child pornography. The
 1022 possession, control, or intentional viewing of each visual
 1023 depiction of child pornography is a separate offense. If such
 1024 visual depiction includes sexual conduct by more than one minor,
 1025 each such minor in each such visual depiction that is knowingly
 1026 possessed, controlled, or intentionally viewed is a separate
 1027 offense. A person who violates this paragraph commits a felony
 1028 of the third degree, punishable as provided in s. 775.082, s.
 1029 775.083, or s. 775.084.

1030 (c) This subsection does not apply to child pornography
 1031 possessed, controlled, or intentionally viewed as part of a law
 1032 enforcement investigation.

1033 (d) Prosecution of a person for an offense under this
 1034 subsection does not prohibit prosecution of that person in this
 1035 state for a violation of any law of this state, including a law
 1036 providing for greater penalties than prescribed in this section
 1037 or any other crime punishing the sexual performance or sexual
 1038 exploitation of children.

1039 (3) (a) ~~(2)~~ Notwithstanding ss. 847.012 and 847.0133, a ~~any~~
 1040 person in this state who knew or reasonably should have known

1041 that he or she was transmitting child pornography, ~~as defined in~~
 1042 ~~s. 847.001~~, to another person in this state or in another
 1043 jurisdiction commits a felony of the third degree, punishable as
 1044 provided in s. 775.082, s. 775.083, or s. 775.084.

1045 (b) ~~(3)~~ Notwithstanding ss. 847.012 and 847.0133, a any
 1046 person in any jurisdiction other than this state who knew or
 1047 reasonably should have known that he or she was transmitting
 1048 child pornography, ~~as defined in s. 847.001~~, to another any
 1049 person in this state commits a felony of the third degree,
 1050 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1051 (c) ~~(4)~~ This section does ~~shall~~ not ~~be construed to~~
 1052 prohibit prosecution of a person in this state or another
 1053 jurisdiction for a violation of any law of this state, including
 1054 a law providing for greater penalties than prescribed in this
 1055 section, for the transmission of child pornography, ~~as defined~~
 1056 ~~in s. 847.001~~, to another any person in this state.

1057 (d) ~~(5)~~ A person is subject to prosecution in this state
 1058 pursuant to chapter 910 for any act or conduct proscribed by
 1059 this section, including a person in a jurisdiction other than
 1060 this state, if the act or conduct violates paragraph (b)
 1061 ~~subsection (3)~~.

1062 (e) This subsection does ~~The provisions of this section do~~
 1063 not apply to subscription-based transmissions such as list
 1064 servers.

1065 Section 33. Subsection (1) of section 856.022, Florida
 1066 Statutes, is amended to read:

1067 856.022 Loitering or prowling by certain offenders in
 1068 close proximity to children; penalty.-
 1069 (1) Except as provided in subsection (2), this section
 1070 applies to a person convicted of committing, or attempting,
 1071 soliciting, or conspiring to commit, any of the criminal
 1072 offenses proscribed in the following statutes in this state or
 1073 similar offenses in another jurisdiction against a victim who
 1074 was under 18 years of age at the time of the offense: s. 787.01,
 1075 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 1076 the offender was not the victim's parent or guardian; s.
 1077 787.06(3)(g); s. 794.011, excluding s. 794.011(10); s. 794.05;
 1078 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025;
 1079 former s. 827.071; s. 847.003; s. 847.0133; s. 847.0135,
 1080 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 1081 s. 985.701(1); or any similar offense committed in this state
 1082 which has been redesignated from a former statute number to one
 1083 of those listed in this subsection, if the person has not
 1084 received a pardon for any felony or similar law of another
 1085 jurisdiction necessary for the operation of this subsection and
 1086 a conviction of a felony or similar law of another jurisdiction
 1087 necessary for the operation of this subsection has not been set
 1088 aside in any postconviction proceeding.

1089 Section 34. Paragraph (a) of subsection (1) of section
 1090 895.02, Florida Statutes, is amended to read:

1091 895.02 Definitions.-As used in ss. 895.01-895.08, the
 1092 term:

1093 (1) "Racketeering activity" means to commit, to attempt to
 1094 commit, to conspire to commit, or to solicit, coerce, or
 1095 intimidate another person to commit:

1096 (a) Any crime that is chargeable by petition, indictment,
 1097 or information under the following provisions of the Florida
 1098 Statutes:

1099 1. Section 210.18, relating to evasion of payment of
 1100 cigarette taxes.

1101 2. Section 316.1935, relating to fleeing or attempting to
 1102 elude a law enforcement officer and aggravated fleeing or
 1103 eluding.

1104 3. Section 403.727(3)(b), relating to environmental
 1105 control.

1106 4. Section 409.920 or s. 409.9201, relating to Medicaid
 1107 fraud.

1108 5. Section 414.39, relating to public assistance fraud.

1109 6. Section 440.105 or s. 440.106, relating to workers'
 1110 compensation.

1111 7. Section 443.071(4), relating to creation of a
 1112 fictitious employer scheme to commit reemployment assistance
 1113 fraud.

1114 8. Section 465.0161, relating to distribution of medicinal
 1115 drugs without a permit as an Internet pharmacy.

1116 9. Section 499.0051, relating to crimes involving
 1117 contraband and adulterated drugs.

1118 10. Part IV of chapter 501, relating to telemarketing.

- 1119 11. Chapter 517, relating to sale of securities and
 1120 investor protection.
- 1121 12. Section 550.235 or s. 550.3551, relating to dogracing
 1122 and horseracing.
- 1123 13. Chapter 550, relating to jai alai frontons.
- 1124 14. Section 551.109, relating to slot machine gaming.
- 1125 15. Chapter 552, relating to the manufacture,
 1126 distribution, and use of explosives.
- 1127 16. Chapter 560, relating to money transmitters, if the
 1128 violation is punishable as a felony.
- 1129 17. Chapter 562, relating to beverage law enforcement.
- 1130 18. Section 624.401, relating to transacting insurance
 1131 without a certificate of authority, s. 624.437(4)(c)1., relating
 1132 to operating an unauthorized multiple-employer welfare
 1133 arrangement, or s. 626.902(1)(b), relating to representing or
 1134 aiding an unauthorized insurer.
- 1135 19. Section 655.50, relating to reports of currency
 1136 transactions, when such violation is punishable as a felony.
- 1137 20. Chapter 687, relating to interest and usurious
 1138 practices.
- 1139 21. Section 721.08, s. 721.09, or s. 721.13, relating to
 1140 real estate timeshare plans.
- 1141 22. Section 775.13(5)(b), relating to registration of
 1142 persons found to have committed any offense for the purpose of
 1143 benefiting, promoting, or furthering the interests of a criminal
 1144 gang.

- 1145 23. Section 777.03, relating to commission of crimes by
- 1146 accessories after the fact.
- 1147 24. Chapter 782, relating to homicide.
- 1148 25. Chapter 784, relating to assault and battery.
- 1149 26. Chapter 787, relating to kidnapping or human
- 1150 trafficking.
- 1151 27. Chapter 790, relating to weapons and firearms.
- 1152 28. Chapter 794, relating to sexual battery, but only if
- 1153 such crime was committed with the intent to benefit, promote, or
- 1154 further the interests of a criminal gang, or for the purpose of
- 1155 increasing a criminal gang member's own standing or position
- 1156 within a criminal gang.
- 1157 29. Former section 796.03, former s. 796.035, s. 796.04,
- 1158 s. 796.05, or s. 796.07, relating to prostitution.
- 1159 30. Chapter 806, relating to arson and criminal mischief.
- 1160 31. Chapter 810, relating to burglary and trespass.
- 1161 32. Chapter 812, relating to theft, robbery, and related
- 1162 crimes.
- 1163 33. Chapter 815, relating to computer-related crimes.
- 1164 34. Chapter 817, relating to fraudulent practices, false
- 1165 pretenses, fraud generally, and credit card crimes.
- 1166 35. Chapter 825, relating to abuse, neglect, or
- 1167 exploitation of an elderly person or disabled adult.
- 1168 36. Former s. Section 827.071, relating to commercial
- 1169 sexual exploitation of children.
- 1170 37. Section 828.122, relating to fighting or baiting

1171 animals.

1172 38. Chapter 831, relating to forgery and counterfeiting.

1173 39. Chapter 832, relating to issuance of worthless checks

1174 and drafts.

1175 40. Section 836.05, relating to extortion.

1176 41. Chapter 837, relating to perjury.

1177 42. Chapter 838, relating to bribery and misuse of public

1178 office.

1179 43. Chapter 843, relating to obstruction of justice.

1180 44. Section 847.003, relating to sexual performance by a

1181 child.

1182 ~~45.44.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,

1183 or s. 847.07, relating to obscene literature and profanity.

1184 ~~46.45.~~ Chapter 849, relating to gambling, lottery,

1185 gambling or gaming devices, slot machines, or any of the

1186 provisions within that chapter.

1187 ~~47.46.~~ Chapter 874, relating to criminal gangs.

1188 ~~48.47.~~ Chapter 893, relating to drug abuse prevention and

1189 control.

1190 ~~49.48.~~ Chapter 896, relating to offenses related to

1191 financial transactions.

1192 ~~50.49.~~ Sections 914.22 and 914.23, relating to tampering

1193 with or harassing a witness, victim, or informant, and

1194 retaliation against a witness, victim, or informant.

1195 ~~51.50.~~ Sections 918.12 and 918.13, relating to tampering

1196 with jurors and evidence.

1197 Section 35. Subsection (8) of section 905.34, Florida
 1198 Statutes, is amended to read:
 1199 905.34 Powers and duties; law applicable.—The jurisdiction
 1200 of a statewide grand jury impaneled under this chapter shall
 1201 extend throughout the state. The subject matter jurisdiction of
 1202 the statewide grand jury shall be limited to the offenses of:
 1203 (8) Any violation of s. 847.003, s. 847.0135, s. 847.0137,
 1204 or s. 847.0138 relating to computer pornography and child
 1205 exploitation prevention, or any offense related to a violation
 1206 of s. 847.003, s. 847.0135, s. 847.0137, or s. 847.0138 or any
 1207 violation of former s. 827.071 ~~chapter 827~~ where the crime is
 1208 facilitated by or connected to the use of the Internet or any
 1209 device capable of electronic data storage or transmission;
 1210
 1211 or any attempt, solicitation, or conspiracy to commit any
 1212 violation of the crimes specifically enumerated above, when any
 1213 such offense is occurring, or has occurred, in two or more
 1214 judicial circuits as part of a related transaction or when any
 1215 such offense is connected with an organized criminal conspiracy
 1216 affecting two or more judicial circuits. The statewide grand
 1217 jury may return indictments and presentments irrespective of the
 1218 county or judicial circuit where the offense is committed or
 1219 triable. If an indictment is returned, it shall be certified and
 1220 transferred for trial to the county where the offense was
 1221 committed. The powers and duties of, and law applicable to,
 1222 county grand juries shall apply to a statewide grand jury except

1223 when such powers, duties, and law are inconsistent with the
 1224 provisions of ss. 905.31-905.40.

1225 Section 36. Paragraph (a) of subsection (1) of section
 1226 934.07, Florida Statutes, is amended to read:

1227 934.07 Authorization for interception of wire, oral, or
 1228 electronic communications.—

1229 (1) The Governor, the Attorney General, the statewide
 1230 prosecutor, or any state attorney may authorize an application
 1231 to a judge of competent jurisdiction for, and such judge may
 1232 grant in conformity with ss. 934.03-934.09 an order authorizing
 1233 or approving the interception of, wire, oral, or electronic
 1234 communications by:

1235 (a) The Department of Law Enforcement or any law
 1236 enforcement agency as defined in s. 934.02 having responsibility
 1237 for the investigation of the offense as to which the application
 1238 is made when such interception may provide or has provided
 1239 evidence of the commission of the offense of murder, kidnapping,
 1240 aircraft piracy, arson, gambling, robbery, burglary, theft,
 1241 dealing in stolen property, criminal usury, bribery, or
 1242 extortion; any felony violation of ss. 790.161-790.166,
 1243 inclusive; any violation of s. 787.06; any violation of chapter
 1244 893; any violation of the provisions of the Florida Anti-Fencing
 1245 Act; any violation of chapter 895; any violation of chapter 896;
 1246 any violation of chapter 815; any violation of chapter 847; any
 1247 violation of former s. 827.071; any violation of s. 944.40; or
 1248 any conspiracy or solicitation to commit any violation of the

1249 laws of this state relating to the crimes specifically
 1250 enumerated in this paragraph.

1251 Section 37. Section 938.085, Florida Statutes, is amended
 1252 to read:

1253 938.085 Additional cost to fund rape crisis centers.—In
 1254 addition to any sanction imposed when a person pleads guilty or
 1255 nolo contendere to, or is found guilty of, regardless of
 1256 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and
 1257 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;
 1258 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.
 1259 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.
 1260 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.
 1261 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.
 1262 796.07(2)(a)–(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.
 1263 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; former
 1264 s. 827.071; s. 836.10; s. 847.003; s. 847.0133; s. 847.0135(2);
 1265 s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),
 1266 (13), and (14)(c); or s. 985.701(1), the court shall impose a
 1267 surcharge of \$151. Payment of the surcharge shall be a condition
 1268 of probation, community control, or any other court-ordered
 1269 supervision. The sum of \$150 of the surcharge shall be deposited
 1270 into the Rape Crisis Program Trust Fund established within the
 1271 Department of Health by chapter 2003-140, Laws of Florida. The
 1272 clerk of the court shall retain \$1 of each surcharge that the
 1273 clerk of the court collects as a service charge of the clerk's
 1274 office.

1275 Section 38. Subsection (1) of section 938.10, Florida
 1276 Statutes, is amended to read:

1277 938.10 Additional court cost imposed in cases of certain
 1278 crimes.—

1279 (1) If a person pleads guilty or nolo contendere to, or is
 1280 found guilty of, regardless of adjudication, any offense against
 1281 a minor in violation of s. 784.085, chapter 787, chapter 794,
 1282 former s. 796.03, former s. 796.035, s. 800.04, chapter 827,
 1283 former s. 827.071, s. 847.003, s. 847.012, s. 847.0133, s.
 1284 847.0135(5), s. 847.0137, s. 847.0138, s. 847.0145, s.
 1285 893.147(3), or s. 985.701, or any offense in violation of s.
 1286 775.21, s. 823.07, s. 847.0125, s. 847.0134, or s. 943.0435, the
 1287 court shall impose a court cost of \$151 against the offender in
 1288 addition to any other cost or penalty required by law.

1289 Section 39. Paragraph (a) of subsection (1) of section
 1290 943.0435, Florida Statutes, is amended to read:

1291 943.0435 Sexual offenders required to register with the
 1292 department; penalty.—

1293 (1) As used in this section, the term:

1294 (a)1. "Sexual offender" means a person who meets the
 1295 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 1296 subparagraph c., or sub-subparagraph d., as follows:

1297 a.(I) Has been convicted of committing, or attempting,
 1298 soliciting, or conspiring to commit, any of the criminal
 1299 offenses proscribed in the following statutes in this state or
 1300 similar offenses in another jurisdiction: s. 393.135(2); s.

1301 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 1302 the victim is a minor and the defendant is not the victim's
 1303 parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s.
 1304 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05;
 1305 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);
 1306 s. 825.1025; former s. 827.071; s. 847.003; s. 847.0133; s.
 1307 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
 1308 847.0145; s. 916.1075(2); or s. 985.701(1); or any similar
 1309 offense committed in this state which has been redesignated from
 1310 a former statute number to one of those listed in this sub-sub-
 1311 subparagraph; and

1312 (II) Has been released on or after October 1, 1997, from
 1313 the sanction imposed for any conviction of an offense described
 1314 in sub-sub-subparagraph (I). For purposes of sub-sub-
 1315 subparagraph (I), a sanction imposed in this state or in any
 1316 other jurisdiction includes, but is not limited to, a fine,
 1317 probation, community control, parole, conditional release,
 1318 control release, or incarceration in a state prison, federal
 1319 prison, private correctional facility, or local detention
 1320 facility;

1321 b. Establishes or maintains a residence in this state and
 1322 who has not been designated as a sexual predator by a court of
 1323 this state but who has been designated as a sexual predator, as
 1324 a sexually violent predator, or by another sexual offender
 1325 designation in another state or jurisdiction and was, as a
 1326 result of such designation, subjected to registration or

1327 community or public notification, or both, or would be if the
 1328 person were a resident of that state or jurisdiction, without
 1329 regard to whether the person otherwise meets the criteria for
 1330 registration as a sexual offender;

1331 c. Establishes or maintains a residence in this state who
 1332 is in the custody or control of, or under the supervision of,
 1333 any other state or jurisdiction as a result of a conviction for
 1334 committing, or attempting, soliciting, or conspiring to commit,
 1335 any of the criminal offenses proscribed in the following
 1336 statutes or similar offense in another jurisdiction: s.
 1337 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 1338 787.025(2)(c), where the victim is a minor and the defendant is
 1339 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
 1340 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.
 1341 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.
 1342 800.04; s. 810.145(8); s. 825.1025; former s. 827.071; s.
 1343 847.003; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 1344 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.
 1345 985.701(1); or any similar offense committed in this state which
 1346 has been redesignated from a former statute number to one of
 1347 those listed in this sub-subparagraph; or

1348 d. On or after July 1, 2007, has been adjudicated
 1349 delinquent for committing, or attempting, soliciting, or
 1350 conspiring to commit, any of the criminal offenses proscribed in
 1351 the following statutes in this state or similar offenses in
 1352 another jurisdiction when the juvenile was 14 years of age or

1353 | older at the time of the offense:
 1354 | (I) Section 794.011, excluding s. 794.011(10);
 1355 | (II) Section 800.04(4)(a)2. where the victim is under 12
 1356 | years of age or where the court finds sexual activity by the use
 1357 | of force or coercion;
 1358 | (III) Section 800.04(5)(c)1. where the court finds
 1359 | molestation involving unclothed genitals; or
 1360 | (IV) Section 800.04(5)(d) where the court finds the use of
 1361 | force or coercion and unclothed genitals.
 1362 | 2. For all qualifying offenses listed in sub-subparagraph
 1363 | (1)(a)1.d., the court shall make a written finding of the age of
 1364 | the offender at the time of the offense.

1365 |
 1366 | For each violation of a qualifying offense listed in this
 1367 | subsection, except for a violation of s. 794.011, the court
 1368 | shall make a written finding of the age of the victim at the
 1369 | time of the offense. For a violation of s. 800.04(4), the court
 1370 | shall also make a written finding indicating whether the offense
 1371 | involved sexual activity and indicating whether the offense
 1372 | involved force or coercion. For a violation of s. 800.04(5), the
 1373 | court shall also make a written finding that the offense did or
 1374 | did not involve unclothed genitals or genital area and that the
 1375 | offense did or did not involve the use of force or coercion.

1376 | Section 40. Paragraph (a) of subsection (1) and subsection
 1377 | (3) of section 943.04354, Florida Statutes, are amended to read:
 1378 | 943.04354 Removal of the requirement to register as a

1379 sexual offender or sexual predator in special circumstances.—

1380 (1) For purposes of this section, a person shall be
 1381 considered for removal of the requirement to register as a
 1382 sexual offender or sexual predator only if the person:

1383 (a) Was convicted, regardless of adjudication, or
 1384 adjudicated delinquent of a violation of s. 794.011, s. 800.04,
 1385 former s. 827.071, s. 847.003, ~~or~~ s. 847.0135(5), or s. 847.0137
 1386 or of a similar offense in another jurisdiction and if the
 1387 person does not have any other conviction, regardless of
 1388 adjudication, or adjudication of delinquency for a violation of
 1389 s. 794.011, s. 800.04, former s. 827.071, s. 847.003, ~~or~~ s.
 1390 847.0135(5), or s. 847.0137 or for a similar offense in another
 1391 jurisdiction;

1392 (3) If a person provides to the Department of Law
 1393 Enforcement a certified copy of the court's order removing the
 1394 requirement that the person register as a sexual offender or
 1395 sexual predator for the violation of s. 794.011, s. 800.04,
 1396 former s. 827.071, s. 847.003, ~~or~~ s. 847.0135(5), or s. 847.0137
 1397 or a similar offense in another jurisdiction, the registration
 1398 requirement will not apply to the person and the department
 1399 shall remove all information about the person from the public
 1400 registry of sexual offenders and sexual predators maintained by
 1401 the department. However, the removal of this information from
 1402 the public registry does not mean that the public is denied
 1403 access to information about the person's criminal history or
 1404 record that is otherwise available as a public record.

1405 Section 41. Section 943.0585, Florida Statutes, is amended
 1406 to read:
 1407 943.0585 Court-ordered expunction of criminal history
 1408 records.—The courts of this state have jurisdiction over their
 1409 own procedures, including the maintenance, expunction, and
 1410 correction of judicial records containing criminal history
 1411 information to the extent such procedures are not inconsistent
 1412 with the conditions, responsibilities, and duties established by
 1413 this section. Any court of competent jurisdiction may order a
 1414 criminal justice agency to expunge the criminal history record
 1415 of a minor or an adult who complies with the requirements of
 1416 this section. The court shall not order a criminal justice
 1417 agency to expunge a criminal history record until the person
 1418 seeking to expunge a criminal history record has applied for and
 1419 received a certificate of eligibility for expunction pursuant to
 1420 subsection (2) or subsection (5). A criminal history record that
 1421 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
 1422 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
 1423 s. 825.1025, former s. 827.071, chapter 839, s. 847.003, s.
 1424 847.0133, s. 847.0135, s. 847.0137, s. 847.0145, s. 893.135, s.
 1425 916.1075, a violation enumerated in s. 907.041, or any violation
 1426 specified as a predicate offense for registration as a sexual
 1427 predator pursuant to s. 775.21, without regard to whether that
 1428 offense alone is sufficient to require such registration, or for
 1429 registration as a sexual offender pursuant to s. 943.0435, may
 1430 not be expunged, without regard to whether adjudication was

1431 withheld, if the defendant was found guilty of or pled guilty or
 1432 nolo contendere to the offense, or if the defendant, as a minor,
 1433 was found to have committed, or pled guilty or nolo contendere
 1434 to committing, the offense as a delinquent act. The court may
 1435 only order expunction of a criminal history record pertaining to
 1436 one arrest or one incident of alleged criminal activity, except
 1437 as provided in this section. The court may, at its sole
 1438 discretion, order the expunction of a criminal history record
 1439 pertaining to more than one arrest if the additional arrests
 1440 directly relate to the original arrest. If the court intends to
 1441 order the expunction of records pertaining to such additional
 1442 arrests, such intent must be specified in the order. A criminal
 1443 justice agency may not expunge any record pertaining to such
 1444 additional arrests if the order to expunge does not articulate
 1445 the intention of the court to expunge a record pertaining to
 1446 more than one arrest. This section does not prevent the court
 1447 from ordering the expunction of only a portion of a criminal
 1448 history record pertaining to one arrest or one incident of
 1449 alleged criminal activity. Notwithstanding any law to the
 1450 contrary, a criminal justice agency may comply with laws, court
 1451 orders, and official requests of other jurisdictions relating to
 1452 expunction, correction, or confidential handling of criminal
 1453 history records or information derived therefrom. This section
 1454 does not confer any right to the expunction of any criminal
 1455 history record, and any request for expunction of a criminal
 1456 history record may be denied at the sole discretion of the

1457 court.

1458 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
 1459 petition to a court to expunge a criminal history record is
 1460 complete only when accompanied by:

1461 (a) A valid certificate of eligibility for expunction
 1462 issued by the department pursuant to subsection (2).

1463 (b) The petitioner's sworn statement attesting that the
 1464 petitioner:

1465 1. Has never, prior to the date on which the petition is
 1466 filed, been adjudicated guilty of a criminal offense or
 1467 comparable ordinance violation, or been adjudicated delinquent
 1468 for committing any felony or a misdemeanor specified in s.
 1469 943.051(3)(b).

1470 2. Has not been adjudicated guilty of, or adjudicated
 1471 delinquent for committing, any of the acts stemming from the
 1472 arrest or alleged criminal activity to which the petition
 1473 pertains.

1474 3. Has never secured a prior sealing or expunction of a
 1475 criminal history record under this section, s. 943.059, former
 1476 s. 893.14, former s. 901.33, or former s. 943.058, unless
 1477 expunction is sought of a criminal history record previously
 1478 sealed for 10 years pursuant to paragraph (2)(h) and the record
 1479 is otherwise eligible for expunction.

1480 4. Is eligible for such an expunction to the best of his
 1481 or her knowledge or belief and does not have any other petition
 1482 to expunge or any petition to seal pending before any court.

1483
 1484 Any person who knowingly provides false information on such
 1485 sworn statement to the court commits a felony of the third
 1486 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1487 775.084.

1488 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
 1489 petitioning the court to expunge a criminal history record, a
 1490 person seeking to expunge a criminal history record shall apply
 1491 to the department for a certificate of eligibility for
 1492 expunction. The department shall, by rule adopted pursuant to
 1493 chapter 120, establish procedures pertaining to the application
 1494 for and issuance of certificates of eligibility for expunction.
 1495 A certificate of eligibility for expunction is valid for 12
 1496 months after the date stamped on the certificate when issued by
 1497 the department. After that time, the petitioner must reapply to
 1498 the department for a new certificate of eligibility. Eligibility
 1499 for a renewed certification of eligibility must be based on the
 1500 status of the applicant and the law in effect at the time of the
 1501 renewal application. The department shall issue a certificate of
 1502 eligibility for expunction to a person who is the subject of a
 1503 criminal history record if that person:

1504 (a) Has obtained, and submitted to the department, a
 1505 written, certified statement from the appropriate state attorney
 1506 or statewide prosecutor which indicates:

1507 1. That an indictment, information, or other charging
 1508 document was not filed or issued in the case.

1509 2. That an indictment, information, or other charging
 1510 document, if filed or issued in the case, was dismissed or nolle
 1511 prosequi by the state attorney or statewide prosecutor, or was
 1512 dismissed by a court of competent jurisdiction, and that none of
 1513 the charges related to the arrest or alleged criminal activity
 1514 to which the petition to expunge pertains resulted in a trial,
 1515 without regard to whether the outcome of the trial was other
 1516 than an adjudication of guilt.

1517 3. That the criminal history record does not relate to a
 1518 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 1519 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
 1520 former s. 827.071, chapter 839, s. 847.003, s. 847.0133, s.
 1521 847.0135, s. 847.0137, s. 847.0145, s. 893.135, s. 916.1075, a
 1522 violation enumerated in s. 907.041, or any violation specified
 1523 as a predicate offense for registration as a sexual predator
 1524 pursuant to s. 775.21, without regard to whether that offense
 1525 alone is sufficient to require such registration, or for
 1526 registration as a sexual offender pursuant to s. 943.0435, where
 1527 the defendant was found guilty of, or pled guilty or nolo
 1528 contendere to any such offense, or that the defendant, as a
 1529 minor, was found to have committed, or pled guilty or nolo
 1530 contendere to committing, such an offense as a delinquent act,
 1531 without regard to whether adjudication was withheld.

1532 (b) Remits a \$75 processing fee to the department for
 1533 placement in the Department of Law Enforcement Operating Trust
 1534 Fund, unless such fee is waived by the executive director.

1535 (c) Has submitted to the department a certified copy of
 1536 the disposition of the charge to which the petition to expunge
 1537 pertains.

1538 (d) Has never, prior to the date on which the application
 1539 for a certificate of eligibility is filed, been adjudicated
 1540 guilty of a criminal offense or comparable ordinance violation,
 1541 or been adjudicated delinquent for committing any felony or a
 1542 misdemeanor specified in s. 943.051(3)(b).

1543 (e) Has not been adjudicated guilty of, or adjudicated
 1544 delinquent for committing, any of the acts stemming from the
 1545 arrest or alleged criminal activity to which the petition to
 1546 expunge pertains.

1547 (f) Has never secured a prior sealing or expunction of a
 1548 criminal history record under this section, s. 943.059, former
 1549 s. 893.14, former s. 901.33, or former s. 943.058, unless
 1550 expunction is sought of a criminal history record previously
 1551 sealed for 10 years pursuant to paragraph (h) and the record is
 1552 otherwise eligible for expunction.

1553 (g) Is no longer under court supervision applicable to the
 1554 disposition of the arrest or alleged criminal activity to which
 1555 the petition to expunge pertains.

1556 (h) Has previously obtained a court order sealing the
 1557 record under this section, former s. 893.14, former s. 901.33,
 1558 or former s. 943.058 for a minimum of 10 years because
 1559 adjudication was withheld or because all charges related to the
 1560 arrest or alleged criminal activity to which the petition to

1561 expunge pertains were not dismissed prior to trial, without
 1562 regard to whether the outcome of the trial was other than an
 1563 adjudication of guilt. The requirement for the record to have
 1564 previously been sealed for a minimum of 10 years does not apply
 1565 when a plea was not entered or all charges related to the arrest
 1566 or alleged criminal activity to which the petition to expunge
 1567 pertains were dismissed prior to trial.

1568 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

1569 (a) In judicial proceedings under this section, a copy of
 1570 the completed petition to expunge shall be served upon the
 1571 appropriate state attorney or the statewide prosecutor and upon
 1572 the arresting agency; however, it is not necessary to make any
 1573 agency other than the state a party. The appropriate state
 1574 attorney or the statewide prosecutor and the arresting agency
 1575 may respond to the court regarding the completed petition to
 1576 expunge.

1577 (b) If relief is granted by the court, the clerk of the
 1578 court shall certify copies of the order to the appropriate state
 1579 attorney or the statewide prosecutor and the arresting agency.
 1580 The arresting agency is responsible for forwarding the order to
 1581 any other agency to which the arresting agency disseminated the
 1582 criminal history record information to which the order pertains.
 1583 The department shall forward the order to expunge to the Federal
 1584 Bureau of Investigation. The clerk of the court shall certify a
 1585 copy of the order to any other agency which the records of the
 1586 court reflect has received the criminal history record from the

1587 court.

1588 (c) For an order to expunge entered by a court prior to
 1589 July 1, 1992, the department shall notify the appropriate state
 1590 attorney or statewide prosecutor of an order to expunge which is
 1591 contrary to law because the person who is the subject of the
 1592 record has previously been convicted of a crime or comparable
 1593 ordinance violation or has had a prior criminal history record
 1594 sealed or expunged. Upon receipt of such notice, the appropriate
 1595 state attorney or statewide prosecutor shall take action, within
 1596 60 days, to correct the record and petition the court to void
 1597 the order to expunge. The department shall seal the record until
 1598 such time as the order is voided by the court.

1599 (d) On or after July 1, 1992, the department or any other
 1600 criminal justice agency is not required to act on an order to
 1601 expunge entered by a court when such order does not comply with
 1602 the requirements of this section. Upon receipt of such an order,
 1603 the department must notify the issuing court, the appropriate
 1604 state attorney or statewide prosecutor, the petitioner or the
 1605 petitioner's attorney, and the arresting agency of the reason
 1606 for noncompliance. The appropriate state attorney or statewide
 1607 prosecutor shall take action within 60 days to correct the
 1608 record and petition the court to void the order. No cause of
 1609 action, including contempt of court, shall arise against any
 1610 criminal justice agency for failure to comply with an order to
 1611 expunge when the petitioner for such order failed to obtain the
 1612 certificate of eligibility as required by this section or such

1613 order does not otherwise comply with the requirements of this
 1614 section.

1615 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 1616 criminal history record of a minor or an adult which is ordered
 1617 expunged by a court of competent jurisdiction pursuant to this
 1618 section must be physically destroyed or obliterated by any
 1619 criminal justice agency having custody of such record; except
 1620 that any criminal history record in the custody of the
 1621 department must be retained in all cases. A criminal history
 1622 record ordered expunged that is retained by the department is
 1623 confidential and exempt from the provisions of s. 119.07(1) and
 1624 s. 24(a), Art. I of the State Constitution and not available to
 1625 any person or entity except upon order of a court of competent
 1626 jurisdiction. A criminal justice agency may retain a notation
 1627 indicating compliance with an order to expunge.

1628 (a) The person who is the subject of a criminal history
 1629 record that is expunged under this section or under other
 1630 provisions of law, including former s. 893.14, former s. 901.33,
 1631 and former s. 943.058, may lawfully deny or fail to acknowledge
 1632 the arrests covered by the expunged record, except when the
 1633 subject of the record:

- 1634 1. Is a candidate for employment with a criminal justice
 1635 agency;
- 1636 2. Is a defendant in a criminal prosecution;
- 1637 3. Concurrently or subsequently petitions for relief under
 1638 this section, s. 943.0583, or s. 943.059;

1639 4. Is a candidate for admission to The Florida Bar;
 1640 5. Is seeking to be employed or licensed by or to contract
 1641 with the Department of Children and Families, the Division of
 1642 Vocational Rehabilitation within the Department of Education,
 1643 the Agency for Health Care Administration, the Agency for
 1644 Persons with Disabilities, the Department of Health, the
 1645 Department of Elderly Affairs, or the Department of Juvenile
 1646 Justice or to be employed or used by such contractor or licensee
 1647 in a sensitive position having direct contact with children, the
 1648 disabled, or the elderly;
 1649 6. Is seeking to be employed or licensed by the Department
 1650 of Education, any district school board, any university
 1651 laboratory school, any charter school, any private or parochial
 1652 school, or any local governmental entity that licenses child
 1653 care facilities;
 1654 7. Is seeking to be licensed by the Division of Insurance
 1655 Agent and Agency Services within the Department of Financial
 1656 Services; or
 1657 8. Is seeking to be appointed as a guardian pursuant to s.
 1658 744.3125.
 1659 (b) Subject to the exceptions in paragraph (a), a person
 1660 who has been granted an expunction under this section, former s.
 1661 893.14, former s. 901.33, or former s. 943.058 may not be held
 1662 under any provision of law of this state to commit perjury or to
 1663 be otherwise liable for giving a false statement by reason of
 1664 such person's failure to recite or acknowledge an expunged

1665 criminal history record.

1666 (c) Information relating to the existence of an expunged
 1667 criminal history record which is provided in accordance with
 1668 paragraph (a) is confidential and exempt from the provisions of
 1669 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 1670 except that the department shall disclose the existence of a
 1671 criminal history record ordered expunged to the entities set
 1672 forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their
 1673 respective licensing, access authorization, and employment
 1674 purposes, and to criminal justice agencies for their respective
 1675 criminal justice purposes. It is unlawful for any employee of an
 1676 entity set forth in subparagraph (a)1., subparagraph (a)4.,
 1677 subparagraph (a)5., subparagraph (a)6., subparagraph (a)7., or
 1678 subparagraph (a)8. to disclose information relating to the
 1679 existence of an expunged criminal history record of a person
 1680 seeking employment, access authorization, or licensure with such
 1681 entity or contractor, except to the person to whom the criminal
 1682 history record relates or to persons having direct
 1683 responsibility for employment, access authorization, or
 1684 licensure decisions. Any person who violates this paragraph
 1685 commits a misdemeanor of the first degree, punishable as
 1686 provided in s. 775.082 or s. 775.083.

1687 (5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the
 1688 eligibility requirements prescribed in paragraph (1)(b) and
 1689 subsection (2), the department shall issue a certificate of
 1690 eligibility for expunction under this subsection to a person who

1691 is the subject of a criminal history record if that person:

1692 (a) Has obtained, and submitted to the department, on a
 1693 form provided by the department, a written, certified statement
 1694 from the appropriate state attorney or statewide prosecutor
 1695 which states whether an information, indictment, or other
 1696 charging document was not filed or was dismissed by the state
 1697 attorney, or dismissed by the court, because it was found that
 1698 the person acted in lawful self-defense pursuant to the
 1699 provisions related to justifiable use of force in chapter 776.

1700 (b) Each petition to a court to expunge a criminal history
 1701 record pursuant to this subsection is complete only when
 1702 accompanied by:

1703 1. A valid certificate of eligibility for expunction
 1704 issued by the department pursuant to this subsection.

1705 2. The petitioner's sworn statement attesting that the
 1706 petitioner is eligible for such an expunction to the best of his
 1707 or her knowledge or belief.

1708
 1709 Any person who knowingly provides false information on such
 1710 sworn statement to the court commits a felony of the third
 1711 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1712 775.084.

1713 (c) This subsection does not confer any right to the
 1714 expunction of a criminal history record, and any request for
 1715 expunction of a criminal history record may be denied at the
 1716 discretion of the court.

1717 (d) Subsections (3) and (4) shall apply to expunction
 1718 ordered under this subsection.

1719 (e) The department shall, by rule adopted pursuant to
 1720 chapter 120, establish procedures pertaining to the application
 1721 for and issuance of certificates of eligibility for expunction
 1722 under this subsection.

1723 (6) STATUTORY REFERENCES.—Any reference to any other
 1724 chapter, section, or subdivision of the Florida Statutes in this
 1725 section constitutes a general reference under the doctrine of
 1726 incorporation by reference.

1727 Section 42. Section 943.059, Florida Statutes, is amended
 1728 to read:

1729 943.059 Court-ordered sealing of criminal history
 1730 records.—The courts of this state shall continue to have
 1731 jurisdiction over their own procedures, including the
 1732 maintenance, sealing, and correction of judicial records
 1733 containing criminal history information to the extent such
 1734 procedures are not inconsistent with the conditions,
 1735 responsibilities, and duties established by this section. Any
 1736 court of competent jurisdiction may order a criminal justice
 1737 agency to seal the criminal history record of a minor or an
 1738 adult who complies with the requirements of this section. The
 1739 court shall not order a criminal justice agency to seal a
 1740 criminal history record until the person seeking to seal a
 1741 criminal history record has applied for and received a
 1742 certificate of eligibility for sealing pursuant to subsection

1743 (2). A criminal history record that relates to a violation of s.
 1744 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
 1745 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, former s.
 1746 827.071, chapter 839, s. 847.003, s. 847.0133, s. 847.0135, s.
 1747 847.0137, s. 847.0145, s. 893.135, s. 916.1075, a violation
 1748 enumerated in s. 907.041, or any violation specified as a
 1749 predicate offense for registration as a sexual predator pursuant
 1750 to s. 775.21, without regard to whether that offense alone is
 1751 sufficient to require such registration, or for registration as
 1752 a sexual offender pursuant to s. 943.0435, may not be sealed,
 1753 without regard to whether adjudication was withheld, if the
 1754 defendant was found guilty of or pled guilty or nolo contendere
 1755 to the offense, or if the defendant, as a minor, was found to
 1756 have committed or pled guilty or nolo contendere to committing
 1757 the offense as a delinquent act. The court may only order
 1758 sealing of a criminal history record pertaining to one arrest or
 1759 one incident of alleged criminal activity, except as provided in
 1760 this section. The court may, at its sole discretion, order the
 1761 sealing of a criminal history record pertaining to more than one
 1762 arrest if the additional arrests directly relate to the original
 1763 arrest. If the court intends to order the sealing of records
 1764 pertaining to such additional arrests, such intent must be
 1765 specified in the order. A criminal justice agency may not seal
 1766 any record pertaining to such additional arrests if the order to
 1767 seal does not articulate the intention of the court to seal
 1768 records pertaining to more than one arrest. This section does

1769 not prevent the court from ordering the sealing of only a
 1770 portion of a criminal history record pertaining to one arrest or
 1771 one incident of alleged criminal activity. Notwithstanding any
 1772 law to the contrary, a criminal justice agency may comply with
 1773 laws, court orders, and official requests of other jurisdictions
 1774 relating to sealing, correction, or confidential handling of
 1775 criminal history records or information derived therefrom. This
 1776 section does not confer any right to the sealing of any criminal
 1777 history record, and any request for sealing a criminal history
 1778 record may be denied at the sole discretion of the court.

1779 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
 1780 petition to a court to seal a criminal history record is
 1781 complete only when accompanied by:

1782 (a) A valid certificate of eligibility for sealing issued
 1783 by the department pursuant to subsection (2).

1784 (b) The petitioner's sworn statement attesting that the
 1785 petitioner:

1786 1. Has never, prior to the date on which the petition is
 1787 filed, been adjudicated guilty of a criminal offense or
 1788 comparable ordinance violation, or been adjudicated delinquent
 1789 for committing any felony or a misdemeanor specified in s.
 1790 943.051(3)(b).

1791 2. Has not been adjudicated guilty of or adjudicated
 1792 delinquent for committing any of the acts stemming from the
 1793 arrest or alleged criminal activity to which the petition to
 1794 seal pertains.

1795 3. Has never secured a prior sealing or expunction of a
 1796 criminal history record under this section, s. 943.0585, former
 1797 s. 893.14, former s. 901.33, or former s. 943.058.

1798 4. Is eligible for such a sealing to the best of his or
 1799 her knowledge or belief and does not have any other petition to
 1800 seal or any petition to expunge pending before any court.

1801
 1802 Any person who knowingly provides false information on such
 1803 sworn statement to the court commits a felony of the third
 1804 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1805 775.084.

1806 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
 1807 petitioning the court to seal a criminal history record, a
 1808 person seeking to seal a criminal history record shall apply to
 1809 the department for a certificate of eligibility for sealing. The
 1810 department shall, by rule adopted pursuant to chapter 120,
 1811 establish procedures pertaining to the application for and
 1812 issuance of certificates of eligibility for sealing. A
 1813 certificate of eligibility for sealing is valid for 12 months
 1814 after the date stamped on the certificate when issued by the
 1815 department. After that time, the petitioner must reapply to the
 1816 department for a new certificate of eligibility. Eligibility for
 1817 a renewed certification of eligibility must be based on the
 1818 status of the applicant and the law in effect at the time of the
 1819 renewal application. The department shall issue a certificate of
 1820 eligibility for sealing to a person who is the subject of a

1821 criminal history record provided that such person:
 1822 (a) Has submitted to the department a certified copy of
 1823 the disposition of the charge to which the petition to seal
 1824 pertains.
 1825 (b) Remits a \$75 processing fee to the department for
 1826 placement in the Department of Law Enforcement Operating Trust
 1827 Fund, unless such fee is waived by the executive director.
 1828 (c) Has never, prior to the date on which the application
 1829 for a certificate of eligibility is filed, been adjudicated
 1830 guilty of a criminal offense or comparable ordinance violation,
 1831 or been adjudicated delinquent for committing any felony or a
 1832 misdemeanor specified in s. 943.051(3)(b).
 1833 (d) Has not been adjudicated guilty of or adjudicated
 1834 delinquent for committing any of the acts stemming from the
 1835 arrest or alleged criminal activity to which the petition to
 1836 seal pertains.
 1837 (e) Has never secured a prior sealing or expunction of a
 1838 criminal history record under this section, s. 943.0585, former
 1839 s. 893.14, former s. 901.33, or former s. 943.058.
 1840 (f) Is no longer under court supervision applicable to the
 1841 disposition of the arrest or alleged criminal activity to which
 1842 the petition to seal pertains.
 1843 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.—
 1844 (a) In judicial proceedings under this section, a copy of
 1845 the completed petition to seal shall be served upon the
 1846 appropriate state attorney or the statewide prosecutor and upon

1847 the arresting agency; however, it is not necessary to make any
 1848 agency other than the state a party. The appropriate state
 1849 attorney or the statewide prosecutor and the arresting agency
 1850 may respond to the court regarding the completed petition to
 1851 seal.

1852 (b) If relief is granted by the court, the clerk of the
 1853 court shall certify copies of the order to the appropriate state
 1854 attorney or the statewide prosecutor and to the arresting
 1855 agency. The arresting agency is responsible for forwarding the
 1856 order to any other agency to which the arresting agency
 1857 disseminated the criminal history record information to which
 1858 the order pertains. The department shall forward the order to
 1859 seal to the Federal Bureau of Investigation. The clerk of the
 1860 court shall certify a copy of the order to any other agency
 1861 which the records of the court reflect has received the criminal
 1862 history record from the court.

1863 (c) For an order to seal entered by a court prior to July
 1864 1, 1992, the department shall notify the appropriate state
 1865 attorney or statewide prosecutor of any order to seal which is
 1866 contrary to law because the person who is the subject of the
 1867 record has previously been convicted of a crime or comparable
 1868 ordinance violation or has had a prior criminal history record
 1869 sealed or expunged. Upon receipt of such notice, the appropriate
 1870 state attorney or statewide prosecutor shall take action, within
 1871 60 days, to correct the record and petition the court to void
 1872 the order to seal. The department shall seal the record until

1873 such time as the order is voided by the court.

1874 (d) On or after July 1, 1992, the department or any other
 1875 criminal justice agency is not required to act on an order to
 1876 seal entered by a court when such order does not comply with the
 1877 requirements of this section. Upon receipt of such an order, the
 1878 department must notify the issuing court, the appropriate state
 1879 attorney or statewide prosecutor, the petitioner or the
 1880 petitioner's attorney, and the arresting agency of the reason
 1881 for noncompliance. The appropriate state attorney or statewide
 1882 prosecutor shall take action within 60 days to correct the
 1883 record and petition the court to void the order. No cause of
 1884 action, including contempt of court, shall arise against any
 1885 criminal justice agency for failure to comply with an order to
 1886 seal when the petitioner for such order failed to obtain the
 1887 certificate of eligibility as required by this section or when
 1888 such order does not comply with the requirements of this
 1889 section.

1890 (e) An order sealing a criminal history record pursuant to
 1891 this section does not require that such record be surrendered to
 1892 the court, and such record shall continue to be maintained by
 1893 the department and other criminal justice agencies.

1894 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 1895 history record of a minor or an adult which is ordered sealed by
 1896 a court pursuant to this section is confidential and exempt from
 1897 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 1898 Constitution and is available only to the person who is the

1899 subject of the record, to the subject's attorney, to criminal
 1900 justice agencies for their respective criminal justice purposes,
 1901 which include conducting a criminal history background check for
 1902 approval of firearms purchases or transfers as authorized by
 1903 state or federal law, to judges in the state courts system for
 1904 the purpose of assisting them in their case-related
 1905 decisionmaking responsibilities, as set forth in s. 943.053(5),
 1906 or to those entities set forth in subparagraphs (a)1., 4., 5.,
 1907 6., 8., 9., and 10. for their respective licensing, access
 1908 authorization, and employment purposes.

1909 (a) The subject of a criminal history record sealed under
 1910 this section or under other provisions of law, including former
 1911 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 1912 deny or fail to acknowledge the arrests covered by the sealed
 1913 record, except when the subject of the record:

- 1914 1. Is a candidate for employment with a criminal justice
 1915 agency;
- 1916 2. Is a defendant in a criminal prosecution;
- 1917 3. Concurrently or subsequently petitions for relief under
 1918 this section, s. 943.0583, or s. 943.0585;
- 1919 4. Is a candidate for admission to The Florida Bar;
- 1920 5. Is seeking to be employed or licensed by or to contract
 1921 with the Department of Children and Families, the Division of
 1922 Vocational Rehabilitation within the Department of Education,
 1923 the Agency for Health Care Administration, the Agency for
 1924 Persons with Disabilities, the Department of Health, the

1925 Department of Elderly Affairs, or the Department of Juvenile
 1926 Justice or to be employed or used by such contractor or licensee
 1927 in a sensitive position having direct contact with children, the
 1928 disabled, or the elderly;

1929 6. Is seeking to be employed or licensed by the Department
 1930 of Education, a district school board, a university laboratory
 1931 school, a charter school, a private or parochial school, or a
 1932 local governmental entity that licenses child care facilities;

1933 7. Is attempting to purchase a firearm from a licensed
 1934 importer, licensed manufacturer, or licensed dealer and is
 1935 subject to a criminal history check under state or federal law;

1936 8. Is seeking to be licensed by the Division of Insurance
 1937 Agent and Agency Services within the Department of Financial
 1938 Services;

1939 9. Is seeking to be appointed as a guardian pursuant to s.
 1940 744.3125; or

1941 10. Is seeking to be licensed by the Bureau of License
 1942 Issuance of the Division of Licensing within the Department of
 1943 Agriculture and Consumer Services to carry a concealed weapon or
 1944 concealed firearm. This subparagraph applies only in the
 1945 determination of an applicant's eligibility under s. 790.06.

1946 (b) Subject to the exceptions in paragraph (a), a person
 1947 who has been granted a sealing under this section, former s.
 1948 893.14, former s. 901.33, or former s. 943.058 may not be held
 1949 under any provision of law of this state to commit perjury or to
 1950 be otherwise liable for giving a false statement by reason of

1951 such person's failure to recite or acknowledge a sealed criminal
 1952 history record.

1953 (c) Information relating to the existence of a sealed
 1954 criminal record provided in accordance with the provisions of
 1955 paragraph (a) is confidential and exempt from the provisions of
 1956 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 1957 except that the department shall disclose the sealed criminal
 1958 history record to the entities set forth in subparagraphs (a)1.,
 1959 4., 5., 6., 8., 9., and 10. for their respective licensing,
 1960 access authorization, and employment purposes. An employee of an
 1961 entity set forth in subparagraph (a)1., subparagraph (a)4.,
 1962 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
 1963 subparagraph (a)9., or subparagraph (a)10. may not disclose
 1964 information relating to the existence of a sealed criminal
 1965 history record of a person seeking employment, access
 1966 authorization, or licensure with such entity or contractor,
 1967 except to the person to whom the criminal history record relates
 1968 or to persons having direct responsibility for employment,
 1969 access authorization, or licensure decisions. A person who
 1970 violates the provisions of this paragraph commits a misdemeanor
 1971 of the first degree, punishable as provided in s. 775.082 or s.
 1972 775.083.

1973 (5) STATUTORY REFERENCES.—Any reference to any other
 1974 chapter, section, or subdivision of the Florida Statutes in this
 1975 section constitutes a general reference under the doctrine of
 1976 incorporation by reference.

1977 Section 43. Paragraph (b) of subsection (1) of section
 1978 944.606, Florida Statutes, is amended to read:

1979 944.606 Sexual offenders; notification upon release.—

1980 (1) As used in this section:

1981 (b) "Sexual offender" means a person who has been
 1982 convicted of committing, or attempting, soliciting, or
 1983 conspiring to commit, any of the criminal offenses proscribed in
 1984 the following statutes in this state or similar offenses in
 1985 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 1986 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 1987 the defendant is not the victim's parent or guardian; s.
 1988 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 1989 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 1990 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; former
 1991 s. 827.071; s. 847.003; s. 847.0133; s. 847.0135, excluding s.
 1992 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.
 1993 916.1075(2); or s. 985.701(1); or any similar offense committed
 1994 in this state which has been redesignated from a former statute
 1995 number to one of those listed in this subsection, when the
 1996 department has received verified information regarding such
 1997 conviction; an offender's computerized criminal history record
 1998 is not, in and of itself, verified information.

1999 Section 44. Paragraph (a) of subsection (1) of section
 2000 944.607, Florida Statutes, is amended to read:

2001 944.607 Notification to Department of Law Enforcement of
 2002 information on sexual offenders.—

2003 (1) As used in this section, the term:

2004 (a) "Sexual offender" means a person who is in the custody

2005 or control of, or under the supervision of, the department or is

2006 in the custody of a private correctional facility:

2007 1. On or after October 1, 1997, as a result of a

2008 conviction for committing, or attempting, soliciting, or

2009 conspiring to commit, any of the criminal offenses proscribed in

2010 the following statutes in this state or similar offenses in

2011 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,

2012 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and

2013 the defendant is not the victim's parent or guardian; s.

2014 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.

2015 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;

2016 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; former

2017 s. 827.071; s. 847.003; s. 847.0133; s. 847.0135, excluding s.

2018 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.

2019 916.1075(2); or s. 985.701(1); or any similar offense committed

2020 in this state which has been redesignated from a former statute

2021 number to one of those listed in this paragraph; or

2022 2. Who establishes or maintains a residence in this state

2023 and who has not been designated as a sexual predator by a court

2024 of this state but who has been designated as a sexual predator,

2025 as a sexually violent predator, or by another sexual offender

2026 designation in another state or jurisdiction and was, as a

2027 result of such designation, subjected to registration or

2028 community or public notification, or both, or would be if the

2029 person were a resident of that state or jurisdiction, without
 2030 regard as to whether the person otherwise meets the criteria for
 2031 registration as a sexual offender.

2032 Section 45. Subsections (7), (10), and (14) of section
 2033 947.1405, Florida Statutes, are amended, and subsection (15) is
 2034 added to that section, to read:

2035 947.1405 Conditional release program.—

2036 (7)(a) Any inmate who is convicted of a crime committed on
 2037 or after October 1, 1995, or who has been previously convicted
 2038 of a crime committed on or after October 1, 1995, in violation
 2039 of chapter 794, s. 800.04, former s. 827.071, s. 847.0135(5), or
 2040 s. 847.0145, and is subject to conditional release supervision,
 2041 shall have, in addition to any other conditions imposed, the
 2042 following special conditions imposed by the commission:

2043 1. A mandatory curfew from 10 p.m. to 6 a.m. The
 2044 commission may designate another 8-hour period if the offender's
 2045 employment precludes the above specified time, and such
 2046 alternative is recommended by the Department of Corrections. If
 2047 the commission determines that imposing a curfew would endanger
 2048 the victim, the commission may consider alternative sanctions.

2049 2. If the victim was under the age of 18, a prohibition on
 2050 living within 1,000 feet of a school, child care facility, park,
 2051 playground, designated public school bus stop, or other place
 2052 where children regularly congregate. A releasee who is subject
 2053 to this subparagraph may not relocate to a residence that is
 2054 within 1,000 feet of a public school bus stop. Beginning October

2055 1, 2004, the commission or the department may not approve a
 2056 residence that is located within 1,000 feet of a school, child
 2057 care facility, park, playground, designated school bus stop, or
 2058 other place where children regularly congregate for any releasee
 2059 who is subject to this subparagraph. On October 1, 2004, the
 2060 department shall notify each affected school district of the
 2061 location of the residence of a releasee 30 days prior to release
 2062 and thereafter, if the releasee relocates to a new residence,
 2063 shall notify any affected school district of the residence of
 2064 the releasee within 30 days after relocation. If, on October 1,
 2065 2004, any public school bus stop is located within 1,000 feet of
 2066 the existing residence of such releasee, the district school
 2067 board shall relocate that school bus stop. Beginning October 1,
 2068 2004, a district school board may not establish or relocate a
 2069 public school bus stop within 1,000 feet of the residence of a
 2070 releasee who is subject to this subparagraph. The failure of the
 2071 district school board to comply with this subparagraph shall not
 2072 result in a violation of conditional release supervision. A
 2073 releasee who is subject to this subparagraph may not be forced
 2074 to relocate and does not violate his or her conditional release
 2075 supervision if he or she is living in a residence that meets the
 2076 requirements of this subparagraph and a school, child care
 2077 facility, park, playground, designated public school bus stop,
 2078 or other place where children regularly congregate is
 2079 subsequently established within 1,000 feet of his or her
 2080 residence.

2081 3. Active participation in and successful completion of a
 2082 sex offender treatment program with qualified practitioners
 2083 specifically trained to treat sex offenders, at the releasee's
 2084 own expense. If a qualified practitioner is not available within
 2085 a 50-mile radius of the releasee's residence, the offender shall
 2086 participate in other appropriate therapy.

2087 4. A prohibition on any contact with the victim, directly
 2088 or indirectly, including through a third person, unless approved
 2089 by the victim, a qualified practitioner in the sexual offender
 2090 treatment program, and the sentencing court.

2091 5. If the victim was under the age of 18, a prohibition
 2092 against contact with children under the age of 18 without review
 2093 and approval by the commission. The commission may approve
 2094 supervised contact with a child under the age of 18 if the
 2095 approval is based upon a recommendation for contact issued by a
 2096 qualified practitioner who is basing the recommendation on a
 2097 risk assessment. Further, the sex offender must be currently
 2098 enrolled in or have successfully completed a sex offender
 2099 therapy program. The commission may not grant supervised contact
 2100 with a child if the contact is not recommended by a qualified
 2101 practitioner and may deny supervised contact with a child at any
 2102 time. When considering whether to approve supervised contact
 2103 with a child, the commission must review and consider the
 2104 following:

2105 a. A risk assessment completed by a qualified
 2106 practitioner. The qualified practitioner must prepare a written

2107 | report that must include the findings of the assessment and
 2108 | address each of the following components:

- 2109 | (I) The sex offender's current legal status;
- 2110 | (II) The sex offender's history of adult charges with
 2111 | apparent sexual motivation;
- 2112 | (III) The sex offender's history of adult charges without
 2113 | apparent sexual motivation;
- 2114 | (IV) The sex offender's history of juvenile charges,
 2115 | whenever available;
- 2116 | (V) The sex offender's offender treatment history,
 2117 | including a consultation from the sex offender's treating, or
 2118 | most recent treating, therapist;
- 2119 | (VI) The sex offender's current mental status;
- 2120 | (VII) The sex offender's mental health and substance abuse
 2121 | history as provided by the Department of Corrections;
- 2122 | (VIII) The sex offender's personal, social, educational,
 2123 | and work history;
- 2124 | (IX) The results of current psychological testing of the
 2125 | sex offender if determined necessary by the qualified
 2126 | practitioner;
- 2127 | (X) A description of the proposed contact, including the
 2128 | location, frequency, duration, and supervisory arrangement;
- 2129 | (XI) The child's preference and relative comfort level
 2130 | with the proposed contact, when age-appropriate;
- 2131 | (XII) The parent's or legal guardian's preference
 2132 | regarding the proposed contact; and

2133 (XIII) The qualified practitioner's opinion, along with
 2134 the basis for that opinion, as to whether the proposed contact
 2135 would likely pose significant risk of emotional or physical harm
 2136 to the child.

2137
 2138 The written report of the assessment must be given to the
 2139 commission.

2140 b. A recommendation made as a part of the risk-assessment
 2141 report as to whether supervised contact with the child should be
 2142 approved;

2143 c. A written consent signed by the child's parent or legal
 2144 guardian, if the parent or legal guardian is not the sex
 2145 offender, agreeing to the sex offender having supervised contact
 2146 with the child after receiving full disclosure of the sex
 2147 offender's present legal status, past criminal history, and the
 2148 results of the risk assessment. The commission may not approve
 2149 contact with the child if the parent or legal guardian refuses
 2150 to give written consent for supervised contact;

2151 d. A safety plan prepared by the qualified practitioner,
 2152 who provides treatment to the offender, in collaboration with
 2153 the sex offender, the child's parent or legal guardian, and the
 2154 child, when age appropriate, which details the acceptable
 2155 conditions of contact between the sex offender and the child.
 2156 The safety plan must be reviewed and approved by the Department
 2157 of Corrections before being submitted to the commission; and

2158 e. Evidence that the child's parent or legal guardian, if

2159 | the parent or legal guardian is not the sex offender,
 2160 | understands the need for and agrees to the safety plan and has
 2161 | agreed to provide, or to designate another adult to provide,
 2162 | constant supervision any time the child is in contact with the
 2163 | offender.

2164 |
 2165 | The commission may not appoint a person to conduct a risk
 2166 | assessment and may not accept a risk assessment from a person
 2167 | who has not demonstrated to the commission that he or she has
 2168 | met the requirements of a qualified practitioner as defined in
 2169 | this section.

2170 | 6. If the victim was under age 18, a prohibition on
 2171 | working for pay or as a volunteer at any school, child care
 2172 | facility, park, playground, or other place where children
 2173 | regularly congregate, as prescribed by the commission.

2174 | 7. Unless otherwise indicated in the treatment plan
 2175 | provided by a qualified practitioner in the sexual offender
 2176 | treatment program, a prohibition on viewing, owning, or
 2177 | possessing any obscene, pornographic, or sexually stimulating
 2178 | visual or auditory material, including telephone, electronic
 2179 | media, computer programs, or computer services that are relevant
 2180 | to the offender's deviant behavior pattern.

2181 | 8. Effective for a releasee whose crime is committed on or
 2182 | after July 1, 2005, a prohibition on accessing the Internet or
 2183 | other computer services until a qualified practitioner in the
 2184 | offender's sex offender treatment program, after a risk

2185 assessment is completed, approves and implements a safety plan
 2186 for the offender's accessing or using the Internet or other
 2187 computer services.

2188 9. A requirement that the releasee must submit two
 2189 specimens of blood to the Department of Law Enforcement to be
 2190 registered with the DNA database.

2191 10. A requirement that the releasee make restitution to
 2192 the victim, as determined by the sentencing court or the
 2193 commission, for all necessary medical and related professional
 2194 services relating to physical, psychiatric, and psychological
 2195 care.

2196 11. Submission to a warrantless search by the community
 2197 control or probation officer of the probationer's or community
 2198 controllee's person, residence, or vehicle.

2199 (b) For a releasee whose crime was committed on or after
 2200 October 1, 1997, in violation of chapter 794, s. 800.04, former
 2201 s. 827.071, s. 847.0135(5), or s. 847.0145, and who is subject
 2202 to conditional release supervision, in addition to any other
 2203 provision of this subsection, the commission shall impose the
 2204 following additional conditions of conditional release
 2205 supervision:

2206 1. As part of a treatment program, participation in a
 2207 minimum of one annual polygraph examination to obtain
 2208 information necessary for risk management and treatment and to
 2209 reduce the sex offender's denial mechanisms. The polygraph
 2210 examination must be conducted by a polygrapher who is a member

2211 of a national or state polygraph association and who is
 2212 certified as a postconviction sex offender polygrapher, where
 2213 available, and at the expense of the releasee. The results of
 2214 the examination shall be provided to the releasee's probation
 2215 officer and qualified practitioner and may not be used as
 2216 evidence in a hearing to prove that a violation of supervision
 2217 has occurred.

2218 2. Maintenance of a driving log and a prohibition against
 2219 driving a motor vehicle alone without the prior approval of the
 2220 supervising officer.

2221 3. A prohibition against obtaining or using a post office
 2222 box without the prior approval of the supervising officer.

2223 4. If there was sexual contact, a submission to, at the
 2224 releasee's expense, an HIV test with the results to be released
 2225 to the victim or the victim's parent or guardian.

2226 5. Electronic monitoring of any form when ordered by the
 2227 commission. Any person who has been placed under supervision and
 2228 is electronically monitored by the department must pay the
 2229 department for the cost of the electronic monitoring service at
 2230 a rate that may not exceed the full cost of the monitoring
 2231 service. Funds collected under this subparagraph shall be
 2232 deposited into the General Revenue Fund. The department may
 2233 exempt a person from the payment of all or any part of the
 2234 electronic monitoring service cost if the department finds that
 2235 any of the factors listed in s. 948.09(3) exist.

2236 (10) Effective for a releasee whose crime was committed on

2237 or after September 1, 2005, in violation of chapter 794, s.
 2238 800.04(4), (5), or (6), former s. 827.071, or s. 847.0145, and
 2239 the unlawful activity involved a victim who was 15 years of age
 2240 or younger and the offender is 18 years of age or older or for a
 2241 releasee who is designated as a sexual predator pursuant to s.
 2242 775.21, in addition to any other provision of this section, the
 2243 commission must order electronic monitoring for the duration of
 2244 the releasee's supervision.

2245 (14) Effective for a releasee whose crime was committed on
 2246 or after October 1, 2014, in violation of chapter 794, s.
 2247 800.04, former s. 827.071, s. 847.0135(5), or s. 847.0145, in
 2248 addition to any other provision of this section, the commission
 2249 must impose a condition prohibiting the releasee from viewing,
 2250 accessing, owning, or possessing any obscene, pornographic, or
 2251 sexually stimulating visual or auditory material unless
 2252 otherwise indicated in the treatment plan provided by a
 2253 qualified practitioner in the sexual offender treatment program.
 2254 Visual or auditory material includes, but is not limited to,
 2255 telephone, electronic media, computer programs, and computer
 2256 services.

2257 (15)(a) Effective for a releasee whose crime was committed
 2258 on or after October 1, 2015, in violation of s. 847.003 or s.
 2259 847.0135(4), in addition to any other provision of this section,
 2260 the commission must impose the conditions specified in
 2261 subsections (7), (10), (12), and (14).

2262 (b) Effective for a releasee whose crime was committed on

2263 or after October 1, 2015, in violation of s. 847.0137, in
 2264 addition to any other provision of this section, the commission
 2265 must impose the conditions specified in subsections (7) and
 2266 (14).

2267 Section 46. Subsection (2) of section 948.013, Florida
 2268 Statutes, is amended, and subsection (3) is added to that
 2269 section, to read:

2270 948.013 Administrative probation.—

2271 (2) Effective for an offense committed on or after July 1,
 2272 1998, a person is ineligible for placement on administrative
 2273 probation if the person is sentenced to or is serving a term of
 2274 probation or community control, regardless of the conviction or
 2275 adjudication, for committing, or attempting, conspiring, or
 2276 soliciting to commit, any of the felony offenses described in s.
 2277 787.01 or s. 787.02, where the victim is a minor and the
 2278 defendant is not the victim's parent; s. 787.025; s.
 2279 787.06(3)(g); chapter 794; former s. 796.03; s. 800.04; s.
 2280 825.1025(2)(b); former s. 827.071; s. 847.0133; s. 847.0135; or
 2281 s. 847.0145.

2282 (3) Effective for an offense committed on or after October
 2283 1, 2015, a person is ineligible for placement on administrative
 2284 probation if the person is sentenced to or is serving a term of
 2285 probation or community control, regardless of the conviction or
 2286 adjudication, for committing, or attempting, conspiring, or
 2287 soliciting to commit, any of the felony offenses described in s.
 2288 847.003 or s. 847.0137.

2289 Section 47. Subsection (2) of section 948.03, Florida
 2290 Statutes, is amended to read:

2291 948.03 Terms and conditions of probation.—

2292 (2) The enumeration of specific kinds of terms and
 2293 conditions shall not prevent the court from adding thereto such
 2294 other or others as it considers proper. However, the sentencing
 2295 court may only impose a condition of supervision allowing an
 2296 offender convicted of s. 794.011, s. 800.04, former s. 827.071,
 2297 s. 847.003, s. 847.0135(5), or s. 847.0145, to reside in another
 2298 state, if the order stipulates that it is contingent upon the
 2299 approval of the receiving state interstate compact authority.
 2300 The court may rescind or modify at any time the terms and
 2301 conditions theretofore imposed by it upon the probationer.
 2302 However, if the court withholds adjudication of guilt or imposes
 2303 a period of incarceration as a condition of probation, the
 2304 period shall not exceed 364 days, and incarceration shall be
 2305 restricted to either a county facility, a probation and
 2306 restitution center under the jurisdiction of the Department of
 2307 Corrections, a probation program drug punishment phase I secure
 2308 residential treatment institution, or a community residential
 2309 facility owned or operated by any entity providing such
 2310 services.

2311 Section 48. Subsection (1) of section 948.04, Florida
 2312 Statutes, is amended to read:

2313 948.04 Period of probation; duty of probationer; early
 2314 termination.—

2315 (1) Defendants found guilty of felonies who are placed on
 2316 probation shall be under supervision not to exceed 2 years
 2317 unless otherwise specified by the court. No defendant placed on
 2318 probation pursuant to s. 948.012(1) is subject to the probation
 2319 limitations of this subsection. A defendant who is placed on
 2320 probation or community control for a violation of chapter 794,
 2321 ~~or~~ chapter 827, or s. 847.003 is subject to the maximum level of
 2322 supervision provided by the supervising agency, and that
 2323 supervision shall continue through the full term of the court-
 2324 imposed probation or community control.

2325 Section 49. Subsection (4) and paragraph (c) of subsection
 2326 (8) of section 948.06, Florida Statutes, are amended to read:

2327 948.06 Violation of probation or community control;
 2328 revocation; modification; continuance; failure to pay
 2329 restitution or cost of supervision.-

2330 (4) Notwithstanding any other provision of this section, a
 2331 felony probationer or an offender in community control who is
 2332 arrested for violating his or her probation or community control
 2333 in a material respect may be taken before the court in the
 2334 county or circuit in which the probationer or offender was
 2335 arrested. That court shall advise him or her of the charge of a
 2336 violation and, if such charge is admitted, shall cause him or
 2337 her to be brought before the court that granted the probation or
 2338 community control. If the violation is not admitted by the
 2339 probationer or offender, the court may commit him or her or
 2340 release him or her with or without bail to await further

2341 hearing. However, if the probationer or offender is under
 2342 supervision for any criminal offense proscribed in chapter 794,
 2343 s. 800.04(4), (5), (6), former s. 827.071, or s. 847.0145, or is
 2344 a registered sexual predator or a registered sexual offender, or
 2345 is under supervision for a criminal offense for which he or she
 2346 would meet the registration criteria in s. 775.21, s. 943.0435,
 2347 or s. 944.607 but for the effective date of those sections, the
 2348 court must make a finding that the probationer or offender is
 2349 not a danger to the public prior to release with or without
 2350 bail. In determining the danger posed by the offender's or
 2351 probationer's release, the court may consider the nature and
 2352 circumstances of the violation and any new offenses charged; the
 2353 offender's or probationer's past and present conduct, including
 2354 convictions of crimes; any record of arrests without conviction
 2355 for crimes involving violence or sexual crimes; any other
 2356 evidence of allegations of unlawful sexual conduct or the use of
 2357 violence by the offender or probationer; the offender's or
 2358 probationer's family ties, length of residence in the community,
 2359 employment history, and mental condition; his or her history and
 2360 conduct during the probation or community control supervision
 2361 from which the violation arises and any other previous
 2362 supervisions, including disciplinary records of previous
 2363 incarcerations; the likelihood that the offender or probationer
 2364 will engage again in a criminal course of conduct; the weight of
 2365 the evidence against the offender or probationer; and any other
 2366 facts the court considers relevant. The court, as soon as is

2367 practicable, shall give the probationer or offender an
 2368 opportunity to be fully heard on his or her behalf in person or
 2369 by counsel. After the hearing, the court shall make findings of
 2370 fact and forward the findings to the court that granted the
 2371 probation or community control and to the probationer or
 2372 offender or his or her attorney. The findings of fact by the
 2373 hearing court are binding on the court that granted the
 2374 probation or community control. Upon the probationer or offender
 2375 being brought before it, the court that granted the probation or
 2376 community control may revoke, modify, or continue the probation
 2377 or community control or may place the probationer into community
 2378 control as provided in this section. However, the probationer or
 2379 offender shall not be released and shall not be admitted to
 2380 bail, but shall be brought before the court that granted the
 2381 probation or community control if any violation of felony
 2382 probation or community control other than a failure to pay costs
 2383 or fines or make restitution payments is alleged to have been
 2384 committed by:

- 2385 (a) A violent felony offender of special concern, as
 2386 defined in this section;
- 2387 (b) A person who is on felony probation or community
 2388 control for any offense committed on or after the effective date
 2389 of this act and who is arrested for a qualifying offense as
 2390 defined in this section; or
- 2391 (c) A person who is on felony probation or community
 2392 control and has previously been found by a court to be a

2393 habitual violent felony offender as defined in s. 775.084(1)(b),
 2394 a three-time violent felony offender as defined in s.
 2395 775.084(1)(c), or a sexual predator under s. 775.21, and who is
 2396 arrested for committing a qualifying offense as defined in this
 2397 section on or after the effective date of this act.

2398 (8)

2399 (c) For purposes of this section, the term "qualifying
 2400 offense" means any of the following:

2401 1. Kidnapping or attempted kidnapping under s. 787.01,
 2402 false imprisonment of a child under the age of 13 under s.
 2403 787.02(3), or luring or enticing a child under s. 787.025(2)(b)
 2404 or (c).

2405 2. Murder or attempted murder under s. 782.04, attempted
 2406 felony murder under s. 782.051, or manslaughter under s. 782.07.

2407 3. Aggravated battery or attempted aggravated battery
 2408 under s. 784.045.

2409 4. Sexual battery or attempted sexual battery under s.
 2410 794.011(2), (3), (4), or (8)(b) or (c).

2411 5. Lewd or lascivious battery or attempted lewd or
 2412 lascivious battery under s. 800.04(4), lewd or lascivious
 2413 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
 2414 conduct under s. 800.04(6)(b), lewd or lascivious exhibition
 2415 under s. 800.04(7)(b), or lewd or lascivious exhibition on
 2416 computer under s. 847.0135(5)(b).

2417 6. Robbery or attempted robbery under s. 812.13,
 2418 carjacking or attempted carjacking under s. 812.133, or home

2419 | invasion robbery or attempted home invasion robbery under s.
 2420 | 812.135.

2421 | 7. Lewd or lascivious offense upon or in the presence of
 2422 | an elderly or disabled person or attempted lewd or lascivious
 2423 | offense upon or in the presence of an elderly or disabled person
 2424 | under s. 825.1025.

2425 | 8. Sexual performance by a child or attempted sexual
 2426 | performance by a child under former s. 827.071 or s. 847.003.

2427 | 9. Computer pornography under s. 847.0135(2) or (3),
 2428 | ~~transmission of~~ child pornography under s. 847.0137, or selling
 2429 | or buying of minors under s. 847.0145.

2430 | 10. Poisoning food or water under s. 859.01.

2431 | 11. Abuse of a dead human body under s. 872.06.

2432 | 12. Any burglary offense or attempted burglary offense
 2433 | that is either a first degree felony or second degree felony
 2434 | under s. 810.02(2) or (3).

2435 | 13. Arson or attempted arson under s. 806.01(1).

2436 | 14. Aggravated assault under s. 784.021.

2437 | 15. Aggravated stalking under s. 784.048(3), (4), (5), or
 2438 | (7).

2439 | 16. Aircraft piracy under s. 860.16.

2440 | 17. Unlawful throwing, placing, or discharging of a
 2441 | destructive device or bomb under s. 790.161(2), (3), or (4).

2442 | 18. Treason under s. 876.32.

2443 | 19. Any offense committed in another jurisdiction which
 2444 | would be an offense listed in this paragraph if that offense had

2445 | been committed in this state.

2446 | Section 50. Paragraph (c) of subsection (1) of section
2447 | 948.062, Florida Statutes, is amended to read:

2448 | 948.062 Reviewing and reporting serious offenses committed
2449 | by offenders placed on probation or community control.—

2450 | (1) The department shall review the circumstances related
2451 | to an offender placed on probation or community control who has
2452 | been arrested while on supervision for the following offenses:

2453 | (c) Any sexual performance by a child as provided in
2454 | former s. 827.071 or s. 847.003;

2455 | Section 51. Subsection (2) of section 948.101, Florida
2456 | Statutes, is amended to read:

2457 | 948.101 Terms and conditions of community control.—

2458 | (2) The enumeration of specific kinds of terms and
2459 | conditions does not prevent the court from adding any other
2460 | terms or conditions that the court considers proper. However,
2461 | the sentencing court may only impose a condition of supervision
2462 | allowing an offender convicted of s. 794.011, s. 800.04, former
2463 | s. 827.071, s. 847.003, s. 847.0135(5), or s. 847.0145 to reside
2464 | in another state if the order stipulates that it is contingent
2465 | upon the approval of the receiving state interstate compact
2466 | authority. The court may rescind or modify at any time the terms
2467 | and conditions theretofore imposed by it upon the offender in
2468 | community control. However, if the court withholds adjudication
2469 | of guilt or imposes a period of incarceration as a condition of
2470 | community control, the period may not exceed 364 days, and

2471 incarceration shall be restricted to a county facility, a
 2472 probation and restitution center under the jurisdiction of the
 2473 Department of Corrections, a probation program drug punishment
 2474 phase I secure residential treatment institution, or a community
 2475 residential facility owned or operated by any entity providing
 2476 such services.

2477 Section 52. Subsections (1) and (2), paragraphs (a) and
 2478 (c) of subsection (3), and subsection (5) of section 948.30,
 2479 Florida Statutes, are amended, and subsection (6) is added to
 2480 that section, to read:

2481 948.30 Additional terms and conditions of probation or
 2482 community control for certain sex offenses.—Conditions imposed
 2483 pursuant to this section do not require oral pronouncement at
 2484 the time of sentencing and shall be considered standard
 2485 conditions of probation or community control for offenders
 2486 specified in this section.

2487 (1) Effective for probationers or community controllees
 2488 whose crime was committed on or after October 1, 1995, and who
 2489 are placed under supervision for violation of chapter 794, s.
 2490 800.04, former s. 827.071, s. 847.0135(5), or s. 847.0145, the
 2491 court must impose the following conditions in addition to all
 2492 other standard and special conditions imposed:

2493 (a) A mandatory curfew from 10 p.m. to 6 a.m. The court
 2494 may designate another 8-hour period if the offender's employment
 2495 precludes the above specified time, and the alternative is
 2496 recommended by the Department of Corrections. If the court

2497 determines that imposing a curfew would endanger the victim, the
 2498 court may consider alternative sanctions.

2499 (b) If the victim was under the age of 18, a prohibition
 2500 on living within 1,000 feet of a school, child care facility,
 2501 park, playground, or other place where children regularly
 2502 congregate, as prescribed by the court. The 1,000-foot distance
 2503 shall be measured in a straight line from the offender's place
 2504 of residence to the nearest boundary line of the school, child
 2505 care facility, park, playground, or other place where children
 2506 congregate. The distance may not be measured by a pedestrian
 2507 route or automobile route. A probationer or community controllee
 2508 who is subject to this paragraph may not be forced to relocate
 2509 and does not violate his or her probation or community control
 2510 if he or she is living in a residence that meets the
 2511 requirements of this paragraph and a school, child care
 2512 facility, park, playground, or other place where children
 2513 regularly congregate is subsequently established within 1,000
 2514 feet of his or her residence.

2515 (c) Active participation in and successful completion of a
 2516 sex offender treatment program with qualified practitioners
 2517 specifically trained to treat sex offenders, at the
 2518 probationer's or community controllee's own expense. If a
 2519 qualified practitioner is not available within a 50-mile radius
 2520 of the probationer's or community controllee's residence, the
 2521 offender shall participate in other appropriate therapy.

2522 (d) A prohibition on any contact with the victim, directly

2523 or indirectly, including through a third person, unless approved
 2524 by the victim, a qualified practitioner in the sexual offender
 2525 treatment program, and the sentencing court.

2526 (e) If the victim was under the age of 18, a prohibition
 2527 on contact with a child under the age of 18 except as provided
 2528 in this paragraph. The court may approve supervised contact with
 2529 a child under the age of 18 if the approval is based upon a
 2530 recommendation for contact issued by a qualified practitioner
 2531 who is basing the recommendation on a risk assessment. Further,
 2532 the sex offender must be currently enrolled in or have
 2533 successfully completed a sex offender therapy program. The court
 2534 may not grant supervised contact with a child if the contact is
 2535 not recommended by a qualified practitioner and may deny
 2536 supervised contact with a child at any time. When considering
 2537 whether to approve supervised contact with a child, the court
 2538 must review and consider the following:

2539 1. A risk assessment completed by a qualified
 2540 practitioner. The qualified practitioner must prepare a written
 2541 report that must include the findings of the assessment and
 2542 address each of the following components:

- 2543 a. The sex offender's current legal status;
- 2544 b. The sex offender's history of adult charges with
 2545 apparent sexual motivation;
- 2546 c. The sex offender's history of adult charges without
 2547 apparent sexual motivation;
- 2548 d. The sex offender's history of juvenile charges,

2549 whenever available;

2550 e. The sex offender's offender treatment history,
 2551 including consultations with the sex offender's treating, or
 2552 most recent treating, therapist;

2553 f. The sex offender's current mental status;

2554 g. The sex offender's mental health and substance abuse
 2555 treatment history as provided by the Department of Corrections;

2556 h. The sex offender's personal, social, educational, and
 2557 work history;

2558 i. The results of current psychological testing of the sex
 2559 offender if determined necessary by the qualified practitioner;

2560 j. A description of the proposed contact, including the
 2561 location, frequency, duration, and supervisory arrangement;

2562 k. The child's preference and relative comfort level with
 2563 the proposed contact, when age appropriate;

2564 l. The parent's or legal guardian's preference regarding
 2565 the proposed contact; and

2566 m. The qualified practitioner's opinion, along with the
 2567 basis for that opinion, as to whether the proposed contact would
 2568 likely pose significant risk of emotional or physical harm to
 2569 the child.

2570

2571 The written report of the assessment must be given to the court;

2572 2. A recommendation made as a part of the risk assessment
 2573 report as to whether supervised contact with the child should be
 2574 approved;

2575 3. A written consent signed by the child's parent or legal
 2576 guardian, if the parent or legal guardian is not the sex
 2577 offender, agreeing to the sex offender having supervised contact
 2578 with the child after receiving full disclosure of the sex
 2579 offender's present legal status, past criminal history, and the
 2580 results of the risk assessment. The court may not approve
 2581 contact with the child if the parent or legal guardian refuses
 2582 to give written consent for supervised contact;

2583 4. A safety plan prepared by the qualified practitioner,
 2584 who provides treatment to the offender, in collaboration with
 2585 the sex offender, the child's parent or legal guardian, if the
 2586 parent or legal guardian is not the sex offender, and the child,
 2587 when age appropriate, which details the acceptable conditions of
 2588 contact between the sex offender and the child. The safety plan
 2589 must be reviewed and approved by the court; and

2590 5. Evidence that the child's parent or legal guardian
 2591 understands the need for and agrees to the safety plan and has
 2592 agreed to provide, or to designate another adult to provide,
 2593 constant supervision any time the child is in contact with the
 2594 offender.

2595
 2596 The court may not appoint a person to conduct a risk assessment
 2597 and may not accept a risk assessment from a person who has not
 2598 demonstrated to the court that he or she has met the
 2599 requirements of a qualified practitioner as defined in this
 2600 section.

2601 (f) If the victim was under age 18, a prohibition on
 2602 working for pay or as a volunteer at any place where children
 2603 regularly congregate, including, but not limited to, schools,
 2604 child care facilities, parks, playgrounds, pet stores,
 2605 libraries, zoos, theme parks, and malls.

2606 (g) Unless otherwise indicated in the treatment plan
 2607 provided by a qualified practitioner in the sexual offender
 2608 treatment program, a prohibition on viewing, accessing, owning,
 2609 or possessing any obscene, pornographic, or sexually stimulating
 2610 visual or auditory material, including telephone, electronic
 2611 media, computer programs, or computer services that are relevant
 2612 to the offender's deviant behavior pattern.

2613 (h) Effective for probationers and community controllees
 2614 whose crime is committed on or after July 1, 2005, a prohibition
 2615 on accessing the Internet or other computer services until a
 2616 qualified practitioner in the offender's sex offender treatment
 2617 program, after a risk assessment is completed, approves and
 2618 implements a safety plan for the offender's accessing or using
 2619 the Internet or other computer services.

2620 (i) A requirement that the probationer or community
 2621 controllee must submit a specimen of blood or other approved
 2622 biological specimen to the Department of Law Enforcement to be
 2623 registered with the DNA data bank.

2624 (j) A requirement that the probationer or community
 2625 controllee make restitution to the victim, as ordered by the
 2626 court under s. 775.089, for all necessary medical and related

2627 professional services relating to physical, psychiatric, and
 2628 psychological care.

2629 (k) Submission to a warrantless search by the community
 2630 control or probation officer of the probationer's or community
 2631 controllee's person, residence, or vehicle.

2632 (2) Effective for a probationer or community controllee
 2633 whose crime was committed on or after October 1, 1997, and who
 2634 is placed on community control or sex offender probation for a
 2635 violation of chapter 794, s. 800.04, former s. 827.071, s.
 2636 847.0135(5), or s. 847.0145, in addition to any other provision
 2637 of this section, the court must impose the following conditions
 2638 of probation or community control:

2639 (a) As part of a treatment program, participation at least
 2640 annually in polygraph examinations to obtain information
 2641 necessary for risk management and treatment and to reduce the
 2642 sex offender's denial mechanisms. A polygraph examination must
 2643 be conducted by a polygrapher who is a member of a national or
 2644 state polygraph association and who is certified as a
 2645 postconviction sex offender polygrapher, where available, and
 2646 shall be paid for by the probationer or community controllee.
 2647 The results of the polygraph examination shall be provided to
 2648 the probationer's or community controllee's probation officer
 2649 and qualified practitioner and shall not be used as evidence in
 2650 court to prove that a violation of community supervision has
 2651 occurred.

2652 (b) Maintenance of a driving log and a prohibition against

2653 driving a motor vehicle alone without the prior approval of the
 2654 supervising officer.

2655 (c) A prohibition against obtaining or using a post office
 2656 box without the prior approval of the supervising officer.

2657 (d) If there was sexual contact, a submission to, at the
 2658 probationer's or community controllee's expense, an HIV test
 2659 with the results to be released to the victim or the victim's
 2660 parent or guardian.

2661 (e) Electronic monitoring when deemed necessary by the
 2662 community control or probation officer and his or her
 2663 supervisor, and ordered by the court at the recommendation of
 2664 the Department of Corrections.

2665 (3) Effective for a probationer or community controllee
 2666 whose crime was committed on or after September 1, 2005, and
 2667 who:

2668 (a) Is placed on probation or community control for a
 2669 violation of chapter 794, s. 800.04(4), (5), or (6), former s.
 2670 827.071, or s. 847.0145 and the unlawful sexual activity
 2671 involved a victim 15 years of age or younger and the offender is
 2672 18 years of age or older;

2673 (c) Has previously been convicted of a violation of
 2674 chapter 794, s. 800.04(4), (5), or (6), former s. 827.071, or s.
 2675 847.0145 and the unlawful sexual activity involved a victim 15
 2676 years of age or younger and the offender is 18 years of age or
 2677 older,

2678

2679 | the court must order, in addition to any other provision of this
 2680 | section, mandatory electronic monitoring as a condition of the
 2681 | probation or community control supervision.

2682 | (5) Effective for a probationer or community controllee
 2683 | whose crime was committed on or after October 1, 2014, and who
 2684 | is placed on probation or community control for a violation of
 2685 | chapter 794, s. 800.04, former s. 827.071, s. 847.0135(5), or s.
 2686 | 847.0145, in addition to all other conditions imposed, the court
 2687 | must impose a condition prohibiting the probationer or community
 2688 | controllee from viewing, accessing, owning, or possessing any
 2689 | obscene, pornographic, or sexually stimulating visual or
 2690 | auditory material unless otherwise indicated in the treatment
 2691 | plan provided by a qualified practitioner in the sexual offender
 2692 | treatment program. Visual or auditory material includes, but is
 2693 | not limited to, telephone, electronic media, computer programs,
 2694 | and computer services.

2695 | (6) Effective for a probationer or community controllee
 2696 | whose crime was committed on or after October 1, 2015, and who
 2697 | is placed under supervision for violation of s. 847.003, s.
 2698 | 847.0135(4), or s. 847.0137, the court must impose the
 2699 | conditions specified in subsections (1)-(5) in addition to all
 2700 | other standard and special conditions imposed.

2701 | Section 53. Subsection (1) of section 948.32, Florida
 2702 | Statutes, is amended to read:

2703 | 948.32 Requirements of law enforcement agency upon arrest
 2704 | of persons for certain sex offenses.-

2705 (1) When any state or local law enforcement agency
 2706 investigates or arrests a person for committing, or attempting,
 2707 soliciting, or conspiring to commit, a violation of s.
 2708 787.025(2)(c), s. 787.06(3)(g), chapter 794, former s. 796.03,
 2709 s. 800.04, former s. 827.071, s. 847.003, s. 847.0133, s.
 2710 847.0135, or s. 847.0145, the law enforcement agency shall
 2711 contact the Department of Corrections to verify whether the
 2712 person under investigation or under arrest is on probation,
 2713 community control, parole, conditional release, or control
 2714 release.

2715 Section 54. Paragraph (d) of subsection (3) and subsection
 2716 (10) of section 960.03, Florida Statutes, are amended to read:

2717 960.03 Definitions; ss. 960.01-960.28.—As used in ss.
 2718 960.01-960.28, unless the context otherwise requires, the term:

2719 (3) "Crime" means:

2720 (d) A violation of former s. 827.071, s. 847.003, s.
 2721 847.0135, s. 847.0137, or s. 847.0138, related to online sexual
 2722 exploitation and child pornography.

2723 (10) "Identified victim of child pornography" means any
 2724 person who, while under the age of 18, is depicted in any visual
 2725 depiction ~~image or movie~~ of child pornography, as defined in s.
 2726 847.0137, and who is identified through a report generated by a
 2727 law enforcement agency and provided to the National Center for
 2728 Missing and Exploited Children's Child Victim Identification
 2729 Program.

2730 Section 55. Section 960.197, Florida Statutes, is amended

2731 to read:

2732 960.197 Assistance to victims of online sexual
2733 exploitation and child pornography.—

2734 (1) Notwithstanding the criteria set forth in s. 960.13
2735 for crime victim compensation awards, the department may award
2736 compensation for counseling and other mental health services to
2737 treat psychological injury or trauma to:

2738 (a) A child younger than 18 years of age who suffers
2739 psychiatric or psychological injury as a direct result of online
2740 sexual exploitation under former ~~any provision of~~ s. 827.071, s.
2741 847.003, s. 847.0135, s. 847.0137, or s. 847.0138~~7~~, and who does
2742 not otherwise sustain a personal injury or death; or

2743 (b) Any person who, while younger than age 18, was
2744 depicted in any visual depiction ~~image or movie, regardless of~~
2745 ~~length~~, of child pornography as defined in s. 847.0137 ~~847.001~~,
2746 who has been identified by a law enforcement agency or the
2747 National Center for Missing and Exploited Children as an
2748 identified victim of child pornography, who suffers psychiatric
2749 or psychological injury as a direct result of the crime, and who
2750 does not otherwise sustain a personal injury or death.

2751 (2) Compensation under this section is not contingent upon
2752 pursuit of a criminal investigation or prosecution.

2753 Section 56. Paragraph (d) of subsection (4) of section
2754 985.04, Florida Statutes, is amended to read:

2755 985.04 Oaths; records; confidential information.—

2756 (4)

2757 (d) The department shall disclose to the school
 2758 superintendent the presence of any child in the care and custody
 2759 or under the jurisdiction or supervision of the department who
 2760 has a known history of criminal sexual behavior with other
 2761 juveniles; is alleged to have committed juvenile sexual abuse as
 2762 defined in s. 39.01; or has pled guilty or nolo contendere to,
 2763 or has been found to have committed, a violation of chapter 794,
 2764 chapter 796, chapter 800, former s. 827.071, s. 847.003, ~~or~~ s.
 2765 847.0133, or s. 847.0137, regardless of adjudication. Any
 2766 employee of a district school board who knowingly and willfully
 2767 discloses such information to an unauthorized person commits a
 2768 misdemeanor of the second degree, punishable as provided in s.
 2769 775.082 or s. 775.083.

2770 Section 57. Paragraph (a) of subsection (1) of section
 2771 985.475, Florida Statutes, is amended to read:

2772 985.475 Juvenile sexual offenders.—

2773 (1) CRITERIA.—A "juvenile sexual offender" means:

2774 (a) A juvenile who has been found by the court under s.
 2775 985.35 to have committed a violation of chapter 794, chapter
 2776 796, chapter 800, former s. 827.071, s. 847.003, ~~or~~ s. 847.0133,
 2777 or s. 847.0137;

2778 Section 58. Paragraph (mm) of subsection (1) of section
 2779 1012.315, Florida Statutes, is amended to read:

2780 1012.315 Disqualification from employment.—A person is
 2781 ineligible for educator certification, and instructional
 2782 personnel and school administrators, as defined in s. 1012.01,

2783 are ineligible for employment in any position that requires
 2784 direct contact with students in a district school system,
 2785 charter school, or private school that accepts scholarship
 2786 students under s. 1002.39 or s. 1002.395, if the person,
 2787 instructional personnel, or school administrator has been
 2788 convicted of:

2789 (1) Any felony offense prohibited under any of the
 2790 following statutes:

2791 (mm) Former s. Section 827.071, relating to sexual
 2792 performance by a child.

2793 Section 59. Paragraphs (e), (f), and (h) of subsection (3)
 2794 of section 921.0022, Florida Statutes, are amended to read:

2795 921.0022 Criminal Punishment Code; offense severity
 2796 ranking chart.—

2797 (3) OFFENSE SEVERITY RANKING CHART

2798 (e) LEVEL 5

2799

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.

2800

2801

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

HB 7063

2015

2802	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
2803	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
2804	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
2805	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
2806	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
2807	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
2808	440.105(5)	2nd	Unlawful solicitation for the

			purpose of making workers' compensation claims.
2809	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
2810	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
2811	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
2812	790.01(2)	3rd	Carrying a concealed firearm.
2813	790.162	2nd	Threat to throw or discharge destructive device.
2814	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
2815			

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

HB 7063

2015

2816	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
2817	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
2818	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
2819	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
2820	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
2821	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

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

HB 7063

2015

2822	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
2823	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
2824	812.131(2)(b)	3rd	Robbery by sudden snatching.
2825	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
2826	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
2827	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
2828	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

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

HB 7063

2015

2829

817.568 (2) (b) 2nd Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.

2830

817.625 (2) (b) 2nd Second or subsequent fraudulent use of scanning device or reencoder.

2831

825.1025 (4) 3rd Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

2832

~~827.071 (4)~~ 2nd ~~Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.~~

2833

~~827.071 (5)~~ 3rd ~~Possess, control, or~~

2834	839.13(2)(b)	2nd	intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child. Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
2835	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
2836	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
2837	<u>847.0137(2)(a)</u>	<u>2nd</u>	<u>Possess child pornography with intent to promote.</u>
2838	<u>847.0137(2)(b)</u>	<u>3rd</u>	<u>Possess, control, or intentionally view child pornography.</u>
2839			

HB 7063

2015

2840	<u>847.0137(3)</u> 847.0137 (2) & (3)	3rd	Transmission of <u>child</u> pornography by electronic device or equipment.
2841	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
2842	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
2843	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
2844	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1.,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(2)(c)2., (2)(c)3., (2)(c)5.,
 (2)(c)6., (2)(c)7., (2)(c)8.,
 (2)(c)9., (3), or (4) drugs)
 within 1,000 feet of a child
 care facility, school, or
 state, county, or municipal
 park or publicly owned
 recreational facility or
 community center.

2845

893.13(1)(d)1. 1st Sell, manufacture, or deliver
 cocaine (or other s.
 893.03(1)(a), (1)(b), (1)(d),
 (2)(a), (2)(b), or (2)(c)4.
 drugs) within 1,000 feet of
 university.

2846

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

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

HB 7063

2015

2847			specified business site.
	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
2848	893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
2849	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
2850			
2851	(f) LEVEL 6		
2852	Florida	Felony	
	Statute	Degree	Description
2853	316.027(2)(b)	2nd	Leaving the scene of a crash

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

HB 7063

2015

			involving serious bodily injury.
2854	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
2855	499.0051(3)	2nd	Knowing forgery of pedigree papers.
2856	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
2857	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
2858	775.0875(1)	3rd	Taking firearm from law enforcement officer.
2859	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
2860	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
2861			

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

HB 7063

2015

2862	784.041	3rd	Felony battery; domestic battery by strangulation.
2863	784.048 (3)	3rd	Aggravated stalking; credible threat.
2864	784.048 (5)	3rd	Aggravated stalking of person under 16.
2865	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
2866	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
2867	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
2868	784.081 (2)	2nd	Aggravated assault on specified official or employee.
2869	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.

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

HB 7063

2015

2870	784.083(2)	2nd	Aggravated assault on code inspector.
2871	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
2872	790.115(2) (d)	2nd	Discharging firearm or weapon on school property.
2873	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
2874	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
2875	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
	794.011(8) (a)	3rd	Solicitation of minor to participate in sexual activity

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

HB 7063

2015

			by custodial adult.
2876	794.05(1)	2nd	Unlawful sexual activity with specified minor.
2877	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
2878	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
2879	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
2880	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
2881	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
2882	812.014(2)(b)1.	2nd	Property stolen \$20,000 or

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

HB 7063

2015

			more, but less than \$100,000, grand theft in 2nd degree.
2883	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
2884	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
2885	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
2886	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
2887	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
2888	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
2889	825.102(3)(c)	3rd	Neglect of an elderly person or

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

HB 7063

2015

2890			disabled adult.
	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
2891			
	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
2892			
	827.03(2)(c)	3rd	Abuse of a child.
2893			
	827.03(2)(d)	3rd	Neglect of a child.
2894			
	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
2895			
	836.05	2nd	Threats; extortion.
2896			
	836.10	2nd	Written threats to kill or do bodily injury.
2897			
	843.12	3rd	Aids or assists person to escape.
2898			

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

HB 7063

2015

2899	<u>847.003</u>	<u>2nd</u>	<u>Use or induce a child in a sexual performance, or promote or direct such performance.</u>
2900	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
2901	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
2902	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
2903	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great

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

HB 7063

2015

2904			bodily harm.
2905	944.40	2nd	Escapes.
2906	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
2907	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
2908			
2909	(h)	LEVEL 8	
2910			
2911	Florida Statute	Felony Degree	Description
2912	316.193 (3)(c)3.a.	2nd	DUI manslaughter.
	316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.

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

HB 7063

2015

2913	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
2914	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
2915	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
2916	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
2917	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
2918	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial

			institutions.
2919	777.03(2)(a)	1st	Accessory after the fact, capital felony.
2920	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
2921	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
2922	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
2923	782.072(2)	1st	Committing vessel homicide and failing to render aid or give

			information.
2924	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
2925	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
2926	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
2927	787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.
2928	787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
2929			

2930	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
2931	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
2932	794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
2933	794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
	794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely

			to cause serious injury; prior conviction for specified sex offense.
2934	794.08 (3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
2935	800.04 (4) (b)	2nd	Lewd or lascivious battery.
2936	800.04 (4) (c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
2937	806.01 (1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
2938	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
2939	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
2940			

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

HB 7063

2015

2941	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
2942	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
2943	812.13(2)(b)	1st	Robbery with a weapon.
2944	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
2945	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
2946	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document;

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

HB 7063

2015

			defendant is incarcerated or under supervision.
2947	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
2948	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
2949	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
2950	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
2951	825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
2952	837.02(2)	2nd	Perjury in official proceedings

			relating to prosecution of a capital felony.
2953	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
2954	<u>847.0135(3)</u>	<u>2nd</u>	<u>Solicitation of a child, via a computer service, to commit an unlawful sex act while misrepresenting one's age.</u>
2955	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
2956	860.16	1st	Aircraft piracy.
2957	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
2958	893.13(2)(b)	1st	Purchase in excess of 10 grams

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

HB 7063

2015

			of any substance specified in s. 893.03(1)(a) or (b).
2959	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
2960	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
2961	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
2962	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
2963	893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
2964	893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.

2965	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
2966	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
2967	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
2968	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
2969	893.135 (1) (h) 1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
2970	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
2971			

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

HB 7063

2015

2972	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
2973	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
2974	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
2975	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
2976	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
2976	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

2977

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

2978

2979 Section 60. For the purpose of incorporating the amendment
 2980 made by this act to section 847.001, Florida Statutes, in a
 2981 reference thereto, subsection (2) of section 944.11, Florida
 2982 Statutes, is reenacted to read:

2983 944.11 Department to regulate admission of books.—

2984 (2) The department shall have the authority to prohibit
 2985 admission of reading materials or publications with content
 2986 which depicts sexual conduct as defined by s. 847.001 or
 2987 presents nudity in such a way as to create the appearance that
 2988 sexual conduct is imminent. The department shall have the
 2989 authority to prohibit admission of such materials at a
 2990 particular state correctional facility upon a determination by
 2991 the department that such material or publications would be
 2992 detrimental to the safety, security, order or rehabilitative
 2993 interests of a particular state correctional facility or would
 2994 create a risk of disorder at a particular state correctional
 2995 facility.

2996 Section 61. The Division of Law Revision and Information

HB 7063

2015

2997 | is directed to rename chapter 847, Florida Statutes, as
2998 | "Obscenity; Child Pornography."

2999 | Section 62. This act shall take effect October 1, 2015.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
 2 Subcommittee

3 Representative Spano offered the following:

Amendment (with title amendment)

6 Remove lines 1051-1064 and insert:

7 (c) ~~(4)~~ This subsection does ~~shall not be construed to~~
 8 prohibit prosecution of a person in this state or another
 9 jurisdiction for a violation of any law of this state, including
 10 a law providing for greater penalties than prescribed in this
 11 subsection, for the transmission of child pornography, ~~as~~
 12 ~~defined in s. 847.001~~, to another ~~any~~ person in this state.

13 (d) ~~(5)~~ A person is subject to prosecution in this state
 14 pursuant to chapter 910 for any act or conduct proscribed by
 15 this subsection, including a person in a jurisdiction other than
 16 this state, if the act or conduct violates paragraph (b)

073307

h7063-Spano Adm 1.docx

Published On: 3/24/2015 6:16:22 PM

Amendment No. 1

17 ~~subsection (3).~~

18 (e) This subsection does ~~The provisions of this section do~~
19 not apply to subscription-based transmissions such as list
20 servers.

21 (f) For purposes of this subsection, each act of
22 transmitting child pornography is a separate offense.

23

24

25

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

26

Remove line 25 and insert:

27

penalties; providing application and construction; providing

28

that each act of transmitting child pornography is a separate

29

offense;