

**SB 250** by **Ring**; (Identical to H 0027) Florida Law Enforcement Officers' Hall of Fame

**SB 634** by **Simpson**; (Identical to CS/H 1019) Motor Vehicles

**CS/SB 644** by **BI, Richter**; (Similar to CS/CS/H 0665) Licensure by the Office of Financial Regulation

**CS/SB 650** by **AG, Sachs**; (Compare to CS/H 0851) Artificial Coloring and Sale of Certain Animals and Fowls

389094	A	S	RCS	CJ, Smith	Delete L.16 - 19:	04/08 05:34 PM
929876	AA	S	RCS	CJ, Gibson	Delete L.6 - 8:	04/08 05:34 PM

**SB 876** by **Stargel**; (Identical to H 0759) Offenses Against Unborn Children

714942	A	S	FAV	HP, Galvano	Delete L.26 - 27.	03/20 06:26 PM
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**SB 974** by **Sobel**; (Identical to H 0967) Human Trafficking

**SB 1350** by **Bradley**; (Similar to H 7137) Criminal Penalties

308100	A	S	RCS	CJ, Bradley	Delete L.17 - 31:	04/08 05:34 PM
832422	A	S	WD	CJ, Bradley	Delete L.55:	04/05 09:16 AM
806648	A	S	WD	CJ, Bradley	Delete L.79 - 120:	04/05 09:16 AM
845048	A	S	RCS	CJ, Bradley	Delete L.79 - 120:	04/08 05:34 PM

**CS/SB 1448** by **HP, Smith**; (Similar to CS/H 1041) Controlled Substances

811210	A	S	WD	CJ, Smith	Delete L.181 - 186:	04/08 12:59 PM
640050	A	S	RCS	CJ, Smith	Delete L.181 - 186:	04/08 05:34 PM

**SPB 7148** by **CJ**; Drug Trafficking

236166	A	S	FAV	CJ, Bradley	Delete L.102:	04/08 05:34 PM
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CRIMINAL JUSTICE**  
**Senator Evers, Chair**  
**Senator Smith, Vice Chair**

**MEETING DATE:** Monday, April 8, 2013  
**TIME:** 1:00 —3:00 p.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

**MEMBERS:** Senator Evers, Chair; Senator Smith, Vice Chair; Senators Altman, Bradley, Dean, Gibson, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 250</b> Ring (Identical H 27)	Florida Law Enforcement Officers' Hall of Fame; Establishing the Florida Law Enforcement Officers' Hall of Fame; providing for administration by the Department of Law Enforcement; designating location; providing procedures for selection, nomination, and induction, etc.  CJ     04/08/2013 Favorable GO ACJ AP	Favorable Yeas 6 Nays 0
2	<b>SB 634</b> Simpson (Identical CS/H 1019)	Motor Vehicles; Revising provisions relating to the operation of radios or other soundmaking devices in vehicles; deleting a standard for determining prohibited sound levels; deleting an exception for vehicles operated for business or political purposes; authorizing local authorities to regulate the place where such soundmaking devices may be operated, etc.  TR     03/21/2013 Favorable CJ     04/08/2013 Favorable JU	Favorable Yeas 4 Nays 2
3	<b>CS/SB 644</b> Banking and Insurance / Richter (Similar CS/CS/H 665)	Licensure by the Office of Financial Regulation; Authorizing, rather than requiring, the Office of Financial Regulation to deny a mortgage broker license application if the applicant had a mortgage broker license revoked previously; revising the procedures and requirements for submitting fingerprints as part of an application to sell, or offer to sell, securities; requiring the Office of Financial Regulation to pay an annual fee to the Department of Law Enforcement; revising license application fees to include fingerprint retention fees as prescribed by rule, etc.  BI     03/20/2013 Fav/CS CJ     04/08/2013 Favorable ACJ AP	Favorable Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, April 8, 2013, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 650</b> Agriculture / Sachs (Compare CS/H 851)	Artificial Coloring and Sale of Certain Animals and Fowls; Providing that it is unlawful for a person to dye or artificially color any animal or fowl; providing that it is unlawful to sell or give away animals of a certain age; providing exceptions; providing criminal penalties, etc.  AG 04/01/2013 Fav/CS CJ 04/08/2013 Fav/CS	Fav/CS Yeas 6 Nays 0
5	<b>SB 876</b> Stargel (Identical H 759)	Offenses Against Unborn Children; Citing this act as the "Florida Unborn Victims of Violence Act"; providing a rule of construction that a person who engages in conduct that violates any provision of the Florida Criminal Code or of a criminal offense defined by another statute and causes the death of, or bodily injury to, an unborn child commits a separate offense if such an offense is not otherwise specifically provided for; providing for criminal penalties for such an offense, etc.  HP 03/20/2013 Fav/1 Amendment CJ 04/08/2013 Favorable JU AP	Favorable Yeas 4 Nays 2
6	<b>SB 974</b> Sobel (Identical H 967)	Human Trafficking; Citing this act as the "Florida Victim's Relief Act;" providing that a victim of human trafficking has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a human-trafficking counselor or trained volunteer or any record made in the course of advising, counseling, or assisting the victim; providing that the confidential communication or record may be disclosed only with the prior written consent of the victim; requiring the court to hold a hearing on a motion to vacate the conviction, etc.  CJ 04/08/2013 Favorable JU CF	Favorable Yeas 6 Nays 0
7	<b>SB 1350</b> Bradley (Similar H 7137, Compare H 963)	Criminal Penalties; Providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring that a judge consider certain factors before determining if life imprisonment is an appropriate sentence, etc.  CJ 04/01/2013 Not Considered CJ 04/08/2013 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 2

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, April 8, 2013, 1:00 —3:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>CS/SB 1448</b> Health Policy / Smith (Similar CS/H 1041)	Controlled Substances; Adding to the list of Schedule III controlled substances certain specified materials, compounds, mixtures, or preparations that promote muscle growth or otherwise enhance athletic performance; adding human chorionic gonadotropin to the list of Schedule III controlled substances, etc.  HP 03/20/2013 Fav/CS CJ 04/08/2013 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0

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Consideration of proposed committee bill:

9	<b>SPB 7148</b>	Drug Trafficking; Providing that a person who knowingly sells, purchases, manufactures, delivers, or brings into this state specified quantities of oxycodone or hydrocodone, or who is knowingly in actual or constructive possession of such quantities of such drugs, commits a felony of the first degree; providing criminal penalties, etc.	Submitted as Committee Bill Yeas 6 Nays 0
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Other Related Meeting Documents

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 250

INTRODUCER: Senator Ring

SUBJECT: Florida Law Enforcement Officers' Hall of Fame

DATE: April 3, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Favorable</b>
2.			GO	
3.			ACJ	
4.			AP	
5.				
6.				

**I. Summary:**

SB 250 establishes a Florida Law Enforcement Officers' Hall of Fame, which is administered by the Florida Department of Law Enforcement (FDLE) without appropriation of state funds. The Department of Management Services (DMS) must set aside an area on the Plaza Level of the Capitol Building (and meet other specifications) for the Hall of Fame and consult with the FDLE regarding the design and theme of the area. The bill also specifies the procedures for recommendations of potential nominees and selection of officers for induction.

This bill creates section 265.004 of the Florida Statutes.

**II. Present Situation:**

The FDLE provides the following information relevant to the bill:

Florida has no publicly established Hall of Fame for law enforcement officers, and there is no Hall of Fame in Florida that gives preference to law enforcement officers who were born in Florida or adopted Florida as their home. Florida is, however, home to the American Police Hall of Fame and Museum (APHF), which was founded in 1960 and is the nation's first national police museum and memorial dedicated to American law enforcement officers killed in the line of duty. Through interactive displays, simulators and thousands of artifacts, the APHF Museum educates the public about the history and current trends of American law enforcement. The APHF Memorial lists over 8,000 officers who were killed in the line of duty. Their names are permanently etched on the Memorial's marble walls, which are added to once a year for Police Memorial Day (May 15th). The APHF houses two non-profit law enforcement associations: The

National Association of Chiefs of Police (NACOP) and the American Federation of Police and Concerned Citizens (AFP&CC), which provide financial and program support.

The Florida Legislature has established four Halls of Fame in Florida that honor persons born in Florida or who adopted Florida as their home, and who have made significant contributions to the state. The Florida Women's Hall of Fame (s. 265.001, F.S.), created in 1982, honors women who, through their lives and efforts, have made significant contributions to improving the lives of women and all citizens of Florida. The Florida Commission on the Status of Women maintains and facilitates the permanent Florida Women's Hall of Fame display in the state Capitol, with no specific appropriation of state funds.

The Florida Veterans' Hall of Fame (s. 265.003, F.S.), was created by the 2011 Legislature to recognize and honor military veterans who have made a significant contribution to Florida through their works and lives, during or after military service. The Florida Veterans' Hall of Fame is administered by the Florida Department of Veterans Affairs without appropriation of state funds.

The Florida Civil Rights Hall of Fame (s. 760.065, F.S.), honors persons who have made significant contributions as leaders in the struggle for equality and justice. It is administered by the Commission on Human Relations, which is responsible for related costs; however, the costs of operation, repairs and maintenance are covered by the Department of Management Services.

The Florida Artists Hall of Fame (s. 265.2865, F.S.), was established by the Legislature in 1986 to recognize persons, living or deceased, who have made significant contributions to the arts in Florida either as performing or practicing artists in individual disciplines. Located on the Plaza level of the Rotunda in the Capitol building, it is administered by the Florida Council on Arts and Culture and the Division of Cultural Affairs within the Department of State. The Secretary of State must annually request an appropriation to carry out the purposes of s. 265.2865, F.S.

The 1988 Legislature designated the Florida Sports Hall of Fame in Lake City, Columbia County, as the Official Sports Hall of Fame for the state (s. 15.051, F.S.). The Sports Hall of Fame was founded in 1961 by the Florida Sportswriters Association and Florida Sportscasters Association, to recognize and honor Florida's greatest sports figures and events, and was housed ... at Cypress Gardens in Winter Haven and in Lake City before moving to the Lake Myrtle Sports Complex in Auburndale, Florida, on June 22, 2010. Florida provides state funding for a professional golf hall of fame facility and the International Game Fish Association World Center facility, pursuant to s. 288.1168, F.S. The distribution of funds is overseen by the Department of Revenue.<sup>1</sup>

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<sup>1</sup> Analysis of SB 250 (February 12, 2012), Florida Department of Law Enforcement (on file with the Senate Criminal Justice Committee) (further cited as "FDLE's Bill Analysis"). All information in the "Present Section" of this analysis is from the FDLE Analysis unless otherwise indicated.

Presently, numerous agencies, associations, and organizations present state and national awards for “officer of the year,” “deputy of the year,” etc., including, but not limited to, the Florida Attorney General,<sup>2</sup> the Florida Police Chiefs Association, the Florida Sheriffs Association, the Fraternal Order of Police, the Police Benevolent Association, the American Legion, and the National Rifle Association.

Section 683.115, F.S., designates May 15th of each year as “Law Enforcement Memorial Day.” The Capitol Courtyard contains a law enforcement officer memorial monument to honor fallen officers. This monument is maintained by the Fraternal Order of Police. A memorial service for fallen officers is held annually at the Capitol.

### **III. Effect of Proposed Changes:**

The bill creates s. 265.004, F.S., which establishes the Florida Law Enforcement Officers’ Hall of Fame. According to intent language in the proposed statute:

It is the intent of the Legislature to recognize and honor those law enforcement officers who, through their works, service, and exemplary accomplishments during or following their service as a law enforcement officer, have dedicated their lives to, and sacrificed their lives for, the safety of the residents of Florida and have made significant contributions to the state.

The Hall of Fame is administered by the FDLE without appropriation of state funds. The bill directs the DMS to set aside an area on the Plaza Level of the Capitol building for the Hall of Fame. The DMS must consult with the FDLE regarding the design and theme of the area. The FDLE must affix the name of each inductee on a plaque displayed in the designated area of the Capitol building.

The FDLE must annually accept recommendations of persons to be considered as nominees for induction into the Hall of Fame from law enforcement organizations the FDLE deems appropriate, including but not limited to, the Police Benevolent Association.

The FDLE must choose nominees from among the recommendations submitted and transmit the names to the Governor and Cabinet who will select the nominees to be inducted. In making these recommendations, the FDLE must give preference to law enforcement officers who were born in Florida or who adopted Florida as their home state.

The FDLE may establish criteria and set specific time periods for the acceptance of recommendations for nomination and for the selection process. The FDLE may also establish, organize, and conduct a formal induction ceremony.<sup>3</sup>

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<sup>2</sup> According to information provided by Attorney General staff in 2011 in regard to SB 484 (which is almost identical to SB 250), nominees are law enforcement officers (including correctional officers) who are selected by several agencies, associations, and organizations. The Florida Law Enforcement Officer of the Year is selected by a group composed of members of multiple agencies, associations, and organizations. Both the Florida Law Enforcement Officer of the Year and the other nominees are honored for their achievements. *See* Staff Analysis of SB 484 (November 28, 2011) Senate Committee on Criminal Justice.

<sup>3</sup> The FDLE construes these provisions as granting it rulemaking authority. FDLE Analysis.

The FDLE notes the following effects of the bill were it to become law:

... Passage of this bill will result in the addition of another designated memorial to those already established in Florida's Capitol building.

In establishing a Law Enforcement Officers' Hall of Fame, Florida will join several other states that have created halls of fame to recognize and honor their law enforcement officers. South Carolina, Oklahoma and Texas (Rangers) all have museums as a part of their halls of fame. These halls of fame are similar to the Florida-based American Police Hall of Fame and Museum in their scope and mission.

South Carolina's Museum and Hall of Fame was established by that state's legislature in 1974. The Hall of Fame's primary purpose of honoring South Carolina officers who have died in the line of duty is accomplished through a memorial room. Its secondary purpose is to honor all officers in the day-to-day performance of their duties; this is accomplished through interpretive exhibits and a museum collection.

The Oklahoma Law Enforcement Museum & Hall of Fame is administered by a foundation that has a 20-member board of directors, and has three primary areas of interest: 1) identify and honor individual contributions to the profession (Hall of Fame); 2) preserve the corporate history of the profession (Museum); and 3) to establish a memorial educational scholarship for the children of fallen officers. The Texas Ranger Hall of Fame and Museum was appointed the official repository, library and archives of the Texas Rangers by the Texas Legislature in 1997. Housed in the City of Waco, the Hall of Fame and Museum has been sponsored by the City of Waco since 1968. It is managed by a board of directors and advisors.

Other states with halls of fame include Nebraska and Wisconsin. The State of Wisconsin has a combined Fire and Police Hall of Fame that was established in 1996 to commemorate the heroic deeds and invaluable contributions of firefighters and police officers throughout the state. Since 1998, the Hall of Fame has been co-located with the state's Old Firehouse and Police Museum.

The State of Nebraska also has a Hall of Fame that was developed by the Police Officers' Association to recognize the accomplishments and deeds of individual law enforcement officers.<sup>4</sup>

The effective date of the bill is July 1, 2013.

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<sup>4</sup> *Id.*



**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill specifies that the Florida Law Enforcement Officers' Hall of Fame is administered by the FDLE without appropriation of state funds.

The FDLE states:

FDLE believes it is important to recognize the many accomplishments of Florida's law enforcement officers; as of December 7, 2012, there were 45,261 certified law enforcement officers in Florida. In order for the Florida Law Enforcement Officers' Hall of Fame initiative to be meaningful, it will require an extensive vetting process in order to examine and evaluate all nominations submitted to the department.

Although the bill directs FDLE to administer the Florida Law Enforcement Officers' Hall of Fame without appropriation of state funds, the associated costs related to staff time and agency resources that will be expended to carry out this annual activity cannot be absorbed within FDLE's existing resources due to previous position reductions.<sup>5</sup>

Over the last several sessions, FDLE had 297 positions eliminated and the department's operating budget cut by approximately \$34 million. Although the

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<sup>5</sup> All of the information and comments provided by the FDLE for the "Government Sector Impact" section of this bill analysis are from the FDLE Analysis.

bill directs FDLE to administer the Florida Law Enforcement Officers’ Hall of Fame without appropriation of state funds, the associated costs related to staff time and agency resources that will be expended to carry out this annual activity cannot be absorbed within FDLE’s existing resources.

**Expenditures:**

The FDLE states:

The FDLE is required to accept recommendations of persons to be considered for induction, and to choose nominees from the recommendations submitted for transmittal to the Governor and Cabinet. The FDLE is, also, authorized to develop guidelines for the process of accepting recommendations and selecting nominees. In order to implement these statutory requirements, the FDLE will need 1 FTE to develop the guidelines that will govern the implementation, and to solicit, review and more importantly, vet the applications prior to processing the names submitted for consideration.

	FY 13-14	FY 14-15	FY 15-16	
1 Government Analyst	\$ 51, 482	\$ 51,482	\$ 50,642	Salary & Benefits
1 Government Analyst	\$9,973	\$3,762	\$6,555	Expenses
Standard HR Services for 1 Government Analyst	\$354	\$354	\$354	Human Resources Services
<b>TOTAL</b>	<b>\$61,809</b>	<b>\$55,598</b>	<b>\$55,598</b>	

The FDLE further indicates that the bill “requires that the name of each person inducted into the Hall of Fame be placed on a plaque displayed in the designated area of the Capitol building.” The FDLE will include the costs related to this plaque as part of the expenses previously specified.

**Non-Recurring:**

An analysis was not available from the DMS, but the FDLE states: “The DMS is required to set aside an area on the Plaza level of the Capitol for the Hall of Fame, and may incur non-recurring expenses to prepare the area.”

**VI. Technical Deficiencies:**

The FDLE indicates that some intent language in the bill could create ambiguities that may make it difficult to implement provisions of the bill:

SB 250 grants FDLE rule-making authority to “establish criteria and set specific time periods for the acceptance of recommendations for nomination and for the process of

selecting nominees to forward to the Governor and Cabinet.” However, an apparent inconsistency in the intent language may pose difficulties for FDLE in carrying out this duty.

Section 1 states that “It is the intent of the Legislature to recognize and honor those law enforcement officers who, through their works, service, and *exemplary accomplishments during or following their service as law enforcement officers*, have dedicated their lives to, and *sacrificed their lives for*,...” (Emphases added). To the law enforcement community, the words “sacrificed their lives for” mean “died in the line of duty.” But, it does not appear that the intent is to limit eligibility only to those who have died in the line of duty, as evidenced by the inclusion of the words “exemplary accomplishments during or following their service as law enforcement officers.” If this point is not clarified, the FDLE will have difficulty in establishing criteria for the process of accepting recommendations and selecting nominees to forward to the Governor and Cabinet.<sup>6</sup>

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>6</sup> FDLE Analysis.

By Senator Ring

29-00552-13

2013250\_\_

A bill to be entitled

An act relating to the Florida Law Enforcement Officers' Hall of Fame; creating s. 265.004, F.S.; establishing the Florida Law Enforcement Officers' Hall of Fame; providing for administration by the Department of Law Enforcement; designating location; providing procedures for selection, nomination, and induction; providing an effective date.

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

Section 1. Section 265.004, Florida Statutes, is created to read:

265.004 Florida Law Enforcement Officers' Hall of Fame.—

(1) It is the intent of the Legislature to recognize and honor those law enforcement officers who, through their works, service, and exemplary accomplishments during or following their service as law enforcement officers, have dedicated their lives to, and sacrificed their lives for, the safety of the citizens of Florida and have made significant contributions to the state.

(2) There is established the Florida Law Enforcement Officers' Hall of Fame.

(a) The Florida Law Enforcement Officers' Hall of Fame is administered by the Department of Law Enforcement without appropriation of state funds.

(b) The Department of Management Services shall set aside an area on the Plaza Level of the Capitol Building along the northeast front wall and shall consult with the Department of Law Enforcement regarding the design and theme of the area.

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

29-00552-13

2013250\_\_

(c) The Department of Law Enforcement shall affix the name of each person inducted into the Florida Law Enforcement Officers' Hall of Fame on a plaque displayed in the designated area of the Capitol Building.

(3) (a) The Department of Law Enforcement shall annually accept recommendations of persons to be considered as nominees for induction into the Florida Law Enforcement Officers' Hall of Fame. The department shall accept recommendations of potential nominees from law enforcement organizations that the department deems appropriate, including, but not limited to, the Police Benevolent Association. The department shall choose nominees from among the recommendations submitted and transmit the names of those law enforcement officers to the Governor and Cabinet who will select the nominees to be inducted.

(b) In making its recommendations to the Governor and Cabinet, the Department of Law Enforcement shall give preference to law enforcement officers who were born in Florida or adopted Florida as their home state.

(4) The Department of Law Enforcement may establish criteria and set specific time periods for the acceptance of recommendations for nomination and for the process of selecting nominees to forward to the Governor and Cabinet. The department may establish, organize, and conduct a formal induction ceremony.

Section 2. This act shall take effect July 1, 2013.

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Governmental Oversight and Accountability, *Chair*  
Appropriations Subcommittee on Finance and  
Tax, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Banking and Insurance  
Commerce and Tourism  
Judiciary  
Rules

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

### SENATOR JEREMY RING

29th District

March 20, 2013

Honorable Senator Greg Evers  
510 Knott Building  
404 South Monroe Street  
Tallahassee, Fl 32399

Dear Chairman Evers,

I am writing to respectfully request your cooperation in placing Senate Bill 250, relating to Florida Law Enforcement Officers' Hall of Fame on the Criminal Justice agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator District 29

cc: Amanda Cannon

#### REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR JOE NEGRON**  
32nd District

**COMMITTEES:**  
Appropriations, *Chair*  
Banking and Insurance  
Rules

**SELECT COMMITTEE:**  
Select Committee on Patient Protection  
and Affordable Care Act, *Chair*

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission,  
*Alternating Chair*

## Committee Request

**To:** Senator Greg Evers, Chair  
Criminal Justice

**Subject:** Committee Presentation Request

**Date:** April 8, 2013

I respectfully request that Joel Ramos from my office be allowed to present SB 250, related to Law Enforcement Officers Hall of Fame, to the committee at the meeting scheduled for April 8th. Thank you for your time and consideration.

Sincerely

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator, District 29

CC. Amanda Cannon, Staff Director

**REPLY TO:**

- 3500 SW Corporate Parkway, Suite 204, Palm City, Florida 34990 (772) 219-1665 FAX: (772) 219-1666
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 634

INTRODUCER: Senator Simpson

SUBJECT: Motor Vehicles

DATE: April 2, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	<b>Favorable</b>
2.	Clodfelter	Cannon	CJ	<b>Favorable</b>
3.			JU	
4.				
5.				
6.				

**I. Summary:**

SB 634 removes a provision of s. 316.3045, F.S., that exempts motor vehicles used for business or political purposes from the prohibition against amplifying sound from within a motor vehicle to a level that it is plainly audible at a distance of 25 feet or more from the motor vehicle. This provision was recently found to be unconstitutional by the Florida Supreme Court.

The bill also removes a provision of the statute that prohibits amplifying sound from within a motor vehicle so that it is louder than necessary for convenient hearing by the vehicle's occupants in areas adjoining churches, schools, or hospitals. The constitutionality of this provision has been called into question by courts because of its subjective nature.

This bill amends section 316.3045 of the Florida Statutes.

**II. Present Situation:**

Richard T. Catalano and another man were cited in 2007 and 2008, respectively, in separate incidents in Pinellas County, Florida, for violating the sound standards of s. 316.3045, F.S. (playing music too loudly in their vehicles), and both men challenged the constitutionality of the law, arguing that the statute is facially unconstitutional. The circuit court agreed and invalidated the law, and the Second District Court of Appeal upheld that decision.<sup>1</sup> In December 2012, the Florida Supreme Court issued an opinion affirming the lower court decisions holding that the statute is unconstitutional.<sup>2</sup>

<sup>1</sup> *State v. Catalano*, 60 So.3d 1139 (Fla. 2d DCA 2011).

<sup>2</sup> *State v. Catalano*, 104 So.3d 1069 (Fla. 2012).

Section 316.3045, F.S., provides:

316.3045 Operation of radios or other mechanical soundmaking devices or instruments in vehicles; exemptions.—

(1) It is unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument from within the motor vehicle so that the sound is:

- (a) Plainly audible at a distance of 25 feet or more from the motor vehicle; or
- (b) Louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.

(2) The provisions of this section shall not apply to any law enforcement motor vehicle equipped with any communication device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.

(3) The provisions of this section do not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices. The provisions of this subsection shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from regulating the time and manner in which such business may be operated.

(4) The provisions of this section do not apply to the noise made by a horn or other warning device required or permitted by s. 316.271. The Department of Highway Safety and Motor Vehicles shall promulgate rules defining “plainly audible” and establish standards regarding how sound should be measured by law enforcement personnel who enforce the provisions of this section.

(5) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

In considering the constitutionality of the statute, the Supreme Court first determined that the “plainly audible at a distance of 25 feet or more” standard “provides fair warning of the prohibited conduct and provides an objective guideline – distance – to prevent arbitrary and discriminatory enforcement so that basic policy matters are not delegated to policemen, judges, and juries for resolution on an ad hoc and subjective basis.... This is not a standard that calls for police officers to judge whether sound is excessive, raucous, disturbing, or offensive; if the officer can hear the amplified sound more than twenty-five feet from its source, the individual has violated the statute.”<sup>3</sup> The court then held that the “plainly audible” standard is not unconstitutionally vague.<sup>4</sup>

Next turning to whether the statute is unconstitutionally overbroad or an unreasonable restriction on the freedom of expression, the court noted that “the right to play music, including amplified music, in public fora is protected under the First Amendment.... Limitations are reasonable if they are “justified without reference to the content of the regulated speech,... narrowly tailored to serve a significant governmental interest, and... leave open ample alternative channels for

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<sup>3</sup> *Id.*, 104 So.3d at 1076 (citation omitted).

<sup>4</sup> *Id.* at 1075-1077.



communication of the information.”...If the time, place, and manner of the limitations are content based, a strict standard of scrutiny is applied.”<sup>5</sup>

With respect to s. 316.3045, F.S., the court noted:

“Initially, it would appear that section 316.3045(1)(a) does not regulate expression based on the content of the message as it bans all amplified sound coming from within the interior of a motor vehicle that is “plainly audible” beyond twenty-five feet from the source. In short, the statute proscribes excessive sound emanating from vehicles on public thoroughfares. Subsection (3), however, excepts “motor vehicles used for business or political purposes, which in the normal course of conducting such business use [sound-making] devices” from this broad proscription.

“...The regulation, however, treats commercial and political speech more favorably than noncommercial speech....Regardless of the intent of the Legislature, section 316.3045 is a sweeping ban on amplified sound that can be heard beyond twenty-five feet of a motor vehicle, unless that sound comes from a business or political vehicle, which presumably uses sound-making devices for the purpose of expressing commercial and political viewpoints....Thus, this statute is content based because it does not apply equally to music, political speech, and advertising. *See Discovery Network*, 507 U.S. at 428–29, 113 S.Ct. 1505 (stating that a sound ordinance is permissible if it applies equally to music, political speech, and advertising).”<sup>6</sup>

Pointing to the State’s argument that the statute serves the State’s interest in traffic safety and protecting the public from excessively loud noise, the court agreed that protecting the public from excessively loud noise is a compelling state interest, but that traffic safety generally is not a compelling state interest.

“Even assuming the asserted interests are compelling, it is unclear how the statute advances those interests by allowing commercial and political speech at a volume “plainly audible” beyond twenty-five feet, but not allowing noncommercial speech to be heard at the same distance....The State simply argues that noncommercial vehicles are more dangerous to the public because they are ubiquitous. This argument, however, fails to explain how a commercial or political vehicle amplifying commercial or political messages audible a mile away is less dangerous or more tolerable than a noncommercial vehicle amplifying a religious message audible just over twenty-five feet away from the vehicle. Further, the statute protects commercial speech to a greater degree than noncommercial speech; commercial speech, however, is generally afforded less protection.”<sup>7</sup>

The court then held:

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<sup>5</sup> *Id.* at 1078 (citations omitted).

<sup>6</sup> *Id.* at 1078-1079.

<sup>7</sup> *Id.* at 1080 (citation omitted).

“Accordingly, we find that the statute is an unreasonable restriction on First Amendment rights. Likewise, the restriction of the constitutionally protected right to amplify sound, despite the State’s acknowledgement that this level of noise is tolerable and safe if the source is a commercial or political vehicle, is not narrowly tailored to achieve the government’s interests in improving traffic safety and protecting the citizenry from excessive noise. Thus, we also find that the statute is unconstitutionally overbroad because it restricts the freedom of expression in a manner more intrusive than necessary.”<sup>8</sup>

The Supreme Court also noted the comment by one of the lower court judges in a concurring opinion that s. 316.3045(1)(b), F.S., is also “constitutionally infirm” because it “permits citations, at least ‘in areas adjoining churches, schools, or hospitals,’ for sound that is ‘louder than necessary for the convenient hearing by persons inside the vehicle.’”<sup>9</sup> The court did not consider the constitutionality of paragraph (1)(b) because it was not at issue in the appeal, but the lower court judge questioned the subjectivity required to enforce the provision.

### III. Effect of Proposed Changes:

The bill amends s. 316.3045, F.S., to:

- Repeal current paragraph (b) of subsection (1), which prohibits sound from a soundmaking device or instrument from within a motor vehicle so that the sound is louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals;
- Repeal the exclusion in subsection (3) of motor vehicles used for business or political purposes, which in the normal course of conducting business use soundmaking devices;
- Amend the remaining portion of subsection (3) to permit local authorities to regulate the place where a device or instrument described in subsection (1) can be operated (regulation of time and manner are already permitted); and
- Make editorial and clarifying changes.

Removal of the language that was rejected by the court as unconstitutional, as well as the language that is constitutionally suspect, will presumably make the statute constitutional. The statute, as amended, will prohibit the operator of a motor vehicle from amplifying sound from within the motor vehicle to a level that it is plainly audible at a distance of 25 feet or more from the vehicle. This will reestablish existing law that has not been enforceable throughout the state since the Supreme Court found the entire statute to be unconstitutional due to other provisions.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>8</sup> *Id.* at 1080.

<sup>9</sup> *Id.* at 1074.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

A citizen found to have violated the sound standard of s. 316.3045, F.S., for sound which is plainly audible at a distance of 25 feet or more from the citizen's motor vehicle, is subject to a \$30 penalty for a nonmoving traffic violation.<sup>10</sup> This is not a new provision, but reestablishes existing law that was not enforceable due to the unconstitutionality of other provisions in the statute.

**C. Government Sector Impact:**

The bill removes unconstitutional portions of existing law so the law enforcement officers will be equipped with a constitutional traffic law that serves the State's interest in traffic safety and in protecting the public from excessively loud noise on public streets. There appears to be no fiscal impact on the governmental sector because this was existing law that was temporarily unenforceable.

**VI. Technical Deficiencies:**

It is recommended that the word "subsection" on line 37 be changed to "section" to conform with the amendments to s. 316.3045(3), F.S.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>10</sup> The penalty is set forth in s. 318.18(2), F.S.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Simpson

18-01010A-13

2013634

A bill to be entitled

An act relating to motor vehicles; amending s. 316.3045, F.S.; revising provisions relating to the operation of radios or other soundmaking devices in vehicles; deleting a standard for determining prohibited sound levels; deleting an exception for vehicles operated for business or political purposes; authorizing local authorities to regulate the place where such soundmaking devices may be operated; providing an effective date.

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

Section 1. Section 316.3045, Florida Statutes, is amended to read:

316.3045 Operation of radios or other mechanical soundmaking devices or instruments in vehicles; exemptions.-

(1) A ~~It is unlawful for any person who operates or occupies operating or occupying~~ a motor vehicle on a street or highway may not ~~to~~ operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument from within the motor vehicle so that the sound is-

~~(a)~~ plainly audible at a distance of 25 feet or more from the motor vehicle; ~~or~~

~~(b) Louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.~~

(2) ~~The provisions of~~ This section does ~~shall~~ not apply to any law enforcement motor vehicle equipped with any

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

18-01010A-13

2013634

communication device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.

(3) ~~The provisions of this section do not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices. The provisions of~~ This subsection does ~~shall~~ not be ~~deemed to~~ prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from regulating the time, place, and manner in which a device or instrument described in subsection (1) ~~such business~~ may be operated.

(4) ~~The provisions of~~ This section does ~~do~~ not apply to the noise made by a horn or other warning device required or permitted by s. 316.271. The Department of Highway Safety and Motor Vehicles shall adopt ~~promulgate~~ rules defining "plainly audible" and shall establish standards regarding how sound should be measured by law enforcement personnel who enforce the provisions of this section.

(5) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 2. This act shall take effect July 1, 2013.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Community Affairs, *Chair*  
Appropriations Subcommittee on General  
Government  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Environmental Preservation and Conservation

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

**SENATOR WILTON SIMPSON**

18th District

March 21, 2013

Senator Greg Evers, Chairman  
Committee on Criminal Justice  
510 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Senator Evers,

Please place Senate Bill 634, relating to loud music, on the next Criminal Justice Committee agenda.

Please contact my office with any questions.

A handwritten signature in black ink, appearing to be "W. Simpson".

Senator Wilton Simpson, 18<sup>th</sup> District

#### REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

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**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13

Meeting Date

Topic MOTOR VEHICLES

Bill Number SB 634  
*(if applicable)*

Name CHRIS CONWELL

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title MAJOR - TALLAHASSEE POLICE DEPT

Address 934 E. 7<sup>th</sup> Ave.

Phone \_\_\_\_\_

Street

TALLAHASSEE FLA 32303

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing THE FLORIDA POLICE CHIEFS ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

05

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13  
Meeting Date

Topic Motor Vehicles

Bill Number 634  
*(if applicable)*

Name Keri Rayborn

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address PO Box 1565  
Street

Phone (850)524-2394

Tallahassee, FL 32302  
City State Zip

E-mail Keri@raybornconsultants.com

Speaking:  For  Against  Information

Representing Florida Sheriffs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

**BILL:** CS/SB 644

**INTRODUCER:** Banking and Insurance Committee and Senator Richter

**SUBJECT:** Licensure by the Office of Financial Regulation

**DATE:** April 2, 2013                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 644 allows the Office of Financial Regulation (OFR) to exercise discretion regarding whether to deny an application for licensure as a mortgage broker or mortgage lender if the applicant’s licensure or its equivalent was revoked in any jurisdiction. Current law requires the automatic denial of the licensure application. The bill also changes the method by which the OFR collects fingerprints from applicants for registration as securities dealers, associated persons, or securities issuers and applicants for money services business licensure. The new method of fingerprinting is live-scan processing. Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.

Sections 1, 2 and 6 of the bill are effective upon becoming law; the other sections of the bill are effective October 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 494.00321, 494.00611, 517.12, 560.141, and 560.143.

## II. Present Situation:

### Licensure as a Mortgage Broker or Mortgage Lender

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 sets a minimum federal standard that an individual who is an applicant for a state loan originator license must have never had his or her loan originator license revoked in any governmental jurisdiction.<sup>1</sup> In 2009, Florida adopted this requirement for loan originators in s. 494.00312(5), F.S.<sup>2</sup> Florida also adopted parallel requirements for persons (employers, businesses, and individuals) who are applicants for licenses as mortgage brokers and mortgage lenders, exceeding the federal requirement.

According to representatives from the Office of Financial Regulation, the issue that has arisen is that states may use the term “revoked” differently. In Florida, if a licensee does not timely complete the annual renewal or pay the annual fee, their license “expires” on December 31. In other states, if the licensee does not pay that state’s annual assessment when due, the regulatory process may be to administratively revoke the permanent license. Therefore, because the license status will be “revoked” in the other state, it would cause the Florida license to be revoked, or a new license application in Florida to be denied, under current law.<sup>3</sup>

### Office of Financial Regulation Fingerprint Requirements

Under ch. 517, F.S., no dealer, associated person, or issuer of securities may sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, without being registered with the OFR. Under ch. 560, F.S., persons engaged in business as a money services business (payment instrument seller, foreign currency exchanger, check casher, or money transmitter) must be licensed with the Office. The application for such registration or licensure requires the applicant to submit fingerprint cards that are subsequently processed by the Florida Department of Law Enforcement (FDLE) and Federal Bureau of Investigation (FBI). The FDLE and FBI no longer accept physical fingerprint cards; they now only accept electronic or live-scan fingerprints for processing.<sup>4</sup>

## III. Effect of Proposed Changes:

**Section 1** amends s. 494.00321(5), F.S., to allow the OFR discretion regarding whether to deny an application for mortgage broker licensure if the applicant has had a mortgage broker license, or its equivalent, revoked in any jurisdiction. Current law requires denial of the application.

**Section 2** amends s. 494.00611(5), F.S., to allow the OFR discretion regarding whether to deny an application for mortgage lender licensure if the applicant has had a mortgage broker license, or its equivalent, revoked in any jurisdiction. Current law requires denial of the application.

---

<sup>1</sup> See 12 U.S.C. Sec. 5104(b)(1).

<sup>2</sup> See Ch. 2009-241, L.O.F.

<sup>3</sup> Information for this paragraph comes from Analysis of SB 644, Office of Financial Regulation, Financial Services Commission (dated March 26, 2013) (on file with the Committee on Criminal Justice). This analysis is further cited as “OFR Analysis.”

<sup>4</sup> *Id.*

**Section 3** amends s. 517.12(7), F.S., to require securities dealers, associated persons, or securities issuers to submit the fingerprints for live scan processing as part of the mandatory requirement to register with the OFR. The costs of fingerprint processing are borne by the person subject to the background check. Under current law, a fingerprint card of a complete set of fingerprints must be taken by an authorized law enforcement agency or in a manner otherwise approved by rule, and the cost of the fingerprint processing may be borne by the OFR, the employer, or the person subject to the background check.

**Section 4** amends s. 560.141, F.S., to require the applicant for money services business licensure to submit the fingerprints for live scan processing as part of the mandatory licensure requirements to register with the OFR. Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.

The bill also requires the fingerprints to be entered into the statewide automated fingerprint identification system. The OFR must pay an annual fee to the Department of Law Enforcement to participate in the system. The costs of fingerprint processing are borne by the person subject to the background check. Under current law, a fingerprint card of a complete set of fingerprints must be taken by an authorized law enforcement agency, and the cost of the fingerprint processing may be borne by the OFR, the employer, or the person subject to the background check.

**Section 5** amends s. 560.143, F.S., to provide that OFR fingerprint retention fees are prescribed by rule.

**Section 6** provides effective dates. Sections 1, 2 and 6 of the bill are effective upon becoming law; the other sections of the bill are effective October 1, 2013.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

The provision of the Committee Substitute requiring currently licensed money services businesses to submit to live-scan fingerprinting may result in additional fees imposed on persons required to undergo live-scan fingerprinting.

The Florida Department of Law Enforcement has provided the following information regarding private sector impact:

Year 1: 500 new applicants x \$40.50 + 725 license renewals x \$40.50 = \$49,613

Year 2: 500 new applicants x \$40.50 + 1450 license renewals x \$40.50 + 1225 fingerprints retained x \$6 = \$86,325

Year 3: 500 new applicants x \$40.50 + 725 license renewals x \$40.50 + 3175 fingerprints retained x \$6 = \$ 68,663

Each request is \$40.50; \$24 goes into the FDLE Operating Trust Fund; \$16.50 from each request is forwarded to the FBI; not revenue for Florida; but expense for private sector.<sup>5</sup>

**C. Government Sector Impact:**

The Office of Financial Regulation currently collects fingerprint fees from applicants that are subsequently transferred to the Florida Department of Law Enforcement. Switching from fingerprint cards to live-scan fingerprint processing is estimated to result in the following reductions for Fiscal Year 2013-2014:

- A reduction of \$13,275 related to fingerprinting required under ch. 494, F.S. (mortgage brokers and mortgage lenders) and ch. 560, F.S. (money services businesses). The estimated non-operating budget authority needed in Category 310175 is reduced by \$95,000.
- A reduction of \$121,500 related to elimination of the processing fee for fingerprinting. The estimated non-operating budget authority needed in category 310175 is reduced by \$150,000.<sup>6</sup>

The provision of the Committee Substitute requiring currently licensed money services businesses to submit to live-scan fingerprinting may alter the fiscal impact of the bill.

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<sup>5</sup> Analysis of SB 644 (dated March 20, 2013), Florida Department of Law Enforcement (on file with the Committee on Criminal Justice).

<sup>6</sup> Telephonic conversation with OFR staff on March 26, 2013, and OFR Analysis.

The Florida Department of Law Enforcement has provided the following information regarding fiscal impact:

		(FY 13-14)	(FY 14-15)	(FY 15-16)
		Amount/FTE	Amount/FTE	Amount/FTE
A.	Revenues      OTF	29,400	54,150	48,450

Year 1: 500 new applicants x \$24 + 725 license renewals x \$24 = \$29,400

Year 2: 500 new applicants x \$24 + 1450 license renewals x \$24 + 1225 fingerprints retained x \$6 = \$54,150

Year 3: 500 new applicants x \$24 + 725 license renewals x \$24 + 3175 fingerprints retained x \$6 = \$ 48,450<sup>7</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
 (Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 20, 2013:**

- Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.
- Eliminates the repeal of s. 560.143(1)(f), F.S.
- Specifies that the OFR fingerprint retention fees will be prescribed by rule.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>7</sup> *Id.*

By the Committee on Banking and Insurance; and Senator Richter

597-02827-13

2013644c1

1 A bill to be entitled  
 2 An act relating to licensure by the Office of  
 3 Financial Regulation; amending s. 494.00321, F.S.;  
 4 authorizing, rather than requiring, the office to deny  
 5 a mortgage broker license application if the applicant  
 6 had a mortgage broker license revoked previously;  
 7 amending s. 494.00611, F.S.; authorizing, rather than  
 8 requiring, the office to deny a mortgage lender  
 9 license application if the applicant had a mortgage  
 10 lender license revoked previously; amending s. 517.12,  
 11 F.S.; revising the procedures and requirements for  
 12 submitting fingerprints as part of an application to  
 13 sell, or offer to sell, securities; removing  
 14 conflicting language; amending s. 560.141, F.S.;  
 15 revising the procedures and requirements for  
 16 submitting fingerprints to apply for a license as a  
 17 money services business; requiring the Office of  
 18 Financial Regulation to pay an annual fee to the  
 19 Department of Law Enforcement; removing conflicting  
 20 language; amending s. 560.143, F.S.; revising license  
 21 application fees to include fingerprint retention fees  
 22 as prescribed by rule; providing effective dates.  
 23

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

25  
 26 Section 1. Effective upon this act becoming a law,  
 27 subsection (5) of section 494.00321, Florida Statutes, is  
 28 amended to read:  
 29 494.00321 Mortgage broker license.—

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

597-02827-13

2013644c1

30 (5) The office ~~may shall~~ deny a license if the applicant  
 31 has had a mortgage broker license, or its equivalent, revoked in  
 32 any jurisdiction, and shall deny a license ~~or~~ if any of the  
 33 applicant's control persons has had a loan originator license,  
 34 or its equivalent, revoked in any jurisdiction.

35 Section 2. Effective upon this act becoming a law,  
 36 subsection (5) of section 494.00611, Florida Statutes, is  
 37 amended to read:

38 494.00611 Mortgage lender license.—

39 (5) The office may deny ~~not issue~~ a license if the  
 40 applicant has had a mortgage lender license or its equivalent  
 41 revoked in any jurisdiction, and shall deny a license if ~~or~~ any  
 42 of the applicant's control persons has ~~ever~~ had a loan  
 43 originator license or its equivalent revoked in any  
 44 jurisdiction.

45 Section 3. Subsection (7) of section 517.12, Florida  
 46 Statutes, is amended to read:

47 517.12 Registration of dealers, associated persons,  
 48 investment advisers, and branch offices.—

49 (7) The application must shall also contain such  
 50 information as the commission or office may require about the  
 51 applicant; any member, principal, or director of the applicant  
 52 or any person having a similar status or performing similar  
 53 functions; any person directly or indirectly controlling the  
 54 applicant; or any employee of a dealer or of an investment  
 55 adviser rendering investment advisory services. Each applicant  
 56 and any direct owners, principals, or indirect owners that are  
 57 required to be reported on Form BD or Form ADV pursuant to  
 58 subsection (15) shall submit fingerprints for live-scan

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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2013644c1

59 processing in accordance with rules adopted by the commission.  
 60 The fingerprints may be submitted through a third-party vendor  
 61 authorized by the Department of Law Enforcement to provide live-  
 62 scan fingerprinting. The costs of fingerprint processing shall  
 63 be borne by the person subject to the background check. The  
 64 Department of Law Enforcement shall conduct a state criminal  
 65 history background check, and a federal criminal history  
 66 background check must be conducted through the Federal Bureau of  
 67 Investigation. The office shall review the results of the state  
 68 and federal criminal history background checks and determine  
 69 whether the applicant meets licensure requirements ~~file a~~  
 70 ~~complete set of fingerprints. A fingerprint card submitted to~~  
 71 ~~the office must be taken by an authorized law enforcement agency~~  
 72 ~~or in a manner approved by the commission by rule. The office~~  
 73 ~~shall submit the fingerprints to the Department of Law~~  
 74 ~~Enforcement for state processing, and the Department of Law~~  
 75 ~~Enforcement shall forward the fingerprints to the Federal Bureau~~  
 76 ~~of Investigation for federal processing. The cost of the~~  
 77 ~~fingerprint processing may be borne by the office, the employer,~~  
 78 ~~or the person subject to the background check. The Department of~~  
 79 ~~Law Enforcement shall submit an invoice to the office for the~~  
 80 ~~fingerprints received each month. The office shall screen the~~  
 81 ~~background results to determine if the applicant meets licensure~~  
 82 ~~requirements.~~ The commission may waive, by rule, the requirement  
 83 that applicants, including any direct owners, principals, or  
 84 indirect owners that are required to be reported on Form BD or  
 85 Form ADV pursuant to subsection (15), submit ~~file a set of~~  
 86 fingerprints or the requirement that such fingerprints be  
 87 processed by the Department of Law Enforcement or the Federal

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02827-13

2013644c1

88 Bureau of Investigation. The commission or office may require  
 89 information about any such applicant or person concerning such  
 90 matters as:  
 91 (a) His or her full name, and any other names by which he  
 92 or she may have been known, and his or her age, social security  
 93 number, photograph, qualifications, and educational and business  
 94 history.  
 95 (b) Any injunction or administrative order by a state or  
 96 federal agency, national securities exchange, or national  
 97 securities association involving a security or any aspect of the  
 98 securities business and any injunction or administrative order  
 99 by a state or federal agency regulating banking, insurance,  
 100 finance, or small loan companies, real estate, mortgage brokers,  
 101 or other related or similar industries, which injunctions or  
 102 administrative orders relate to such person.  
 103 (c) His or her conviction of, or plea of nolo contendere  
 104 to, a criminal offense or his or her commission of any acts  
 105 which would be grounds for refusal of an application under s.  
 106 517.161.  
 107 (d) The names and addresses of other persons of whom the  
 108 office may inquire as to his or her character, reputation, and  
 109 financial responsibility.  
 110 Section 4. Subsection (1) of section 560.141, Florida  
 111 Statutes, is amended to read:  
 112 560.141 License application.—  
 113 (1) To apply for a license as a money services business  
 114 under this chapter, the applicant must submit:  
 115 (a) ~~Submit~~ An application to the office on forms prescribed  
 116 by rule which includes the following information:

Page 4 of 9

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02827-13

2013644c1

117 1. The legal name and address of the applicant, including  
 118 any fictitious or trade names used by the applicant in the  
 119 conduct of its business.  
 120 2. The date of the applicant's formation and the state in  
 121 which the applicant was formed, if applicable.  
 122 3. The name, social security number, alien identification  
 123 or taxpayer identification number, business and residence  
 124 addresses, and employment history for the past 5 years for each  
 125 officer, director, responsible person, the compliance officer,  
 126 each controlling shareholder, and any other person who has a  
 127 controlling interest in the money services business as provided  
 128 in s. 560.127.  
 129 4. A description of the organizational structure of the  
 130 applicant, including the identity of any parent or subsidiary of  
 131 the applicant, and the disclosure of whether any parent or  
 132 subsidiary is publicly traded.  
 133 5. The applicant's history of operations in other states if  
 134 applicable and a description of the money services business or  
 135 deferred presentment provider activities proposed to be  
 136 conducted by the applicant in this state.  
 137 6. If the applicant or its parent is a publicly traded  
 138 company, copies of all filings made by the applicant with the  
 139 United States Securities and Exchange Commission, or with a  
 140 similar regulator in a country other than the United States,  
 141 within the preceding year.  
 142 7. The location at which the applicant proposes to  
 143 establish its principal place of business and any other  
 144 location, including branch offices and authorized vendors  
 145 operating in this state. For each branch office and each

Page 5 of 9

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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2013644c1

146 location of an authorized vendor, the applicant shall include  
 147 the nonrefundable fee required by s. 560.143.  
 148 8. The name and address of the clearing financial  
 149 institution or financial institutions through which the  
 150 applicant's payment instruments are drawn or through which the  
 151 payment instruments are payable.  
 152 9. The history of the applicant's material litigation,  
 153 criminal convictions, pleas of nolo contendere, and cases of  
 154 adjudication withheld.  
 155 10. The history of material litigation, arrests, criminal  
 156 convictions, pleas of nolo contendere, and cases of adjudication  
 157 withheld for each executive officer, director, controlling  
 158 shareholder, and responsible person.  
 159 11. The name of the registered agent in this state for  
 160 service of process unless the applicant is a sole proprietor.  
 161 12. Any other information specified in this chapter or by  
 162 rule.  
 163 (b) ~~In addition to the application form, submit:~~  
 164 ~~1.~~ A nonrefundable application fee as provided in s.  
 165 560.143.  
 166 (c) 2. Fingerprints for each person listed in subparagraph  
 167 (a) 3. for live-scan processing in accordance with rules adopted  
 168 by the commission.  
 169 1. The fingerprints may be submitted through a third-party  
 170 vendor authorized by the Department of Law Enforcement to  
 171 provide live-scan fingerprinting.  
 172 2. The Department of Law Enforcement must conduct the state  
 173 criminal history background check, and a federal criminal  
 174 history background check must be conducted through the Federal

Page 6 of 9

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597-02827-13 2013644c1

175 Bureau of Investigation.

176 3. All fingerprints submitted to the Department of Law

177 Enforcement must be submitted electronically and entered into

178 the statewide automated fingerprint identification system

179 established in s. 943.05(2)(b) and available for use in

180 accordance with s. 943.05(2)(g) and (h). The office shall pay an

181 annual fee to the Department of Law Enforcement to participate

182 in the system and shall inform the Department of Law Enforcement

183 of any person whose fingerprints no longer must be retained.

184 4. The costs of fingerprint processing, including the cost

185 of retaining the fingerprints, shall be borne by the person

186 subject to the background check.

187 5. The office shall review the results of the state and

188 federal criminal history background checks and determine whether

189 the applicant meets licensure requirements.

190 6. For purposes of this paragraph, fingerprints are not

191 required to be submitted if ~~A fingerprint card for each of the~~

192 ~~persons listed in subparagraph (a)3. unless~~ the applicant is a

193 publicly traded corporation~~, or is exempted from this chapter~~

194 under s. 560.104(1). ~~The fingerprints must be taken by an~~

195 ~~authorized law enforcement agency. The office shall submit the~~

196 ~~fingerprints to the Department of Law Enforcement for state~~

197 ~~processing, and the Department of Law Enforcement shall forward~~

198 ~~the fingerprints to the Federal Bureau of Investigation for~~

199 ~~federal processing. The cost of the fingerprint processing may~~

200 ~~be borne by the office, the employer, or the person subject to~~

201 ~~the criminal records background check. The office shall screen~~

202 ~~the background results to determine if the applicant meets~~

203 ~~licensure requirements. As used in this section, The term~~

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204 "publicly traded" means a stock is currently traded on a

205 national securities exchange registered with the federal

206 Securities and Exchange Commission or traded on an exchange in a

207 country other than the United States regulated by a regulator

208 equivalent to the Securities and Exchange Commission and the

209 disclosure and reporting requirements of such regulator are

210 substantially similar to those of the commission.

211 7. Licensees initially approved before October 1, 2013,

212 seeking renewal must submit fingerprints for each person listed

213 in subparagraph (a)3. for live-scan processing pursuant to this

214 paragraph. Such fingerprints must be submitted before the office

215 may renew licenses set to expire between April 30, 2014, and

216 December 31, 2015.

217 ~~(d)3-~~ A copy of the applicant's written anti-money

218 laundering program required under 31 C.F.R. s. 103.125.

219 ~~(e)4-~~ Within the time allotted by rule, any information

220 needed to resolve any deficiencies found in the application.

221 Section 5. Subsections (1) and (2) of section 560.143,

222 Florida Statutes, are amended to read

223 560.143 Fees.—

224 (1) LICENSE APPLICATION FEES.—The applicable non-refundable

225 fees must accompany an application for licensure:

226 (a) Part II.....\$375.

227 (b) Part III.....\$188.

228 (c) Per branch office.....\$38.

229 (d) For each location of an authorized

230 vendor.....\$38.

231 (e) Declaration as a deferred presentment

232 provider.....\$1,000.

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2013644c1

233           (f) Fingerprint retention fees as prescribed by rule.  
234           (g) License application fees for branch offices and  
235 authorized vendors are limited to \$20,000 when such fees are  
236 assessed as a result of a change in controlling interest as  
237 defined in s. 560.127.  
238           (2) LICENSE RENEWAL FEES.—The applicable non-refundable  
239 license renewal fees must accompany a renewal of licensure:  
240           (a) Part II.....\$750.  
241           (b) Part III.....\$375.  
242           (c) Per branch office.....\$38.  
243           (d) For each location of an authorized  
244 vendor.....\$38.  
245           (e) Declaration as a deferred presentment  
246 provider.....\$1,000.  
247           (f) Renewal fees for branch offices and authorized vendors  
248 are limited to \$20,000 biennially.  
249           (g) Fingerprint retention fees as prescribed by rule.  
250           Section 6. Except as otherwise expressly provided in this  
251 act and except for this section, which shall take effect upon  
252 this act becoming a law, this act shall take effect October 1,  
253 2013.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Gaming, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health  
and Human Services  
Banking and Insurance  
Commerce and Tourism  
Judiciary  
Rules  
Transportation

### JOINT COMMITTEE:

Joint Legislative Budget Commission

### SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

March 21, 2013

The Honorable Greg Evers, Chair  
Committee on Criminal Justice  
510 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Evers:

Senate Bill 644, related to Licensure by the Office of Financial Regulation, has been referred to the Committee on Criminal Justice. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Amanda Cannon, Staff Director

### REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

DON GAETZ  
President of the Senate

GARRETT RICHTER  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8

Meeting Date

Topic Licensure by OFR

Bill Number 644  
*(if applicable)*

Name FRENCH BROWN

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director of Legislative Affairs

Address 200 E. GAINES St  
*Street*

Phone 850-410-9544

TALLAHASSEE FL 32399  
*City State Zip*

E-mail FRENCH.BROWN@FLOFR.COM

Speaking:  For  Against  Information

Representing OFFICE OF FINANCIAL Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13

Meeting Date

Topic OFR Licensure

Bill Number 644  
*(if applicable)*

Name Warren Husband

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address PO Box 10909

Phone 850 205 9000

Street

Tallahassee FL 32302

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Securities Industry & Financial Markets Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Gaming, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health  
and Human Services  
Banking and Insurance  
Commerce and Tourism  
Judiciary  
Rules  
Transportation

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission

### SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

April 4, 2013

The Honorable Greg Evers, Chair  
Committee on Criminal Justice  
510 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Chairman Evers:

Thank you for the opportunity to present CS/SB 644, related to Licensure by the Office of Financial Regulation in your committee on Monday, April 8, 2013.

I will be unable to present this bill because of a scheduling conflict. I am requesting that my aide, Becky Kokkinos, be allowed to present this bill on my behalf.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Amanda Cannon, Staff Director

**REPLY TO:**

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

**BILL:** CS/CS/SB 650

**INTRODUCER:** Criminal Justice Committee; Agriculture Committee; and Senator Sachs

**SUBJECT:** Artificial Coloring and Sale of Certain Animals and Fowls

**DATE:** April 8, 2013

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Halley</u>	<u>AG</u>	<b>Fav/CS</b>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/CS/SB 650 prohibits a person, firm, or corporation from selling, bartering or giving away animals such as rabbits, baby chickens, and ducklings that have been artificially colored or dyed. It also prohibits the sale, offer for sale, or giving away of these animals if the animal is under a specified age. The prohibition does not apply to animals that are to be used or raised for agricultural purposes or for poultry or livestock exhibitions. It also does not apply to agricultural entities that use artificial dyes on animals for protective health purposes. Persons who violate the provisions of this act would be guilty of a misdemeanor of the second degree.

This bill creates section 828.1615 of the Florida Statutes.

**II. Present Situation:**

Dyeing baby animals, such as chicks, ducklings, and rabbits is a tradition at Easter. The dye is either injected in the incubating egg or sprayed on the hatchling. While poultry farmers claim that this does not harm the animal, the colorful animals are purchased by customers who may not stop to consider the responsibility of caring for the animals' long term. The Humane Society

does not have specific numbers, but it reports that already overburdened animal shelters nationwide see an increase in chicks, ducklings, and rabbits after the holiday.

The 1967 Legislature found that the dyeing process, as well as abuse and abandonment after the novelty wears off, caused many animals to die. To protect the animals, it passed a law prohibiting the artificial coloring and sale of certain animals and fowl.<sup>1</sup> The 2012 Legislature amended HB 1197 to repeal the ban on dyeing live animals. The expressed intention for the repeal was to allow dog groomers to dye the fur of dogs for grooming competitions.

Professional pet groomers and stylists have participated in dog grooming competitions for over 30 years. The competitions have become a phenomenon across the United States and internationally. As the industry grows and changes, these competitions have also evolved to include a new trend called Creative Grooming. Creative Grooming embodies the artistic side of the groomer. Dogs are groomed by using extravagant color schemes and designs that are carved or sculpted into the coat of the animal to make it look like other animals, celebrities, or works of art. Florida pet groomers feel that they are at a disadvantage if there is a state ban on dyeing animals.

### III. Effect of Proposed Changes:

**Section 1** creates s. 828.1615, F.S., to prohibit a person, firm, or corporation from bartering, selling, or giving away dyed or artificially colored animals such as rabbits, baby chickens, or ducklings. It prohibits baby chickens, ducklings or other fowl under four weeks of age, and rabbits under two months of age to be sold or given away as pets, toys, or merchandising premiums. This section does not apply to animals used or raised for agricultural purposes by persons with proper facilities to care for them, by agricultural entities for protective health purposes, or for poultry or livestock exhibitions. Persons who violate the provisions of this section would be guilty of a misdemeanor of the second degree.

**Section 2** provides that this act shall take effect July 1, 2013.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>1</sup> s. 828.161, F.S.



**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Criminal Justice on April 8, 2013:**

The committee substitute amends subsection (1) of the newly created s. 828.1615, F.S., to address the concerns of dog groomers by eliminating prohibition on dyeing or artificially coloring animals. The committee substitute prohibits a person, firm, or corporation from selling, bartering, or giving away any animal that has been dyed or artificially colored, including but not limited to rabbits, baby chickens, and ducklings.

**CS by Agriculture on April 1, 2013:**

The committee substitute clarifies that agricultural entities that use artificial dyes on animals for protective health purposes are exempt from the bill's prohibition to dye or artificially color animals. Agricultural operations vaccinate chicks with vaccines that contain a temporary dye, which in some cases will show color inside the mouth of a chick. In other cases after the chicks are hatched, they pass through a machine that sprays them with a light, colored mist containing an inoculation against diseases. The dye acts as a safety feature so that handlers know that all the chicks have been vaccinated and are protected from viruses, which could destroy entire flocks.

**B. Amendments:**

None.



389094

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2013	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Smith) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 16 - 19  
and insert:

(1) It is unlawful for a person, firm, or corporation, to sell, barter, or give away any animal or fowl, including but not limited to, rabbits, baby chickens, and ducklings that have been dyed or artificially colored.

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

And the title is amended as follows:

Delete line 7



389094

13 and insert:  
14       certain age; providing exceptions; providing that it  
15       is unlawful to sell, barter, or give away certain  
16       designated animals that have been dyed or colored;  
17       providing criminal



929876

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2013	.	
	.	
	.	
	.	

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The Committee on Criminal Justice (Gibson) recommended the following:

**Senate Amendment to Amendment (389094)**

Delete lines 6 - 8  
and insert:  
sell, barter, or give away any animal or fowl that has been dyed  
or artificially colored, including but not limited to rabbits,  
baby chickens, and ducklings.

By the Committee on Agriculture; and Senator Sachs

575-03308-13

2013650c1

A bill to be entitled

An act relating to the artificial coloring and sale of certain animals and fowls; creating s. 828.1615, F.S.; providing that it is unlawful for a person to dye or artificially color any animal or fowl; providing that it is unlawful to sell or give away animals of a certain age; providing exceptions; providing criminal penalties; providing an effective date.

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

Section 1. Section 828.1615, Florida Statutes, is created to read:

828.1615 Prohibiting artificial coloring and sale of certain animals and fowls; construction.-

(1) It is unlawful for a person to dye or artificially color any animal or fowl, including, but not limited to, rabbits, baby chickens, and ducklings, or to bring a dyed or artificially colored animal or fowl into this state.

(2) It is unlawful for a person to sell, offer for sale, or give away as merchandising premiums, baby chickens, ducklings, or other fowl under 4 weeks of age or rabbits under 2 months of age to be used as pets, toys, or retail premiums.

(3) This section does not apply to any animal or fowl, including, but not limited to, rabbits, baby chickens, and ducklings, to be used or raised for agricultural purposes by persons with proper facilities to care for them, by agricultural entities for protective health purposes, or for poultry or livestock exhibitions.

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

575-03308-13

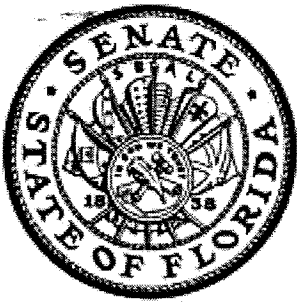
2013650c1

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

Section 2. This act shall take effect July 1, 2013.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



## THE FLORIDA SENATE

**Senator Maria Lorts Sachs**  
**Minority Leader Pro Tempore**  
District 34

Committees:

Gaming  
Vice Chair

Agriculture

Education

Appropriations  
Subcommittee on  
Education

Appropriations  
Subcommittee on Finance  
and Tax

Military Affairs, Space,  
and Domestic Security

Regulated Industries

STAFF:

Joshua Freeman  
Legislative Assistant

Caitlin Lewis  
Legislative Assistant

August Mangeney  
Legislative Assistant

April 1, 2013

The Office of Senator Evers  
308 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Evers:

I am writing to request that Senate Bill 650 (Artificial Coloring and Sale of Certain Animals and Fowl) be heard during the Criminal Justice Committee Meeting on Monday April 8<sup>th</sup>. If you have any questions feel free to contact me or my staff. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Maria Lorts Sachs".

Sen. Maria Sachs,  
District 34

Cc: Amanda Cannon  
Sue Arnold  
Ann McGraw  
Michael Bascom  
Molly Caddell  
David Murzin

17th Avenue, Suite E, Delray Beach, Florida 33445 (561) 279-1427  
Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5091

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

Don Gaetz  
President of the Senate

Garrett Richter  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 876

INTRODUCER: Senator Stargel

SUBJECT: Offenses Against Unborn Children

DATE: April 2, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davlantes</u>	<u>Stovall</u>	<u>HP</u>	<b>Fav/1 amendment</b>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/>            | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input checked="" type="checkbox"/> | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

SB 876 states that anyone who commits a crime causing bodily injury to or death of an unborn child commits a separate offense from any offenses committed against the mother of that child, and offenses committed against such a child are punished as if they had been committed against the pregnant mother. Assigning punishment for an offense against an unborn child does not require proof that the perpetrator had or should have had knowledge of the pregnancy or that he or she intended to cause death or harm to the child.

Notwithstanding any other provision of law, the death penalty may not be imposed for an offense against an unborn child. Nor does this bill permit the prosecution of:

- Any person for conduct relating to an abortion for which the woman or her legal representative gave permission, or for which there was lawfully implied consent;
- Any person giving medical treatment to a pregnant woman or her unborn child; or
- Any woman with respect to her unborn child.

The bill defines “unborn child” to mean any member of the species *Homo sapiens* at any stage of development who is carried in the womb. The bill also changes all statutory references to

“unborn quick child” and “viable fetus” to “unborn child” and provides cross-references to the previously mentioned definition.

The bill provides an effective date of October 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 775.021, 316.193, 435.05, 782.071, 782.09, and 921.022

## II. Present Situation:

### History of Prenatal Criminal Law

Beginning in the 17th century, the common law rule was that only children who were born alive were afforded protections of the criminal law.<sup>1</sup> This became known as the “born alive rule.” Due to the lack of medical technology in that time, it was difficult for doctors to know the health or condition of an unborn child; therefore, it was impossible to prove whether an assault on the mother was the proximate cause of the death of the fetus. The born alive rule became the standard in federal cases for imposing additional punishment on a perpetrator in crimes against an expectant mother. The born alive rule has been challenged many times; however, courts have upheld it stating that it is the job of the state legislatures to change the law.

Alternatively, some jurisdictions began adopting the rule that an unborn child is afforded protection of the criminal law at quickening, which was defined as “the first recognizable movements of the fetus, appearing usually from the sixteenth to eighteenth week of pregnancy.”<sup>2</sup> Quickening also became the evidentiary standard for determining whether a person violated an abortion statute because, at the time (early 20th century), it was the most certain way to determine whether a woman was pregnant or not.

Finally, many jurisdictions have determined that an unborn child is afforded protection under the law if the fetus is viable. This term has been defined as “the physical maturation or physiological capability of the fetus to live outside the womb.”<sup>3</sup> The Massachusetts Supreme Court became the first court to include viable unborn children in the statutory meaning of “person” for purposes of criminal laws.<sup>4</sup>

Due to the advancement in technology and challenges to the born alive rule, many state legislatures have enacted changes to their criminal laws to provide a criminal penalty for crimes against unborn children. Although many jurisdictions began enacting such laws, some people felt that no protection existed for an unborn victim of a federal crime.<sup>5</sup>

---

<sup>1</sup> Joseph L. Falvey, Jr., *Kill an Unborn Child – Go to Jail: The Unborn Victims of Violence Act of 2004 and Military Justice*, 53 NAVAL L. REV. 1, 1 (2006).

<sup>2</sup> *Id.* at 5 (quoting Clarke D. Forsythe, *Homicide of the Unborn Child: The Born Alive Rule and Other Legal Anachronisms*, 21 VAL. U. L. REV. 563, 567 (1987)).

<sup>3</sup> *Id.* at 6 (quoting Forsythe, *supra* note 2, at 569).

<sup>4</sup> *Id.*

<sup>5</sup> Jon O. Shimabukuro, *The Unborn Victims of Violence Act*, CRS Report for Congress (May 21, 2004), available at [http://assets.opencrs.com/rpts/RS21550\\_20040521.pdf](http://assets.opencrs.com/rpts/RS21550_20040521.pdf) (last visited March 14, 2013).



## Federal Unborn Victims of Violence Act<sup>6</sup>

The Unborn Victims of Violence Act (UVVA or act), signed into law on April 1, 2004, establishes a separate offense for harming or killing an unborn child during the commission of specified crimes.<sup>7</sup> Under the act, any person who injures or kills a “child in utero” during the commission of certain specified crimes is guilty of an offense separate from one involving the pregnant woman. Punishment for the separate offense is the same as if the offense had been committed against the pregnant woman. In addition, an offense does not require proof that the person engaging in the misconduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death of, or bodily injury to, the child in utero. The term “child in utero” is defined by the act to mean “a member of the species homo sapiens, at any stage of development, who is carried in the womb.” The death penalty is not applicable to an offense under the UVVA.<sup>8</sup>

In an attempt to preserve a woman’s right to have an abortion, there are three specific exclusions from the prohibitions of the act:

- Persons conducting consensual, legal abortions;
- Persons conducting any medical treatment of the pregnant woman or unborn child; and
- Any woman with respect to her unborn child.

Currently, 38 states, including Florida, have fetal homicide laws. Twenty-three states, not including Florida, have fetal homicide laws that apply to the earliest stages of pregnancy (“any state of gestation,” “conception,” “fertilization” or “post-fertilization”).<sup>9</sup>

## Florida Law

Section 782.09, F.S., is specifically aimed at holding a defendant equally accountable for the death of an unborn quick child as he or she would have been if the mother or any other person died as a result of the defendant’s actions. The homicide crimes included in this section are first degree (capital) murder, second degree murder, third degree murder, and manslaughter. For purposes of defining “unborn quick child,” this statute references the definition of “viable fetus” in s. 782.071, F.S.

Section 782.071, F.S., which is Florida’s vehicular homicide statute, holds a defendant equally accountable for the death of a viable fetus as for the death of the mother or any other person killed as a result of the defendant’s actions. Section 316.193, F.S., provides that a defendant who kills an unborn quick child as a result of committing DUI manslaughter is equally as culpable as if he or she killed any other human being. For purposes of defining “unborn quick child,” the statute references the definition of “viable fetus” in s. 782.071, F.S.

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<sup>6</sup> The information in this section of the Present Situation of this bill analysis is from the CRS Report for Congress. *Id.*

<sup>7</sup> See 18 U.S.C. s. 1841 and 10 U.S.C. s. 919a.

<sup>8</sup> 18 U.S.C. s. 1841(a)(2)(D).

<sup>9</sup> National Conference of State Legislatures, *Fetal Homicide Laws*, <http://www.ncsl.org/issues-research/health/fetal-homicide-state-laws.aspx> . Last visited on March 14, 2013.

The term “viable fetus” is defined in s. 782.071(2), F.S., which states: “a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.”<sup>10</sup>

In 1989, the Florida Supreme Court stated that “the potentiality of life in the fetus becomes compelling at the point in time when the fetus becomes viable.”<sup>11</sup> Further, the court provided the following definition of viability:

Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures. Under current standards, this point generally occurs upon completion of the second trimester. [N]o medical evidence exists indicating that technological improvements will move viability forward beyond twenty-three to twenty-four weeks gestation within the foreseeable future due to the anatomic threshold of fetal development.<sup>12</sup>

Although Florida law uses the definition of “viable fetus” to define “unborn quick child,” the specific term “unborn quick child” is not defined in statute similarly to how it has been defined by the courts. In *Stokes v. Liberty Mutual Insurance Co.*, the Florida Supreme Court used a medical dictionary definition of “quick” in its analysis of a wrongful death claim. This term was defined as follows: Pregnant with a child the movement of which is felt.<sup>13</sup> However, Justice Ervin offered a different definition of “quick child” in a concurring opinion in a case overturning a conviction for unlawful abortion. Specifically, Justice Ervin said that a woman is pregnant with a quick child “when the embryo (has) advanced to that degree of maturity where the child had a separate and independent existence, and the woman has herself felt the child alive and quick within her.”<sup>14</sup>

### III. Effect of Proposed Changes:

**Section 1** provides a short title for the bill, the Florida Unborn Victims of Violence Act.

**Section 2** adds a subsection to s. 775.021, F.S., related to the rules of construction for the Florida Criminal Code, to state that anyone who commits a crime that causes bodily injury to or death of an unborn child commits a separate offense from any offenses committed against the mother of that child.

Accordingly, under this provision, offenses that injure an unborn child would become chargeable offenses on par with the homicide offenses that are chargeable under current law. Injury to the unborn child, an element of violent crimes such as battery or aggravated battery, would likely require some delay in prosecution of these crimes and almost certainly will require medical expert testimony.

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<sup>10</sup> The term “viable fetus” is commonly used in abortion case law.

<sup>11</sup> *In re T.W.*, 551 So. 2d 1186, 1193 (Fla. 1989)

<sup>12</sup> *Id.* at 1194 (internal citation omitted).

<sup>13</sup> *Stokes v. Liberty Mutual Insurance Co.*, 213 So. 2d 695, 697 (Fla. 1968)

<sup>14</sup> *Walsingham v. State*, 250 So. 2d 857 (Fla. 1971) (Ervin, J., specially concurring) (quoting *State v. Steadman*, 51 S.E.2d 91, 93 (1948)).

Any offense committed against an unborn child is punished as if that offense had been committed against the pregnant mother. However, notwithstanding any other provision of law, the death penalty may not be imposed for an offense against an unborn child.

The bill states that an offense against an unborn child does not require proof that the perpetrator had or should have had knowledge of the pregnancy or that he or she intended to cause death or harm to the child. This removes the intent element from any crime against an unborn child.

The new subsection does not permit the prosecution of:

- Any person for conduct relating to an abortion for which the woman or her legal representative gave permission, or for which there was lawfully implied consent;
- Any person giving medical treatment to a pregnant woman or her unborn child; or
- Any woman with respect to her unborn child.

The bill defines “unborn child” to mean any member of the species *Homo sapiens* at any stage of development who is carried in the womb. This definition eliminates any issues of proof regarding the viability or length of a pregnancy.

**Section 3** amends s. 316.193, F.S., concerning penalties for driving under the influence, to change any references to “unborn quick child” to simply “unborn child.” It also provides a cross-reference to the definition of “unborn child” which the bill adds to s. 775.021, F.S.

**Section 4** amends s. 435.05, F.S., concerning employment screening, to change the term “unborn quick child” to “unborn child.”

**Section 5** amends s. 782.071, F.S., concerning vehicular homicide, to define “vehicular homicide” as the killing of a human being or of an unborn child (rather than of a viable fetus) by and injury to the mother. It also provides a cross-reference to the definition of “unborn child” which the bill adds to s. 775.021, F.S.

**Section 6** amends s. 782.09, F.S., concerning the unlawful killing of an unborn child by injuries to the mother, to change all references to “unborn quick child” to “unborn child.” It also provides a cross-reference to the definition of “unborn child” which the bill adds to s. 775.021, F.S.

**Section 7** amends s. 921.022(3), F.S., Level 7 of the Criminal Punishment Code, to change a reference to “viable fetus” to “unborn child” to correspond with changes made earlier in the bill related to vehicular homicide.

**Section 8** provides an effective date of October 1, 2013.

**Other Potential Implications:**

Under current law, s. 782.071(3), F.S., creates a specific right of action for civil damages under s. 768.19, F.S., “under all circumstances, for all deaths” described in the vehicular homicide statute. As previously explained, the vehicular homicide statute currently contains the term “viable fetus.” This bill may necessarily increase the number of wrongful death claims due to the change in the law which eliminates proof regarding viability or length of pregnancy.<sup>15</sup>

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

This bill eliminates the use of the terms “unborn quick child” and “viable fetus” within Florida’s criminal laws, and replaces them with “unborn child.” The bill provides that an “unborn child” is “a member of the species *homo sapiens*, at any stage of development, who is carried in the womb.” This is the same definition used in the federal Unborn Victims of Violence Act (UVVA or act).

Similarly, Illinois’ and Minnesota’s prenatal criminal laws mirror the UVVA. Courts in Illinois and Minnesota have addressed the constitutionality of their state’s prenatal criminal laws and have declined to invalidate them. Although it cannot be known how Florida courts would interpret and apply the changes made by this bill, an examination of the cases from Illinois and Minnesota may provide some guidance as to how a court in Florida may consider a similar case.

In *State v. Merrill*, 450 N.W.2d 318 (Minn. 1990), the Minnesota Supreme Court concluded that the state’s unborn child homicide statutes did not violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and were not unconstitutionally vague. Merrill shot a woman who was pregnant with a 27- or 28-day-old embryo. With respect to his equal protection claim, Merrill argued that the statutes subjected him to prosecution for ending a pregnancy while allowing a pregnant woman to terminate a nonviable fetus or embryo without criminal consequences. Merrill contended that the statutes treated similarly situated persons differently.

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<sup>15</sup> The text of s. 768.19, F.S., refers to the death or injury of a “person.”

The court rejected Merrill's equal protection claim on the grounds that the defendant and a pregnant woman are not similarly situated: "The defendant who assaults a pregnant woman causing the death of the fetus she is carrying destroys the fetus without the consent of the woman. This is not the same as the woman who elects to have her pregnancy terminated by one legally authorized to perform the act." Unlike the assailant who has no right to kill a fetus, the pregnant woman has a right to decide to terminate her pregnancy. The actions of the woman's doctor are based on the woman's constitutionally protected rights under *Roe v. Wade*.<sup>16</sup>

Merrill advanced two arguments for finding the statutes to be unconstitutionally vague. First, he contended that the statutes failed to give fair warning of the prohibited conduct. Merrill maintained that it was unfair to punish an assailant for the murder of an unborn child when neither he nor the pregnant woman may be aware of the pregnancy. However, the court found that the statutes provided fair warning based on the doctrine of transferred intent. The court noted that even if the offender did not intend to kill a particular victim, he should have fair warning that he would be held criminally accountable given that the same type of harm would result if another victim was killed.

Merrill's second argument was that the statutes encouraged arbitrary and discriminatory enforcement by using the phrase "cause the death of an unborn child"<sup>17</sup> to identify prohibited conduct without actually defining when death may occur. Merrill believed that the failure to identify when death occurs for the unborn child would result in judges and juries providing their own definitions. Moreover, Merrill asserted that because an embryo is not alive, it could not experience death.

The court determined that to have life means "to have the property of all living things to grow, to become." The court avoided the question of whether the unborn child should be considered a person or human being. Instead, the court observed that criminal liability "requires only that the embryo be a living organism that is growing into a human being. Death occurs when the embryo is no longer living, when it ceases to have the properties of life." Thus, the trier of fact would simply have to determine whether an assailant's acts caused the embryo or unborn child to stop growing or stop showing the properties of life.

In *People v. Ford*, 581 N.E.2d 1189 (Ill. App. Ct. 1991), the Fourth District Appellate Court of Illinois concluded similarly that the state's fetal homicide statute did not violate the Equal Protection Clause of the Fourteenth Amendment and was not unconstitutionally vague. Like in *Merrill*, Ford argued that the statute treated similarly situated people differently. While a pregnant woman could terminate her nonviable fetus without punishment, an assailant would face criminal penalties for killing such a fetus. Following the Minnesota Supreme Court, the Illinois court found that the defendant and a pregnant woman are not similarly situated. In addition, the court determined that the statute could be upheld as rationally related to a legitimate governmental purpose. Because the statute did not affect a fundamental right held by the defendant, and because it did not

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<sup>16</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>17</sup> Minnesota defines "unborn child" as "the unborn offspring of a human being conceived, but not yet born." See M.S.A. s. 609.266.

discriminate against a suspect class, the validity of the statute could be considered under the rational basis standard of review. The court concluded that the statute was rationally related to a legitimate governmental interest in protecting the potentiality of human life.

Ford's vagueness argument focused on the statute's use of the phrase "cause the death of an unborn child."<sup>18</sup> Ford contended that the absence of statutory definitions for when life begins and death occurs would result in the application of subjective definitions by the trier of fact, and lead to the arbitrary and discriminatory enforcement of the statute. Citing *Merrill*, the court maintained that the trier of fact would be required only to determine whether there was an embryo or fetus that was growing into a human being, and whether because of the acts of an assailant, that growing was stopped. The statute did not require the trier of fact to apply its subjective views.

Finally, Ohio's prenatal criminal legislation was challenged on Eighth Amendment grounds in *Coleman v. DeWitt*, 282 F.3d 908 (6th Cir. 2002). The Eighth Amendment not only protects individuals from cruel and unusual punishment, but also from sentences that are disproportionate to the committed crime. The United States Supreme Court set out a three-prong test for determining whether a sentence is disproportionate.<sup>19</sup> The first prong requires an examination of the gravity of the offense and the harshness of the penalty given. The second prong compares the defendant's sentence to the sentences of other criminals in the same jurisdiction convicted of the same offense. The final prong requires the court to examine how the same crime is treated in other jurisdictions.<sup>20</sup>

The court in *Coleman*, found that the defendant's sentence was not grossly disproportionate to the crime committed and therefore did not violate the Eighth Amendment. Specifically, the court held:

Coleman's sentence of nine years for involuntary manslaughter is far from the "gross disproportionality" required to offend the Eighth Amendment. Coleman's actions were violent and deprived Williams of her child, or at least the ability to exercise her rights over her pregnancy. At least as important as a woman's right to terminate her pregnancy is her right to choose to carry her child to term. In a jurisprudence that finds mandatory life sentences for the non-violent possession of cocaine constitutionally permissible, we would be hard-pressed to find nine years for Coleman's violent act beyond the constitutional pale. Indeed, the Supreme Court has never held unconstitutional a sentence less severe than life imprisonment without the possibility of parole.<sup>21</sup>

One legal scholar has also done a more extensive analysis on whether a constitutional challenge against the UVVA would survive or not. This scholar found that prosecutions

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<sup>18</sup> Illinois defines "unborn child" as "any individual of the human species from fertilization until birth." See 720 ICS 5/9-1.2.

<sup>19</sup> See *Solem v. Helm*, 463 U.S. 277 (1983).

<sup>20</sup> Falvey, Jr., *supra* note 1, at 24.

<sup>21</sup> *Coleman*, 282 F.3d at 915 (internal citations omitted).

under the UVVA do not appear to constitute cruel and unusual punishment in violation of the Eighth Amendment.<sup>22</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Perpetrators of crimes against unborn children at any stage of development may be prosecuted.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on February 27, 2013, and determined that the bill would have an indeterminate impact upon the Department of Corrections.<sup>23</sup>

The Florida Prosecuting Attorney's Association submitted the following explanation regarding potential fiscal impact to the state attorneys: "The change in definition has the potential for an additional workload for the prosecutors especially in DUI Manslaughters, Agg Batteries and Domestic Batteries, etc. This type of case may require expenditure of tax dollars for experts on cause of death of the "unborn" child as we will need to show direct connection between the act and "unborn" child's death with no intervening factors such as mother's health, care, etc."<sup>24</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>22</sup> See Falvey, Jr., *supra* note 1, at 17, 24-27.

<sup>23</sup> Criminal Justice Impact Conference, *Impact of SB 876- Offenses Against Unborn Children*. A copy is on file with the Senate Health Policy Committee.

<sup>24</sup> Florida Prosecuting Attorney's Association, projected fiscal impact, March 4, 2013. On file with Senate Criminal Justice Committee staff.

B. Amendments:

**Barcode 714942 by Health Policy on March 20, 2013:**

The amendment removes the short title of the bill. (WITH TITLE AMENDMENT)

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Stargel

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A bill to be entitled

An act relating to offenses against unborn children; providing a short title; amending s. 775.021, F.S.; providing a rule of construction that a person who engages in conduct that violates any provision of the Florida Criminal Code or of a criminal offense defined by another statute and causes the death of, or bodily injury to, an unborn child commits a separate offense if such an offense is not otherwise specifically provided for; providing for criminal penalties for such an offense; specifying that certain types of knowledge or intent are not necessary for such an offense; providing exceptions; providing a definition; amending ss. 316.193, 435.04, 782.071, 782.09, and 921.0022, F.S.; defining and substituting the term "unborn child" for similar terms used in provisions relating to driving under the influence, employment background screening standards, vehicular homicide, the killing of an unborn quick child by injury to the child's mother; and the offense severity ranking chart of the Criminal Punishment Code, respectively; conforming terminology; providing an effective date.

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

Section 1. This act may be cited as the "Florida Unborn Victims of Violence Act."

Section 2. Subsection (5) is added to section 775.021, Florida Statutes, to read:

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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775.021 Rules of construction.—

(5) Whoever commits an act that violates any provision of this code or commits a criminal offense defined by another statute and thereby causes the death of, or bodily injury to, an unborn child commits a separate offense if the provision or statute does not otherwise specifically provide a separate offense for such death or injury to an unborn child.

(a) Except as otherwise provided in this subsection, the punishment for a separate offense under this subsection is the same as the punishment provided under this code or other statute for that conduct had the injury or death occurred to the mother of the unborn child.

(b) An offense under this subsection does not require proof that the person engaging in the conduct:

1. Had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

2. Intended to cause the death of, or bodily injury to, the unborn child.

(c) Notwithstanding any other provision of law, the death penalty may not be imposed for an offense under this subsection.

(d) This subsection does not permit the prosecution:

1. Of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

2. Of any person for any medical treatment of the pregnant woman or her unborn child; or

3. Of any woman with respect to her unborn child.

(e) As used in this subsection, the term "unborn child"

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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59 means a member of the species homo sapiens, at any stage of  
60 development, who is carried in the womb.

61 Section 3. Paragraph (c) of subsection (3) of section  
62 316.193, Florida Statutes, is amended to read:

63 316.193 Driving under the influence; penalties.—

64 (3) Any person:

65 (c) Who, by reason of such operation, causes or contributes  
66 to causing:

67 1. Damage to the property or person of another commits a  
68 misdemeanor of the first degree, punishable as provided in s.  
69 775.082 or s. 775.083.

70 2. Serious bodily injury to another, as defined in s.  
71 316.1933, commits a felony of the third degree, punishable as  
72 provided in s. 775.082, s. 775.083, or s. 775.084.

73 3. The death of any human being or unborn ~~quick~~ child  
74 commits DUI manslaughter, and commits:

75 a. A felony of the second degree, punishable as provided in  
76 s. 775.082, s. 775.083, or s. 775.084.

77 b. A felony of the first degree, punishable as provided in  
78 s. 775.082, s. 775.083, or s. 775.084, if:

79 (I) At the time of the crash, the person knew, or should  
80 have known, that the crash occurred; and

81 (II) The person failed to give information and render aid  
82 as required by s. 316.062.

83

84 For purposes of this subsection, the ~~definition of the term~~  
85 “unborn ~~quick~~ child” has the same meaning as provided in s.  
86 775.021(5) shall be determined in accordance with the definition  
87 of viable fetus as set forth in s. 782.071. A person who is

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88 convicted of DUI manslaughter shall be sentenced to a mandatory  
89 minimum term of imprisonment of 4 years.

90 Section 4. Paragraph (g) of subsection (2) of section  
91 435.04, Florida Statutes, is amended to read:

92 435.04 Level 2 screening standards.—

93 (2) The security background investigations under this  
94 section must ensure that no persons subject to the provisions of  
95 this section have been arrested for and are awaiting final  
96 disposition of, have been found guilty of, regardless of  
97 adjudication, or entered a plea of nolo contendere or guilty to,  
98 or have been adjudicated delinquent and the record has not been  
99 sealed or expunged for, any offense prohibited under any of the  
100 following provisions of state law or similar law of another  
101 jurisdiction:

102 (g) Section 782.09, relating to killing of an unborn ~~quick~~  
103 child by injury to the mother.

104 Section 5. Section 782.071, Florida Statutes, is amended to  
105 read:

106 782.071 Vehicular homicide.—“Vehicular homicide” is the  
107 killing of a human being, or the killing of an unborn child a  
108 ~~viable fetus~~ by any injury to the mother, caused by the  
109 operation of a motor vehicle by another in a reckless manner  
110 likely to cause the death of, or great bodily harm to, another.

111 (1) Vehicular homicide is:

112 (a) A felony of the second degree, punishable as provided  
113 in s. 775.082, s. 775.083, or s. 775.084.

114 (b) A felony of the first degree, punishable as provided in  
115 s. 775.082, s. 775.083, or s. 775.084, if:

116 1. At the time of the accident, the person knew, or should

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117 have known, that the accident occurred; and

118 2. The person failed to give information and render aid as  
119 required by s. 316.062.

120

121 This paragraph does not require that the person knew that the  
122 accident resulted in injury or death.

123 (2) For purposes of this section, the term "unborn child"  
124 has the same meaning as provided in s. 775.021(5) a fetus is  
125 viable when it becomes capable of meaningful life outside the  
126 womb through standard medical measures.

127 (3) A right of action for civil damages shall exist under  
128 s. 768.19, under all circumstances, for all deaths described in  
129 this section.

130 (4) In addition to any other punishment, the court may  
131 order the person to serve 120 community service hours in a  
132 trauma center or hospital that regularly receives victims of  
133 vehicle accidents, under the supervision of a registered nurse,  
134 an emergency room physician, or an emergency medical technician  
135 pursuant to a voluntary community service program operated by  
136 the trauma center or hospital.

137 Section 6. Section 782.09, Florida Statutes, is amended to  
138 read:

139 782.09 Killing of unborn ~~quick~~ child by injury to mother.—

140 (1) The unlawful killing of an unborn ~~quick~~ child, by any  
141 injury to the mother of such child which would be murder if it  
142 resulted in the death of such mother, shall be deemed murder in  
143 the same degree as that which would have been committed against  
144 the mother. Any person, other than the mother, who unlawfully  
145 kills an unborn ~~quick~~ child by any injury to the mother:

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146 (a) Which would be murder in the first degree constituting  
147 a capital felony if it resulted in the mother's death commits  
148 murder in the first degree constituting a capital felony,  
149 punishable as provided in s. 775.082.

150 (b) Which would be murder in the second degree if it  
151 resulted in the mother's death commits murder in the second  
152 degree, a felony of the first degree, punishable as provided in  
153 s. 775.082, s. 775.083, or s. 775.084.

154 (c) Which would be murder in the third degree if it  
155 resulted in the mother's death commits murder in the third  
156 degree, a felony of the second degree, punishable as provided in  
157 s. 775.082, s. 775.083, or s. 775.084.

158 (2) The unlawful killing of an unborn ~~quick~~ child by any  
159 injury to the mother of such child which would be manslaughter  
160 if it resulted in the death of such mother shall be deemed  
161 manslaughter. A person who unlawfully kills an unborn ~~quick~~  
162 child by any injury to the mother which would be manslaughter if  
163 it resulted in the mother's death commits manslaughter, a felony  
164 of the second degree, punishable as provided in s. 775.082, s.  
165 775.083, or s. 775.084.

166 (3) The death of the mother resulting from the same act or  
167 criminal episode that caused the death of the unborn ~~quick~~ child  
168 does not bar prosecution under this section.

169 (4) This section does not authorize the prosecution of any  
170 person in connection with a termination of pregnancy pursuant to  
171 chapter 390.

172 (5) For purposes of this section, the ~~definition of the~~  
173 term "unborn ~~quick~~ child" has the same meaning as provided in s.  
174 775.021(5) shall be determined in accordance with the definition

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 175 ~~of viable fetus as set forth in s. 782.071.~~  
 176 Section 7. Paragraph (g) of subsection (3) of section  
 177 921.0022, Florida Statutes, is amended to read:  
 178 921.0022 Criminal Punishment Code; offense severity ranking  
 179 chart.—  
 180 (3) OFFENSE SEVERITY RANKING CHART  
 181 (g) LEVEL 7  
 182  
 Florida Felony  
 Statute Degree Description  
 183  
 316.027(1)(b) 1st Accident involving death, failure to  
 184 stop; leaving scene.  
 316.193(3)(c)2. 3rd DUI resulting in serious bodily injury.  
 185  
 316.1935(3)(b) 1st Causing serious bodily injury or death  
 to another person; driving at high  
 speed or with wanton disregard for  
 safety while fleeing or attempting to  
 elude law enforcement officer who is in  
 a patrol vehicle with siren and lights  
 activated.  
 186  
 327.35(3)(c)2. 3rd Vessel BUI resulting in serious bodily  
 injury.  
 187  
 402.319(2) 2nd Misrepresentation and negligence or  
 intentional act resulting in great

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 188 bodily harm, permanent disfiguration,  
 permanent disability, or death.  
 409.920 3rd Medicaid provider fraud; \$10,000 or  
 189 (2)(b)1.a. less.  
 409.920 2nd Medicaid provider fraud; more than  
 190 (2)(b)1.b. \$10,000, but less than \$50,000.  
 456.065(2) 3rd Practicing a health care profession  
 without a license.  
 191  
 456.065(2) 2nd Practicing a health care profession  
 without a license which results in  
 serious bodily injury.  
 192  
 458.327(1) 3rd Practicing medicine without a license.  
 193  
 459.013(1) 3rd Practicing osteopathic medicine without  
 a license.  
 194  
 460.411(1) 3rd Practicing chiropractic medicine  
 without a license.  
 195  
 461.012(1) 3rd Practicing podiatric medicine without a  
 license.  
 196  
 462.17 3rd Practicing naturopathy without a  
 license.

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197 463.015(1) 3rd Practicing optometry without a license.

198 464.016(1) 3rd Practicing nursing without a license.

199 465.015(2) 3rd Practicing pharmacy without a license.

200 466.026(1) 3rd Practicing dentistry or dental hygiene  
without a license.

201 467.201 3rd Practicing midwifery without a license.

202 468.366 3rd Delivering respiratory care services  
without a license.

203 483.828(1) 3rd Practicing as clinical laboratory  
personnel without a license.

204 483.901(9) 3rd Practicing medical physics without a  
license.

205 484.013(1)(c) 3rd Preparing or dispensing optical devices  
without a prescription.

206 484.053 3rd Dispensing hearing aids without a  
license.

207 494.0018(2) 1st Conviction of any violation of ss.  
494.001-494.0077 in which the total

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208 money and property unlawfully obtained  
exceeded \$50,000 and there were five or  
more victims.

560.123(8)(b)1. 3rd Failure to report currency or payment  
instruments exceeding \$300 but less  
than \$20,000 by a money services  
business.

209 560.125(5)(a) 3rd Money services business by unauthorized  
person, currency or payment instruments  
exceeding \$300 but less than \$20,000.

210 655.50(10)(b)1. 3rd Failure to report financial  
transactions exceeding \$300 but less  
than \$20,000 by financial institution.

211 775.21(10)(a) 3rd Sexual predator; failure to register;  
failure to renew driver's license or  
identification card; other registration  
violations.

212 775.21(10)(b) 3rd Sexual predator working where children  
regularly congregate.

213 775.21(10)(g) 3rd Failure to report or providing false  
information about a sexual predator;  
harbor or conceal a sexual predator.

214

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215 782.051(3) 2nd Attempted felony murder of a person by  
a person other than the perpetrator or  
the perpetrator of an attempted felony.

782.07(1) 2nd Killing of a human being by the act,  
procurement, or culpable negligence of  
another (manslaughter).

216 782.071 2nd Killing of a human being or unborn  
child ~~viable fetus~~ by the operation of  
a motor vehicle in a reckless manner  
(vehicular homicide).

217 782.072 2nd Killing of a human being by the  
operation of a vessel in a reckless  
manner (vessel homicide).

218 784.045(1)(a)1. 2nd Aggravated battery; intentionally  
causing great bodily harm or  
disfigurement.

219 784.045(1)(a)2. 2nd Aggravated battery; using deadly  
weapon.

220 784.045(1)(b) 2nd Aggravated battery; perpetrator aware  
victim pregnant.

221 784.048(4) 3rd Aggravated stalking; violation of  
injunction or court order.

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222 784.048(7) 3rd Aggravated stalking; violation of court  
order.

223 784.07(2)(d) 1st Aggravated battery on law enforcement  
officer.

224 784.074(1)(a) 1st Aggravated battery on sexually violent  
predators facility staff.

225 784.08(2)(a) 1st Aggravated battery on a person 65 years  
of age or older.

226 784.081(1) 1st Aggravated battery on specified  
official or employee.

227 784.082(1) 1st Aggravated battery by detained person  
on visitor or other detainee.

228 784.083(1) 1st Aggravated battery on code inspector.

229 787.06(3)(a) 1st Human trafficking using coercion for  
labor and services.

230 787.06(3)(e) 1st Human trafficking using coercion for  
labor and services by the transfer or  
transport of any individual from  
outside Florida to within the state.

231

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 790.07(4) 1st Specified weapons violation subsequent  
 to previous conviction of s. 790.07(1)  
 or (2).  
 232 790.16(1) 1st Discharge of a machine gun under  
 specified circumstances.  
 233 790.165(2) 2nd Manufacture, sell, possess, or deliver  
 hoax bomb.  
 234 790.165(3) 2nd Possessing, displaying, or threatening  
 to use any hoax bomb while committing  
 or attempting to commit a felony.  
 235 790.166(3) 2nd Possessing, selling, using, or  
 attempting to use a hoax weapon of mass  
 destruction.  
 236 790.166(4) 2nd Possessing, displaying, or threatening  
 to use a hoax weapon of mass  
 destruction while committing or  
 attempting to commit a felony.  
 237 790.23 1st,PBL Possession of a firearm by a person who  
 qualifies for the penalty enhancements  
 provided for in s. 874.04.  
 238 794.08(4) 3rd Female genital mutilation; consent by a  
 parent, guardian, or a person in

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 custodial authority to a victim younger  
 than 18 years of age.  
 239 796.03 2nd Procuring any person under 16 years for  
 prostitution.  
 240 800.04(5)(c)1. 2nd Lewd or lascivious molestation; victim  
 less than 12 years of age; offender  
 less than 18 years.  
 241 800.04(5)(c)2. 2nd Lewd or lascivious molestation; victim  
 12 years of age or older but less than  
 16 years; offender 18 years or older.  
 242 806.01(2) 2nd Maliciously damage structure by fire or  
 explosive.  
 243 810.02(3)(a) 2nd Burglary of occupied dwelling; unarmed;  
 no assault or battery.  
 244 810.02(3)(b) 2nd Burglary of unoccupied dwelling;  
 unarmed; no assault or battery.  
 245 810.02(3)(d) 2nd Burglary of occupied conveyance;  
 unarmed; no assault or battery.  
 246 810.02(3)(e) 2nd Burglary of authorized emergency  
 vehicle.  
 247

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812.014(2)(a)1. 1st Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.

248

812.014(2)(b)2. 2nd Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.

249

812.014(2)(b)3. 2nd Property stolen, emergency medical equipment; 2nd degree grand theft.

250

812.014(2)(b)4. 2nd Property stolen, law enforcement equipment from authorized emergency vehicle.

251

812.0145(2)(a) 1st Theft from person 65 years of age or older; \$50,000 or more.

252

812.019(2) 1st Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

253

812.131(2)(a) 2nd Robbery by sudden snatching.

254

812.133(2)(b) 1st Carjacking; no firearm, deadly weapon, or other weapon.

255

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817.234(8)(a) 2nd Solicitation of motor vehicle accident victims with intent to defraud.

256

817.234(9) 2nd Organizing, planning, or participating in an intentional motor vehicle collision.

257

817.234(11)(c) 1st Insurance fraud; property value \$100,000 or more.

258

817.2341 1st Making false entries of material fact (2)(b) & or false statements regarding property values relating to the solvency of an (3)(b) insuring entity which are a significant cause of the insolvency of that entity.

259

825.102(3)(b) 2nd Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

260

825.103(2)(b) 2nd Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.

261

827.03(2)(b) 2nd Neglect of a child causing great bodily harm, disability, or disfigurement.

262

827.04(3) 3rd Impregnation of a child under 16 years

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of age by person 21 years of age or  
older.

263 837.05(2) 3rd Giving false information about alleged  
capital felony to a law enforcement  
officer.

264 838.015 2nd Bribery.

265 838.016 2nd Unlawful compensation or reward for  
official behavior.

266 838.021(3)(a) 2nd Unlawful harm to a public servant.

267 838.22 2nd Bid tampering.

268 847.0135(3) 3rd Solicitation of a child, via a computer  
service, to commit an unlawful sex act.

269 847.0135(4) 2nd Traveling to meet a minor to commit an  
unlawful sex act.

270 872.06 2nd Abuse of a dead human body.

271 874.10 1st,PBL Knowingly initiates, organizes, plans,  
finances, directs, manages, or  
supervises criminal gang-related  
activity.

272

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893.13(1)(c)1. 1st Sell, manufacture, or deliver cocaine  
(or other drug prohibited under s.  
893.03(1)(a), (1)(b), (1)(d), (2)(a),  
(2)(b), or (2)(c)4.) within 1,000 feet  
of a child care facility, school, or  
state, county, or municipal park or  
publicly owned recreational facility or  
community center.

273 893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine  
or other drug prohibited under s.  
893.03(1)(a), (1)(b), (1)(d), (2)(a),  
(2)(b), or (2)(c)4., within 1,000 feet  
of property used for religious services  
or a specified business site.

274 893.13(4)(a) 1st Deliver to minor cocaine (or other s.  
893.03(1)(a), (1)(b), (1)(d), (2)(a),  
(2)(b), or (2)(c)4. drugs).

275 893.135(1)(a)1. 1st Trafficking in cannabis, more than 25  
lbs., less than 2,000 lbs.

276 893.135 1st Trafficking in cocaine, more than 28  
(1)(b)1.a. grams, less than 200 grams.

277 893.135 1st Trafficking in illegal drugs, more than  
(1)(c)1.a. 4 grams, less than 14 grams.

278

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279 893.135(1)(d)1. 1st Trafficking in phencyclidine, more than  
28 grams, less than 200 grams.

280 893.135(1)(e)1. 1st Trafficking in methaqualone, more than  
200 grams, less than 5 kilograms.

281 893.135(1)(f)1. 1st Trafficking in amphetamine, more than  
14 grams, less than 28 grams.

282 893.135 (1)(g)1.a. 1st Trafficking in flunitrazepam, 4 grams  
or more, less than 14 grams.

893.135 (1)(h)1.a. 1st Trafficking in gamma-hydroxybutyric  
acid (GHB), 1 kilogram or more, less  
than 5 kilograms.

283 893.135 (1)(j)1.a. 1st Trafficking in 1,4-Butanediol, 1  
kilogram or more, less than 5  
kilograms.

284 893.135 (1)(k)2.a. 1st Trafficking in Phenethylamines, 10  
grams or more, less than 200 grams.

285 893.1351(2) 2nd Possession of place for trafficking in  
or manufacturing of controlled  
substance.

286 896.101(5)(a) 3rd Money laundering, financial  
transactions exceeding \$300 but less

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287 than \$20,000.

896.104(4)(a)1. 3rd Structuring transactions to evade  
reporting or registration requirements,  
financial transactions exceeding \$300  
but less than \$20,000.

288 943.0435(4)(c) 2nd Sexual offender vacating permanent  
residence; failure to comply with  
reporting requirements.

289 943.0435(8) 2nd Sexual offender; remains in state after  
indicating intent to leave; failure to  
comply with reporting requirements.

290 943.0435(9)(a) 3rd Sexual offender; failure to comply with  
reporting requirements.

291 943.0435(13) 3rd Failure to report or providing false  
information about a sexual offender;  
harbor or conceal a sexual offender.

292 943.0435(14) 3rd Sexual offender; failure to report and  
reregister; failure to respond to  
address verification.

293 944.607(9) 3rd Sexual offender; failure to comply with  
reporting requirements.

294

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295  
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944.607(10) (a) 3rd Sexual offender; failure to submit to  
the taking of a digitized photograph.

944.607(12) 3rd Failure to report or providing false  
information about a sexual offender;  
harbor or conceal a sexual offender.

944.607(13) 3rd Sexual offender; failure to report and  
reregister; failure to respond to  
address verification.

985.4815(10) 3rd Sexual offender; failure to submit to  
the taking of a digitized photograph.

985.4815(12) 3rd Failure to report or providing false  
information about a sexual offender;  
harbor or conceal a sexual offender.

985.4815(13) 3rd Sexual offender; failure to report and  
reregister; failure to respond to  
address verification.

Section 8. This act shall take effect October 1, 2013.



714942

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/20/2013	.	
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The Committee on Health Policy (Galvano) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 26 - 27.

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

And the title is amended as follows:

Delete line 3

and insert:

Amending s. 775.021, F.S.;

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Regulated Industries, *Chair*  
Appropriations Subcommittee on General  
Government  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Commerce and Tourism  
Community Affairs  
Education

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

## SENATOR KELLI STARGEL

15th District

March 12, 2013

The Honorable Greg Evers  
Senate Criminal Justice Committee, Chair  
308 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Chairman Evers:

I am respectfully requesting that SB 876, related to *Offenses Against Unborn Children*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel  
Senator, District 15

Cc: Amanda Cannon/ Staff Director  
Sue Arnold/ AA

REPLY TO:

- 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13

Meeting Date

Topic Offenses Against Unborn Children

Bill Number 876

(if applicable)

Name Pamela Burch Fort

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title \_\_\_\_\_

Address 104 S. Monroe Street

Phone 850-425-1344

Tallahassee FL 32301  
Street City State Zip

E-mail TegLobby@aol.com

Speaking:  For  Against  Information

Representing ACLU of FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13  
Meeting Date

Topic \_\_\_\_\_

Bill Number 876  
*(if applicable)*

Name Missy Wesolowski

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Coordinator

Address 2300 Florida Mango Rd  
*Street*  
West Palm Beach FL 33412  
*City State Zip*

Phone 561-472 9917

E-mail missy.wesolowski @ pp50410.org

Speaking:  For  Against  Information

Representing Florida Alliance of Planned Parenthood Affiliates

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 974

INTRODUCER: Senator Sobel

SUBJECT: Human Trafficking

DATE: April 3, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	CF	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 974 addresses several areas of the law with regard to victims of human trafficking. The bill does the following:

- Creates a privilege for a victim of human trafficking in the Evidence Code that provides for him or her to keep communication between the victim and a human-trafficking counselor confidential and not admissible in evidence unless the privilege is waived.
- Amends s. 772.104, F.S., to provide for punitive damages in a civil cause of action brought based upon criminal acts.
- Statutorily conveys all the rights, benefits, and compensation conveyed by law to victims of other crimes to persons who are victims of human trafficking.
- Clarifies the defense of duress or coercion specifically for victims of human trafficking who are charged with trafficking themselves.
- Relieves a human trafficking victim of criminal liability for certain sexual conduct if the acts are committed as a result of being trafficked.
- Provides for a Motion to Vacate Conviction for a human trafficking victim who is convicted of a prostitution offense where the person’s participation in the crime was the result of having been the victim of human trafficking.

This bill substantially amends sections 772.104 and 787.06 of the Florida Statutes. The bill creates sections 90.50355 and 796.095 of the Florida Statutes.



## II. Present Situation:

### Human Trafficking

In 2000, the United States enacted the Trafficking Victims Protection Act (TVPA), and the United Nations adopted the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, also known as the Palermo Protocol.<sup>1</sup>

The Palermo Protocol focused the attention of the global community on combating human trafficking. For the first time, an international instrument called for the criminalization of all acts of trafficking, including forced labor, slavery, and slavery-like practices. The Palermo Protocol also proposed a victim-centered approach to governmental response through prevention, criminal prosecution, and victim protection.<sup>2</sup> These protection efforts seek to provide appropriate services to the survivors, maximizing their opportunity for a comprehensive recovery.<sup>3</sup>

Survivors of human trafficking often face both criminalization and stigmatization long after they escape from their trafficking situations. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and related offenses. Trafficked persons are not always recognized or treated as victims by law enforcement and prosecutors. They may plead guilty not understanding the consequences. Multiple arrests, incarceration, police violence, deportation, employment, and housing discrimination may result.<sup>4</sup>

In 2010, New York became the first state to enact legislation that allows survivors of trafficking to vacate their convictions for prostitution offenses.<sup>5,6</sup> While every state has a slightly different criminal procedure into which this type of remedy must fit, the central purpose of the law is to give survivors the ability to live their lives unhindered by a criminal record: “Even after they escape from sex trafficking, the criminal record victimizes them for life. This bill would give victims of human trafficking a desperately needed second chance they deserve.”<sup>7</sup>

The Urban Justice Center in New York, instrumental in drafting the law, recommends that a strong state law on vacating convictions should:

- Not be limited to vacating only certain prostitution offenses;

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<sup>1</sup> U.S. Department of State, *Trafficking in Persons Report 2010*, available at <http://www.state.gov/documents/organization/142980.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of State, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/documents/organization/192587.pdf>.

<sup>4</sup> Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project (April 3, 2012) available at <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf>.

<sup>5</sup> N.Y. CRIM. PROC. LAW § 440.10(1)(i)

<sup>6</sup> As of June 2012, Hawaii became the sixth state to implement a law to allow criminal records related to human trafficking to be vacated. The Washington Times. *Hawaii: New law allows trafficking victims to vacate prostitution convictions* (June 11, 2012) available at <http://communities.washingtontimes.com/neighborhood/rights-so-divine/2012/jul/11/hawaii-new-law-allows-trafficking-victims-expunge/>.

<sup>7</sup> Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project (April, 2012) available at <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf>.

- Not require the survivor to present official documentation certifying them as a victim of trafficking;
- Not require the survivor to prove that he or she has left the sex industry or been “rehabilitated”;
- Offer confidentiality provisions to protect the client’s identity;
- Be the most complete remedy possible under the law;
- State that the court must vacate the convictions and dismiss the accusatory instrument if an individual meets the elements;
- Allow the court to take additional appropriate action beyond the mandate of the statute;
- Be retroactive and inclusive of victims with older convictions; and
- Ensure availability of the remedy by funding legal services attorneys.

### **Penalties for Human Trafficking in Florida Law**

The Florida Legislature established penalties for crimes involving human trafficking in 2004.<sup>8</sup> Along with establishing human trafficking as a crime in law, the Legislature introduced the concept of coercion as a critical element to the crime of human trafficking. Today, s. 787.06 (2)(a), F.S., defines coercion as:

- Using or threatening to use physical force against any person;
- Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
- Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services is not applied toward the liquidation of the debt, or the length and nature of labor or services is not proportional to the debt;
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
- Causing or threatening to cause financial harm to any person;
- Enticing or luring any person by fraud or deceit; or
- Providing a controlled substance listed in the schedule of controlled substances to any person to exploit them.

### **Privileged Communication**

Under current law, a person may not assert an evidentiary privilege or otherwise refuse to testify as a witness unless a privilege has been created by statute, Supreme Court rule, or the State or U.S. Constitutions.<sup>9</sup>

An evidentiary privilege prohibits the discovery, subpoena, or admission of what otherwise might be admissible evidence in a legal proceeding.<sup>10</sup> “Privileges are impediments to the search

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<sup>8</sup> Chapter 2004-391, L.O.F.

<sup>9</sup>See s. 90.501, F.S.A. and Law Revision Council Note--1976 (stating, “This section abolishes all common-law privileges existing in Florida and makes the creation of privileges dependent upon legislative action or pursuant to the Supreme Court’s rule-making power.”).

for truth, finding their justification in the priority of societal values they serve.”<sup>11</sup> Privileges are strictly construed because they are in derogation of the common law.<sup>12</sup>

The Florida Evidence Code contains the following evidentiary privileges:

- Journalist’s privilege;<sup>13</sup>
- Lawyer-client privilege;<sup>14</sup>
- Psychotherapist-patient privilege;<sup>15</sup>
- Sexual assault counselor-victim privilege;<sup>16</sup>
- Domestic violence advocate-victim privilege;<sup>17</sup>
- Husband-wife privilege;<sup>18</sup>
- Privilege with respect to communications with clergy;<sup>19</sup>
- Accountant-client privilege;<sup>20</sup> and
- Privilege with respect to trade secrets.<sup>21</sup>

### **Civil Action for Damages**

Current law provides for civil remedies for harm experienced due to another’s criminal act. Specifically, s. 772.104, F.S., provides for victims of human trafficking to bring an action if he or she can prove injury has occurred:

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<sup>10</sup> See *In re Grand Jury Proceedings*, 664 F.2d 423, 429 (5th Cir. 1981) and *The Florida Bar v. Forrester*, 818 So. 2d 477, 481-482 (Fla. 2002).

<sup>11</sup> *In re Grand Jury Proceedings*, 664 F.2d at 429 (quoting *United States v. Brown*, 605 F.2d 389, 396 (8th Cir. 1979)).

<sup>12</sup> *O’Neill v. O’Neill*, 823 So. 2d 837, 839 (Fla. 5th DCA 2002)

<sup>13</sup> Section 90.5015, F.S.

<sup>14</sup> Section 90.502, F.S.

<sup>15</sup> Under s. 90.503, F.S., a psychotherapist is defined as:

1. A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
2. A person licensed or certified as a psychologist under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
3. A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under the laws of this state, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the Department of Children and Family Services pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or
5. An advanced registered nurse practitioner certified under s. 464.012, whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse, and limited only to actions performed in accordance with part I of chapter 464.

<sup>16</sup> Section 90.5035, F.S.

<sup>17</sup> Section 90.5036, F.S.

<sup>18</sup> Section 90.504, F.S.

<sup>19</sup> Section 90.505, F.S.

<sup>20</sup> Section 90.5055, F.S.

<sup>21</sup> Section 90.506, F.S.

**772.104 Civil cause of action.—**

(1) Any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 shall have a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts.

(2) As an alternative to recovery under subsection (1), any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 due to sex trafficking or **human trafficking** shall have a cause of action for threefold the amount gained from the sex trafficking or **human trafficking** and in any such action is entitled to minimum damages in the amount of \$200 and reasonable attorney's fees and court costs in the trial and appellate courts.

(3) In no event shall punitive damages be awarded under this section. The defendant shall be entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim which was without substantial fact or legal support. In awarding attorney's fees and costs under this section, the court shall not consider the ability of the opposing party to pay such fees and costs. Nothing under this section shall be interpreted as limiting any right to recover attorney's fees or costs provided under other provisions of law.

**III. Effect of Proposed Changes:****Human-Trafficking Counselor-Victim Privilege**

The bill creates a privilege against disclosure of confidential communication between a human trafficking victim and his or her counselor. Human-trafficking counselor is defined as a psychotherapist,<sup>22</sup> one who is employed and supervised by a psychotherapist and who has received specified training, and as a trained volunteer who has received the training but is not actually employed by the psychotherapist.

Under the statutorily-created privilege, the human trafficking victim has the ability to prevent any or all of those particular individuals from disclosing communication, given or received, during the counseling process and relationship.

**Punitive Damages**

The bill allows crime victims to seek punitive damages, which are damages above and beyond monetary losses a person suffered, under s. 772.104, F.S. The remedy is not limited to human trafficking victims, but rather includes victims of sex trafficking and all of the crimes listed in s. 772.102, F.S., if those crimes can be linked to the activities set forth in s. 772.103, F.S.<sup>23</sup>

<sup>22</sup> *Supra*, note 15.

<sup>23</sup> **772.103 Prohibited activities.**—It is unlawful for any person:

(1) Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of criminal activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the

### **Victim Status, Affirmative Defense, and Relief from Criminal Liability Created in Human Trafficking Statute**

The bill adds two subsections to s. 787.06, F.S., the human trafficking statute. New subsection (8) provides that when a defendant enters a plea and is convicted of or adjudicated delinquent for committing a violation of the human trafficking statute, the person who was “trafficked” is recognized, under the law, as a victim. With this status, the victim is entitled to the rights enjoyed by all crime victims in Florida. These rights include being kept apprised of case status by the State Attorney, being heard by the court on matters related to the case disposition, and the right to request restitution.

Also, the bill creates an affirmative defense, which may be raised at trial if the defense chooses to present evidence, where a defendant is charged with human trafficking is also a *victim* of human trafficking. The defendant/victim may present evidence and argue that he or she participated in human trafficking due to coercion or duress. It should be noted that this is a defense that can always be raised and does not necessarily need to be set forth in this statute.

The bill eliminates criminal liability for a commercial sex act or illegal sexually explicit performance where the act is related to being a victim of human trafficking. Presumably this evidence could be offered pretrial in the form of a Motion to Dismiss or as a defense at trial.

### **Motions to Vacate (Motions for Vacatur)**

The principle behind vacatur is that of a legal action being undone. Vacatur is defined as “the act of annulling or setting aside.”<sup>24</sup> If a conviction is vacated it is as if it never happened.

The advantage of the Motion to Vacate provided in Section 5 of the bill is that a victim of human trafficking who has been convicted of prostitution will not be required to go through the expunction process. The bill requires the state attorney’s approval of the Motion to Vacate the Conviction (or refusal to contest the Motion).

### **Other Potential Implications:**

The victim-counselor privilege created in Section 2 of the bill does not provide the circumstances under which the privilege does not apply as does the privilege for the patient-psychotherapist. The patient-psychotherapist is not recognized for communications:

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proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(2) Through a pattern of criminal activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.

(4) To conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

<sup>24</sup> Black’s Law Dictionary (9th ed. 2009).

- relevant to an issue in proceedings to compel hospitalization of a patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has reasonable cause to believe the patient is in need of hospitalization.
- made in the course of a court-ordered examination of the mental or emotional condition of the patient.
- relevant to an issue of the mental or emotional condition of the patient in any proceeding in which the patient relies upon the condition as an element of his or her claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

This omission may create confusion, an ethical dilemma or unnecessary litigation for psychotherapists.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator reports that it is difficult to quantify any workload issues the courts may experience if the bill becomes law.<sup>25</sup>

#### **VI. Technical Deficiencies:**

None.

---

<sup>25</sup> Office of the State Courts Administrator, Judicial Impact Statement, March 5, 2013, on file with Senate Criminal Justice Committee staff.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Sobel

33-00321B-13

2013974

1 A bill to be entitled  
 2 An act relating to human trafficking; creating the  
 3 "Florida Victim's Relief Act"; creating s. 90.50355,  
 4 F.S.; defining the terms "confidential communication,"  
 5 "human-trafficking counselor," "trained volunteer,"  
 6 and "victim"; providing that a victim of human  
 7 trafficking has a privilege to refuse to disclose, and  
 8 to prevent any other person from disclosing, a  
 9 confidential communication made by the victim to a  
 10 human-trafficking counselor or trained volunteer or  
 11 any record made in the course of advising, counseling,  
 12 or assisting the victim; providing that the  
 13 confidential communication or record may be disclosed  
 14 only with the prior written consent of the victim;  
 15 specifying by whom the privilege may be claimed;  
 16 amending s. 772.104, F.S.; authorizing a court to  
 17 award punitive damages to a person who proves by clear  
 18 and convincing evidence that he or she has been  
 19 subjected to sex trafficking or human trafficking;  
 20 amending s. 787.06, F.S.; providing that in each  
 21 instance in which a defendant pleads nolo contendere  
 22 to, or is convicted of, or adjudicated delinquent for,  
 23 the crime of human trafficking, the victim of that  
 24 crime is entitled to all benefits, rights, and  
 25 compensation granted pursuant to law; providing that a  
 26 defendant may assert an affirmative defense that the  
 27 person was acting under duress or coerced into  
 28 committing the offense of human trafficking for which  
 29 he or she is being subject to prosecution; creating s.

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30 796.095, F.S.; authorizing a person convicted of  
 31 committing the offense of prostitution and other sex  
 32 crimes to file a motion to vacate the conviction if  
 33 the person's participation in the offense was the  
 34 result of the person having been a victim of human  
 35 trafficking or of a severe form of trafficking;  
 36 requiring certain specified conditions be met in order  
 37 to file the motion; requiring the court to hold a  
 38 hearing on a motion to vacate the conviction;  
 39 permitting the court to dismiss the motion to vacate  
 40 the conviction without a hearing if the court finds  
 41 that the motion fails to assert grounds on which  
 42 relief may be granted; providing that the person  
 43 filing a motion to vacate the conviction has the  
 44 burden of proof by a preponderance of the evidence;  
 45 providing that a minor is not required to show that  
 46 force, fraud, or coercion was used against him or her  
 47 at the time of the offense; providing an effective  
 48 date.

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

51  
 52 Section 1. This act may be cited as the "Florida Victim's  
 53 Relief Act."

54 Section 2. Section 90.50355, Florida Statutes, is created  
 55 to read:

56 90.50355 Human-trafficking counselor-victim privilege.-  
 57 (1) As used in this section, the term:  
 58 (a) "Confidential communication" means a communication

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59 between a human-trafficking counselor or trained volunteer and a  
 60 victim. The communication is confidential if it is not intended  
 61 to be disclosed to a third person other than those persons who  
 62 are:

63 1. Present to further the interest of the victim in the  
 64 consultation, examination, or interview;

65 2. Necessary for the transmission of the communication; and

66 3. Reasonably necessary to accomplish the purposes for  
 67 which the human-trafficking counselor or the trained volunteer  
 68 is consulted.

69 (b) "Human-trafficking counselor" means:

70 1. A psychotherapist as that term is defined in s. 90.503;  
 71 or

72 2. A person who is employed and supervised by one of the  
 73 persons specified in s. 90.503, who renders services to a victim  
 74 of human trafficking, and who has received 40 hours of state-  
 75 accredited training in assisting a victim of human trafficking;  
 76 in civil and criminal law as it relates to human trafficking; in  
 77 the trauma issues associated with victims of human trafficking;  
 78 in peer counseling techniques; in the medical, legal, emotional,  
 79 and social service needs of victims of human trafficking; and in  
 80 the federal, state, and community resources available to meet  
 81 the needs of victims of human trafficking.

82 (c) "Trained volunteer" means a person who has completed 40  
 83 hours of state-accredited training in assisting a victim of  
 84 human trafficking identical to that provided to a human-  
 85 trafficking counselor, who is supervised by members of the staff  
 86 of the psychotherapist or human-trafficking counselor, and who  
 87 is included on a list of volunteers which is maintained by the

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88 human-trafficking counselors.

89 (d) "Victim" is a person who consults a human-trafficking  
 90 counselor or a trained volunteer for the purpose of securing  
 91 advice, counseling, or assistance concerning a mental, physical,  
 92 or emotional condition caused by human trafficking, alleged  
 93 human trafficking, or attempted human trafficking.

94 (3) A victim has a privilege to refuse to disclose, and to  
 95 prevent any other person from disclosing, a confidential  
 96 communication made by the victim to a human-trafficking  
 97 counselor or trained volunteer or of any record made in the  
 98 course of advising, counseling, or assisting the victim. The  
 99 confidential communication or record may be disclosed only with  
 100 the prior written consent of the victim. This privilege includes  
 101 any advice given by the human-trafficking counselor or trained  
 102 volunteer in the course of that relationship.

103 (4) The privilege may be claimed by:

104 (a) The victim or the victim's attorney on his or her  
 105 behalf.

106 (b) A guardian or conservator of the victim.

107 (c) The personal representative of a deceased victim.

108 (d) The human-trafficking counselor or trained volunteer,  
 109 but only on behalf of the victim. The authority of a human-  
 110 trafficking counselor or trained volunteer to claim the  
 111 privilege is presumed in the absence of evidence to the  
 112 contrary.

113 Section 3. Section 772.104, Florida Statutes, is amended to  
 114 read:

115 772.104 Civil cause of action.—

116 (1) ~~A~~ Any person who proves by clear and convincing

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117 evidence that he or she has been subjected to a ~~injured by~~  
 118 ~~reason of any~~ violation of ~~the provisions of~~ s. 772.103 has  
 119 ~~shall have~~ a cause of action for threefold the actual damages  
 120 sustained and, in any such action, is entitled to minimum  
 121 damages in the amount of \$200, and reasonable attorney  
 122 ~~attorney's~~ fees and court costs in the trial and appellate  
 123 courts.

124 (2) As an alternative to recovery under subsection (1), a  
 125 ~~any~~ person who proves by clear and convincing evidence that he  
 126 or she has been injured by reason of a a ~~any~~ violation of ~~the~~  
 127 ~~provisions of~~ s. 772.103 due to sex trafficking or human  
 128 trafficking has ~~shall have~~ a cause of action for threefold the  
 129 amount gained from the sex trafficking or human trafficking and  
 130 in any such action is entitled to minimum damages in the amount  
 131 of \$200 and reasonable attorney ~~attorney's~~ fees and court costs  
 132 in the trial and appellate courts.

133 (3) ~~In no event shall~~ Punitive damages may be awarded under  
 134 this section. The defendant may ~~shall be entitled to~~ recover  
 135 reasonable attorney ~~attorney's~~ fees and court costs in the trial  
 136 and appellate courts upon a finding that the claimant raised a  
 137 claim which was without substantial fact or legal support. In  
 138 awarding attorney ~~attorney's~~ fees and costs under this section,  
 139 the court may ~~shall~~ not consider the ability of the opposing  
 140 party to pay such fees and costs. ~~Nothing under~~ This section  
 141 does not limit ~~shall be interpreted as limiting~~ any right to  
 142 recover attorney ~~attorney's~~ fees or costs provided under other  
 143 provisions of law.

144 Section 4. Subsections (8) and (9) are added to section  
 145 787.06, Florida Statutes, to read:

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146 787.06 Human trafficking.-

147 (8) In each instance in which a defendant pleads nolo  
 148 contendere to, or is convicted of, or adjudicated delinquent  
 149 for, the crime of human trafficking under this section, the  
 150 human-trafficking victim is entitled to all benefits, rights,  
 151 and compensation granted pursuant to law.

152 (9) When a defendant who is being prosecuted for  
 153 trafficking in persons is also a victim of human trafficking, it  
 154 is an affirmative defense that the defendant was acting under  
 155 duress or coerced into committing the offenses for which he or  
 156 she is being subject to prosecution. A human-trafficking victim  
 157 who is also trafficking in persons is not criminally liable for  
 158 a commercial sex act or illegal sexually explicit performance  
 159 committed as a direct result of, or incident or related to,  
 160 being trafficked.

161 Section 5. Section 796.095, Florida Statutes, is created to  
 162 read:

163 796.095 Prostitution; motion to vacate conviction.-

164 (1) A person convicted of committing the offense of  
 165 offering, committing, or engaging in prostitution under s.  
 166 796.07(1), or convicted of a lesser offense when originally  
 167 charged with a violation of s. 796.07(1), may file a motion to  
 168 vacate the conviction if the person's participation in the  
 169 offense was the result of the person having been a victim of  
 170 human trafficking, as defined in s. 787.06, s. 796.04, or s.  
 171 796.045, or if the person is a victim of a severe form of  
 172 trafficking as defined in 22 U.S.C. s. 7102(13).

173 (2) A motion filed under this section must:

174 (a) Be in writing;

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175 (b) Be signed and sworn to by the petitioner;

176 (c) Be made within 6 years after the date that the person  
 177 ceases to be a victim, subject to reasonable concerns for the  
 178 safety of the defendant, family members of the defendant, or  
 179 other victims of the trafficking that may be jeopardized by the  
 180 bringing of a motion, or for other reasons consistent with the  
 181 purpose of this section;

182 (d) Describe all the grounds and evidence for vacation of a  
 183 conviction which are available to the petitioner and of which  
 184 the petitioner has or by the exercise of reasonable diligence  
 185 should have knowledge, and provide copies of any official  
 186 documents showing that the defendant is entitled to relief under  
 187 this section; and

188 (e) Be subject to the review and written approval of the  
 189 state attorney responsible for prosecuting the offense that is  
 190 the subject of the motion to vacate conviction.

191 (3) The court shall hold a hearing on a motion filed under  
 192 this section if the motion satisfies the requirements of  
 193 subsection (2). The court may dismiss a motion without a hearing  
 194 if the court finds that the motion fails to assert grounds on  
 195 which relief may be granted.

196 (4) If the court grants a motion filed under this section,  
 197 the court shall vacate the conviction.

198 (5) A person making a motion to vacate pursuant to this  
 199 section has the burden of proof by a preponderance of the  
 200 evidence. A person making a motion regarding a conviction  
 201 related to an offense committed while he or she was a minor is  
 202 not required to show that force, fraud, or coercion was used  
 203 against him or her at the time of the offense.

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204 Section 6. This act shall take effect October 1, 2013.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

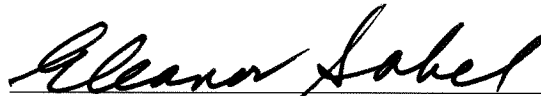
**Subject:** Committee Agenda Request

**Date:** March 5, 2013

---

I respectfully request that **Senate Bill # 974**, relating to Human Trafficking, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



A handwritten signature in cursive script, reading "Eleanor Sobel".

\_\_\_\_\_  
Senator Eleanor Sobel  
Florida Senate, District 33

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-2013

Meeting Date

Topic Human Trafficking Bill Number 974  
Name Janet Lamouireux (Lamb-a-pow) Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title \_\_\_\_\_ (if applicable)

Address 1345 Turkey Trl Phone 863-899-7301  
Street  
City Lkld State FL Zip 33810 E-mail janetL@tamabay.fl.com

Speaking:  For  Against  Information

Representing Florida PTA

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13  
Meeting Date

Topic Human Trafficking

Bill Number 974  
(if applicable)

Name ADRIANNA SEKULA

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Associate Dir. Govt Affairs

Address \_\_\_\_\_  
Street

Phone 904 553 7850

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail adrianna.sekula@pacecenter.org

Speaking:  For  Against  Information

Representing PACE Center For Girls, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04-08-2013

Meeting Date

Topic Human Trafficking

Bill Number 974  
*(if applicable)*

Name Prof. Tanny Coonan

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Exec. Director, FSU Human Rights Center

Address 426 W. Jefferson St.

Phone 850-644-4550

Street

Tallahassee, FL

32301

City

State

Zip

E-mail tcoonan@admin.fsu.edu

Speaking:  For  Against  Information

Representing FSU Human Rights Center

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13

Meeting Date

Topic Human Trafficking Bill Number 974  
(if applicable)  
Name Sheila Hopkins Amendment Barcode \_\_\_\_\_  
(if applicable)  
Job Title Director of Social Concerns Respect Life  
Address 201 W. Park Ave. Phone 205-6826  
Street  
Tallahassee FL 32301 E-mail shopkins@flacathconf.org  
City State Zip

Speaking:  For  Against  Information

Representing Fl. Conference of Catholic Bishops

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

**BILL:** CS/SB 1350

**INTRODUCER:** Criminal Justice Committee and Senator Bradley

**SUBJECT:** Criminal Penalties

**DATE:** April 8, 2013

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	<b>Fav/CS</b>
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 1350 conforms Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment as set forth in recent opinions of the United States Supreme Court. It provides that a juvenile offender who is convicted of murder may be sentenced to life imprisonment only after a mandatory hearing at which the judge considers specified factors relating to the offender’s age and attendant circumstance. The bill also limits the maximum sentence for a juvenile offender who does not commit homicide to a term of not more than 50 years.

This bill substantially amends section 775.082 of the Florida Statutes.

**II. Present Situation:**

In recent years, the United States Supreme Court has issued several opinions addressing the application of the Eighth Amendment’s prohibition against cruel and unusual punishment in relation to the punishment of juvenile offenders.<sup>1</sup> The first of these was *Roper v. Simmons*, 543

<sup>1</sup> The term “juvenile offender” refers to an offender who was under 18 years of age at the time of committing the offense for which he or she was sentenced. Most crimes committed by juveniles are dealt with through delinquency proceedings as set

U. S. 551 (2005), in which the Court found that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded constitutional doctrine regarding punishment of juvenile offenders in *Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

### **Graham v. Florida**

In *Graham*, the Court held that a juvenile offender cannot be sentenced to life in prison without the possibility of parole for any offense other than a homicide. More specifically, the Court found that if a non-homicide juvenile offender is sentenced to life in prison, the state must “provide him or her with some realistic opportunity to obtain release before the end of that term.”<sup>2</sup> Because Florida has abolished parole<sup>3</sup> and the Court deems the possibility of executive clemency to be remote,<sup>4</sup> currently a juvenile offender in Florida cannot be given a life sentence for a non-homicide offense.

*Graham* applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.<sup>5</sup> Therefore, any juvenile offender serving a life sentence for a non-homicide offense that was committed after parole eligibility was eliminated is entitled to be resentenced to a term less than life.

The Supreme Court did not give any guidance as to the maximum permissible sentence for a non-homicide juvenile offender other than to exclude the possibility of life without parole. This has led to different results among the circuits in reviewing sentences for a lengthy term of years. The First Circuit Court of Appeals recognizes that a lengthy term of years is a *de facto* life sentence if it exceeds the juvenile offender’s life expectancy.<sup>6</sup> On the other hand, the Fourth and Fifth Circuit Courts of Appeal have strictly construed *Graham* to apply only to life sentences and not to affect sentences for a lengthy term of years.<sup>7</sup>

---

forth in ch. 985, F.S. However, the law provides a mechanism for juveniles to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, s. 985.58, F.S., requires a grand jury indictment to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.

<sup>2</sup> See *Graham* at 2034

<sup>3</sup> Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.

<sup>4</sup> *Graham* at 2027

<sup>5</sup> See, e.g.,

<sup>6</sup> *Adams v. State*, --- So.3d ---, 37 Fla.L.Weekly D1865 (Fla. 1<sup>st</sup> DCA 2012). The First District Court of Appeals has struck down sentences of 60 years (*Adams*) and 80 years (*Floyd v. State*, 87 So.3d 45 (Fla. 1st DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011)) and 70 years (*Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011)).

<sup>7</sup> See *Guzman v. State*, --- So.3d ----, 2013 WL 949889 (Fla. 4th Dist. 2013); *Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). It also appears that the Second District Court of Appeal may agree with this line of reasoning - see *Young v. State*, --- So.3d --, 2013 WL 614247 (Fla. 2d DCA 2013). The reported longest sentence under the 85% law that was allowed to stand was 100 years for burglary of a dwelling while armed (*Johnson v. State*, --- So.3d ----, 2013 WL 1007663 (Fla. 5th Dist. 2013)).

## Miller v. Alabama

In *Miller*, the Court held that juvenile offenders who commit homicide cannot be sentenced to life in prison without the possibility of parole as the result of a mandatory sentencing scheme. The Court did not find that the Eighth Amendment prohibits sentencing a juvenile murderer to life without parole, but rather that individualized consideration of factors related to the offender's age must be considered before a life without parole sentence can be imposed. The Court also indicated that it expects that few juvenile offenders will be found to merit life without parole sentences.

Section 775.082, F.S., provides that the only permissible punishments for a capital offense are the death penalty or life imprisonment. As the result of the Court's holdings in *Roper* (invalidating the death penalty for juvenile offenders) and *Miller*, there is currently no statutory punishment for a juvenile who commits capital murder.

The majority opinion in *Miller* noted that mandatory life-without-parole sentences "preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it."<sup>8</sup> Although the Court did not require consideration of specific factors, it highlighted the following considerations:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, e.g., *Graham*, 560 U.S., at —, 130 S.Ct., at 2032 ("[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings"); *J.D.B. v. North Carolina*, 564 U.S. —, —, 131 S.Ct. 2394, 2400–2401, 180 L.Ed.2d 310 (2011) (discussing children's responses to interrogation). And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.<sup>9</sup>

The First and Third District Courts of Appeal view *Miller* as a procedural change in the law and have held that it does not apply retroactively to sentences that were final before the opinion was issued.<sup>10</sup> The retroactivity issue has not been addressed by the other District Courts of Appeal, the Florida Supreme Court, or the United States Supreme Court.

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<sup>8</sup> *Miller* at 2467.

<sup>9</sup> *Miller* at 2468.

<sup>10</sup> See *Gonzalez v. State*, 101 So.3d 886 (Fla. 1st DCA 2012); *Geter v. State*, --- So.3d ---, 2012 WL 4448860 (Fla. 3d DCA 2012).

## Graham and Miller Inmates

The Department of Corrections reports that it currently has custody of 222 juvenile offenders who received a mandatory life sentence for capital murder (*Miller* inmates); 43 inmates who received life sentences for non-homicide offenses (*Graham* inmates);<sup>11</sup> and 39 inmates who received life sentences for committing second degree murder, but who could have been sentenced to a lesser term.<sup>12</sup>

## Life Expectancy

The Center for Disease Control's United States Life Tables for 2008 (the most recent published) reflect the following remaining life expectancies for 17-18 year olds in the United States:<sup>13</sup>

<b>Remaining Life Expectancy: 17-18 Year Old Persons in the United States</b>	
Hispanic Females	67.0 years
White Females	64.5 years
Hispanic Males	62.1 years
Black Females	61.3 years
White Males	59.8 years
Black Males	54.9 years

## Parole

A January 2008 Blueprint Commission and Department of Juvenile Justice report, "Getting Smart about Juvenile Justice in Florida," included a recommendation that juveniles who received more than a 10 year adult prison sentence should be eligible for parole consideration. Florida Tax Watch also recommended parole consideration for inmates who were under 18 when they committed their offense, have served more than 10 years, were not convicted of capital murder, have no prior record, and demonstrated exemplary behavior while in prison.<sup>14</sup>

## III. Effect of Proposed Changes:

The bill amends s. 775.082, F.S., to conform Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment set forth by the United States Supreme Court in the *Graham* and *Miller* decisions. It does so by making changes at the sentencing phase, rather than by creating parole or another post-sentencing release process.

<sup>11</sup> This includes inmates who were sentenced for attempted murder. In *Manuel v. State*, 48 So.3d 94 (Fla. 2d DCA 2010), the Second District Court of Appeals held that attempted murder is a nonhomicide offense because the act did not result in the death of a human being.

<sup>12</sup> The information is derived from an attachment to an e-mail dated March 22, 2013 from Department of Corrections staff to Senate Criminal Justice Committee staff, which is on file with the Senate Criminal Justice Committee.

<sup>13</sup> The information is from Tables 5, 6, 8, 9, 11 and 12 in the *United States Life Tables, 2008*, National Vital Statistics Reports, Volume 61, Number 3 (September 24, 2012), available at [www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61\\_03.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_03.pdf) (last visited on March 28, 2013).

<sup>14</sup> "Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force to Save More than \$3 Billion," Florida Tax Watch, March 2010, p.47.

### ***Graham* Defendants**

The bill provides that a juvenile offender who commits a non-homicide offense that is punishable by life imprisonment<sup>15</sup> may be punished by a term of imprisonment not exceeding 50 years. This provision applies to offenses committed on or after July 1, 2013. Non-homicide juvenile offenders who commit such an offense prior to July 1, 2013, or who have already been sentenced to life imprisonment for such an offense, can be sentenced or resentenced to any punishment authorized by law at the time the crime was committed other than life imprisonment.<sup>16</sup>

### ***Miller* defendants and other juvenile offenders who commit homicides**

The bill provides that a juvenile offender who is convicted of a capital offense must be sentenced to either life imprisonment or to imprisonment for a term of not less than 50 years. The sentencing court is required to consider the following factors in determining the appropriate sentence:

1. The nature and circumstances of the offense committed by the defendant.
2. The effect of the crime on the victim's family and on the community.
3. The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
4. The defendant's background, including his or her family, home, and community environment.
5. The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
6. The extent of the defendant's participation in the offense.
7. The effect, if any, of familial pressure or peer pressure on the defendant's actions.
8. The nature and extent of the defendant's prior criminal history.
9. The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
10. The possibility of rehabilitating the defendant.

This list includes all of the factors from the portion of the *Miller* opinion that was quoted previously in this analysis.

Consideration of these factors is mandatory in the sentencing of a juvenile offender who has been convicted of a capital offense, or of a life felony or first-degree felony punishable by a term of years not exceeding life imprisonment for committing murder under s. 782.04, F.S.<sup>17</sup>

Under current law, Florida Statutes provide that any offender who is convicted of a life felony under s. 782.04, F.S., can be punished by a term of imprisonment for life or by imprisonment for

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<sup>15</sup> This includes life felonies and first-degree felonies punishable by a term of years not exceeding life imprisonment.

<sup>16</sup> As previously discussed, Florida intermediate appellate courts have split on the question of whether *Graham* requires resentencing for a juvenile offender who has been sentenced to a lengthy term of years if the court determines that it is functionally equivalent to a life sentence.

<sup>17</sup> Although *Miller* technically does not apply to non-mandatory life sentences, requiring consideration of the sentencing factors avoids the possibility of an equal protection claim by a juvenile offender who receives a life sentence after less consideration than is required for a juvenile offender who commits a more serious offense.

a term of years not exceeding life imprisonment. The bill does not change these punishments except to provide that a juvenile offender cannot be sentenced to life imprisonment or to a term of years equal to life imprisonment unless the sentencing court has considered the required factors and concluded that such punishment is appropriate.<sup>18</sup>

Florida Statutes currently provide that any offender who is convicted of murder under s. 782.04, F.S., that is a first-degree felony punishable by a term of years not exceeding life imprisonment can be sentenced to a term of years not exceeding life imprisonment or to a lesser term of years. The bill allows a sentence to a term of years equal to life imprisonment only if the sentencing court has considered the required factors and concluded that such punishment is appropriate.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

The bill does not specify whether its provisions concerning sentencing for murder under s. 782.04, F.S., are intended to apply retroactively or prospectively. A change in a statute is presumed to operate prospectively unless there is a clear showing that it is to be applied retroactively and its retroactive application is constitutionally permissible. *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So.2d 6, 10 (Fla. 1999).

Article X, section 9 of the Florida Constitution (the “Savings Clause”) provides: “Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.” This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense. *See State v. Smiley*, 966 So.2d 330 (Fla. 2007). The Savings Clause prevents retroactive application of a statute that affects prosecution or punishment for a crime, but does not prohibit retroactive application of a statute that is procedural or remedial in nature.

It is well-established that the Savings Clause prohibits application of a statutory reduction in the maximum sentence for a crime to be applied to an offense that was committed before the change. *See, e.g., Castle v. Sand*, 330 So.2d 10 (Fla. 1976) (reduction of

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<sup>18</sup> The bill creates the phrase “term of years equal to life imprisonment,” leaving the courts to decide whether a particular term of years is the equivalent of a life sentence.

maximum sentence for arson from 10 years to 5 years could not be applied to benefit defendant who committed offense before statutory change). Because current case law indicates that *Miller* does not apply retroactively, the Savings Clause prevents applying the bill's provisions retroactively.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact conference determined that the bill will have no impact on the need for prison beds. The bill would potentially have an impact on the court system to the extent that sentencing hearings for the offenders affected by the bill may require more time and resources than current sentencing hearings.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on April 8, 2013:**

- Removes language indicating that the bill's provisions concerning penalties for murder are retroactive to the extent required by *Miller*.
- Clarifies that the bill applies to offenses that are reclassified to the relevant offense levels by application of an enhancement statute.

B. Amendments:

None.



308100

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2013	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment**

Delete lines 17 - 31  
and insert:

(1) (a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(b) A person who is convicted of a capital felony, or an





308100

13 offense that was reclassified as a capital felony, that was  
14 committed before the person was 18 years of age shall be  
15 punished by life imprisonment and is ineligible for parole if  
16 the judge at a mandatory sentencing hearing concludes that life  
17 imprisonment is an appropriate sentence. In determining whether  
18 life imprisonment is an appropriate sentence, the judge shall  
19 consider factors relevant to the offense and to the defendant's  
20 youth and attendant circumstances, including, but not limited  
21 to:



832422

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/05/2013	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment**

Delete line 55  
and insert:  
imprisonment for a term of not less than 50 years. This paragraph applies retroactively only to the extent necessary to meet constitutional requirements for imposing a life sentence on a defendant who is convicted of committing a murder that was committed before the person was 18 years of age as set forth by the United States Supreme Court in Miller v. Alabama, 132 S. Ct. 2455 (2012).



806648

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/05/2013	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment**

Delete lines 79 - 120  
and insert:

5. Notwithstanding subparagraphs 1.-4., a person convicted under s. 782.04 for an offense that was reclassified as a life felony that was committed before the person was 18 years of age is eligible to be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge at a mandatory sentencing hearing considers factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to, the factors listed



806648

13 in paragraph (1)(b) and concludes that imprisonment for life or  
14 a term of years equal to life imprisonment is an appropriate  
15 sentence. This subparagraph applies retroactively only to the  
16 extent necessary to meet constitutional requirements for  
17 imposing a life sentence on a defendant who is convicted of  
18 committing a murder that was committed before the person was 18  
19 years of age as set forth by the United States Supreme Court in  
20 Miller v. Alabama, 132 S. Ct. 2455 (2012).

21 6. For offenses committed on or after July 1, 2013, a  
22 person convicted of a life felony or of an offense that was  
23 reclassified as a life felony, other than an offense listed in  
24 s. 782.04, that was committed before the person was 18 years of  
25 age shall be punished by a term of imprisonment not to exceed 50  
26 years.

27 (b) Except as provided in paragraphs 1. and 2., for a  
28 felony of the first degree, by a term of imprisonment not  
29 exceeding 30 years or, when specifically provided by statute, by  
30 imprisonment for a term of years not exceeding life  
31 imprisonment.

32 1. A person convicted under s. 782.04 of a first-degree  
33 felony punishable by a term of years not exceeding life  
34 imprisonment, or an offense that was reclassified as a first-  
35 degree felony punishable by a term of years not exceeding life  
36 imprisonment, that was committed before the person was 18 years  
37 of age is eligible for a term of years equal to life  
38 imprisonment if the judge at a mandatory sentencing hearing  
39 considers factors relevant to the offense and to the defendant's  
40 youth and attendant circumstances, including, but not limited  
41 to, the factors listed in paragraph (1)(b) and concludes that a



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42 term of years equal to life imprisonment is an appropriate  
43 sentence. This subparagraph applies retroactively only to the  
44 extent necessary to meet constitutional requirements for  
45 imposing a life sentence on a defendant who is convicted of  
46 committing a murder that was committed before the person was 18  
47 years of age as set forth by the United States Supreme Court in  
48 Miller v. Alabama, 132 S. Ct. 2455 (2012).

49 2. For offenses committed on or after July 1, 2013, a  
50 person convicted for a first-degree felony punishable by a term  
51 of years not exceeding life imprisonment or of an offense that  
52 was reclassified as a first-degree felony punishable by a term  
53 of years not exceeding life imprisonment, other than an offense  
54 listed in s. 782.04, that was committed before the person was  
55 18 years of age shall be punished by a term of imprisonment not  
56 to exceed 50 years.



845048

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2013	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 79 - 120  
and insert:

5. Notwithstanding subparagraphs 1.-4., a person convicted under s. 782.04 for an offense that was reclassified as a life felony that was committed before the person was 18 years of age is eligible to be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge at a mandatory sentencing hearing considers factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to, the factors listed



845048

13 in paragraph (1)(b) and concludes that imprisonment for life or  
14 a term of years equal to life imprisonment is an appropriate  
15 sentence.

16 6. For offenses committed on or after July 1, 2013, a  
17 person convicted of a life felony or of an offense that was  
18 reclassified as a life felony, other than an offense listed in  
19 s. 782.04, that was committed before the person was 18 years of  
20 age shall be punished by a term of imprisonment not to exceed 50  
21 years.

22 (b) Except as provided in paragraphs 1. and 2., for a  
23 felony of the first degree, by a term of imprisonment not  
24 exceeding 30 years or, when specifically provided by statute, by  
25 imprisonment for a term of years not exceeding life  
26 imprisonment.

27 1. A person convicted under s. 782.04 of a first-degree  
28 felony punishable by a term of years not exceeding life  
29 imprisonment, or an offense that was reclassified as a first-  
30 degree felony punishable by a term of years not exceeding life  
31 imprisonment, that was committed before the person was 18 years  
32 of age is eligible for a term of years equal to life  
33 imprisonment if the judge at a mandatory sentencing hearing  
34 considers factors relevant to the offense and to the defendant's  
35 youth and attendant circumstances, including, but not limited  
36 to, the factors listed in paragraph (1)(b) and concludes that a  
37 term of years equal to life imprisonment is an appropriate  
38 sentence.

39 2. For offenses committed on or after July 1, 2013, a  
40 person convicted for a first-degree felony punishable by a term  
41 of years not exceeding life imprisonment or of an offense that



845048

42 was reclassified as a first-degree felony punishable by a term  
43 of years not exceeding life imprisonment, other than an offense  
44 listed in s. 782.04, that was committed before the person was  
45 18 years of age shall be punished by a term of imprisonment not  
46 to exceed 50 years.

47  
48 ===== T I T L E A M E N D M E N T =====

49 And the title is amended as follows:

50 Delete lines 7 - 8

51 and insert:

52 imprisonment is an appropriate sentence; providing an effective  
53 date.

54



By Senator Bradley

7-00910F-13

20131350\_\_

A bill to be entitled

An act relating to criminal penalties; amending s. 775.082, F.S.; providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring that a judge consider certain factors before determining if life imprisonment is an appropriate sentence; providing retroactive application; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 775.082, Florida Statutes, are amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1) (a) A person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(b) A person who is convicted of a capital felony that occurred before the person was 18 years of age shall be punished by life imprisonment and is ineligible for parole if the judge at a mandatory sentencing hearing concludes that life imprisonment is an appropriate sentence. In determining whether life imprisonment is an appropriate sentence, the judge shall consider factors relevant to the offense and to the defendant's

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

7-00910F-13

20131350\_\_

youth and attendant circumstances, including, but not limited to, the following:

1. The nature and circumstances of the offense committed by the defendant.

2. The effect of the crime on the victim's family and on the community.

3. The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

4. The defendant's background, including his or her family, home, and community environment.

5. The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

6. The extent of the defendant's participation in the offense.

7. The effect, if any, of familial pressure or peer pressure on the defendant's actions.

8. The nature and extent of the defendant's prior criminal history.

9. The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

10. The possibility of rehabilitating the defendant.

If the judge concludes that life imprisonment is not an appropriate sentence, the defendant shall be punished by imprisonment for a term of not less than 50 years.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed ~~before~~ ~~prior to~~ October

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

7-00910F-13 20131350

59 1, 1983, by a term of imprisonment for life or for a term of  
60 years not less than 30.

61 2. For a life felony committed on or after October 1, 1983,  
62 by a term of imprisonment for life or by a term of imprisonment  
63 not exceeding 40 years.

64 3. Except as provided in subparagraph 4., for a life felony  
65 committed on or after July 1, 1995, by a term of imprisonment  
66 for life or by imprisonment for a term of years not exceeding  
67 life imprisonment.

68 4.a. Except as provided in sub-subparagraph b., for a life  
69 felony committed on or after September 1, 2005, which is a  
70 violation of s. 800.04(5)(b), by:

71 (I) A term of imprisonment for life; or

72 (II) A split sentence that is a term of not less than 25  
73 years' imprisonment and not exceeding life imprisonment,  
74 followed by probation or community control for the remainder of  
75 the person's natural life, as provided in s. 948.012(4).

76 b. For a life felony committed on or after July 1, 2008,  
77 which is a person's second or subsequent violation of s.  
78 800.04(5)(b), by a term of imprisonment for life.

79 5. A person convicted under s. 782.04 for a life felony who  
80 was under the age of 18 at the time of the offense is eligible  
81 to be punished by a term of imprisonment for life or by a term  
82 of years equal to life imprisonment if the judge at a mandatory  
83 sentencing hearing considers factors relevant to the offense and  
84 to the defendant's youth and attendant circumstances, including,  
85 but not limited to, the factors listed in paragraph (1)(b) and  
86 concludes that imprisonment for life or a term of years equal to  
87 life imprisonment is an appropriate sentence. This paragraph

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88 shall apply retroactively only to the extent necessary to meet  
89 constitutional requirements for imposing a life sentence on a  
90 defendant who is convicted of committing a murder while a  
91 juvenile as set forth by the United States Supreme Court in  
92 Miller v. Alabama, 132 S.Ct. 2455 (2012).

93 6. For offenses committed on or after July 1, 2013, a  
94 person convicted of any other life felony who was under 18 years  
95 of age at the time of the offense shall be punished by a term of  
96 imprisonment not to exceed 50 years.

97 (b) For a felony of the first degree, by a term of  
98 imprisonment not exceeding 30 years or, when specifically  
99 provided by statute, by imprisonment for a term of years not  
100 exceeding life imprisonment.

101 1. A person convicted under s. 782.04 of a first-degree  
102 felony punishable by a term of years not exceeding life  
103 imprisonment who was under the age of 18 years at the time of  
104 the offense is eligible for a term of years equal to life  
105 imprisonment if the judge at a mandatory sentencing hearing  
106 considers factors relevant to the offense and to the defendant's  
107 youth and attendant circumstances, including, but not limited  
108 to, the factors listed in paragraph (1)(b) and concludes that a  
109 term of years equal to life imprisonment is an appropriate  
110 sentence. This paragraph shall apply retroactively only to the  
111 extent necessary to meet constitutional requirements for  
112 imposing a life sentence on a defendant who is convicted of  
113 committing a murder while a juvenile as set forth by the United  
114 States Supreme Court in Miller v. Alabama, 132 S.Ct. 2455  
115 (2012).

116 2. For offenses committed on or after July 1, 2013, a

7-00910F-13

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117 person convicted for any other first-degree felony punishable by  
118 a term of years not exceeding life imprisonment who was under 18  
119 years of age at the time of the offense shall be punished by a  
120 term of imprisonment not exceeding 50 years.

121 (c) For a felony of the second degree, by a term of  
122 imprisonment not exceeding 15 years.

123 (d) For a felony of the third degree, by a term of  
124 imprisonment not exceeding 5 years.

125 Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13

Meeting Date

Topic \_\_\_\_\_

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street

Tallahassee FL 32301  
Street City State Zip

Bill Number SB 1350

(if applicable)

Amendment Barcode \_\_\_\_\_

(if applicable)

Phone 850-425-1344

E-mail TcgLobby@aol.com

Speaking:  For  Against  Information

Representing ACLU of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13  
Meeting Date

Topic Criminal Penalties Bill Number 1350  
Name Sheila Hopkins Amendment Barcode \_\_\_\_\_  
Job Title Director of Social Concerns/Respect Life (if applicable)  
Address 201 W. Park Ave. Phone 205-6826  
Street Tallahassee FL 32301 E-mail shopkins@flacathconf.org  
City State Zip (if applicable)

Speaking:  For  Against  Information

Representing Fl. Conference of Catholic Bishops

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13  
Meeting Date

Topic Criminal Penalties

Bill Number 1350  
*(if applicable)*

Name Janet Ferris

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Retired Circuit Judge

Address 525 Bobbin Brook Lane  
*Street*  
Tallahassee FL 32312  
*City State Zip*

Phone 850.893.8585  
E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

*This form is part of the public record for this meeting.*

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 8, 2013

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1350  
*(if applicable)*

Name Nancy Daniels

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Public Defender, 2nd Judicial Circuit

Address 301 South Monroe Street  
*Street*

Phone 850-488-1010

Tallahassee                      FL                      32301  
*City*                                      *State*                                      *Zip*

E-mail nancy.daniels@flpda2.org

Speaking:     For         Against         Information

Representing Florida Public Defender Association

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-13

Meeting Date

Topic Juvenile Sentencing Bill

Bill Number SB 1350  
*(if applicable)*

Name Jeff Siegmeister

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title State Attorney, Third Circuit

Address 100 SE Court Street  
*Street*

Phone 386 362 2320

Live Oak, FL 32064  
*City State Zip*

E-mail jeff.siegmeister@sa3.state.fl.us

Speaking:  For  Against  Information

Representing Florida Prosecuting Attorneys Association (FPA)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)



CT

# THE FLORIDA SENATE APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13  
Meeting Date

Topic Criminal Penalties

Bill Number 1350  
*(if applicable)*

Name Keri Rayborn

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address PO Box 1565  
*Street*

Phone (850) 524-2394

Tallahassee FL 32302  
*City State Zip*

E-mail Keri@raybornconsultants.com

Speaking:  For  Against  Information

Representing Florida Sheriffs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-13

Meeting Date

Topic Juvenile Criminal Penalties

Bill Number 1350  
*(if applicable)*

Name Dr. Burt Hayner

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Clinical Director

Address 2301 Demerow Rd.

Phone 850-224-9531

Street

Tallahassee, FL 32308

E-mail burthayner@earthlink.net

City

State

Zip

Speaking:  For  Against  Information

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300 ;  
917-591-3452

April 4, 2013

Senator Greg Evers  
Chair, Senate Criminal Justice Committee  
440 S. Monroe Street  
412 Knott Building  
Tallahassee, FL 32301

**Re: Senate Bill 1350**

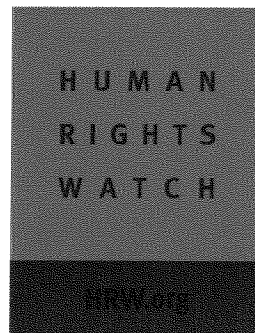
Dear Senator Evers:

Human Rights Watch urges the Senate Criminal Justice Committee to oppose Senate Bill (SB) 1350, Criminal Penalties. HRW believes that this bill is not compliant with the US Supreme Court's holding in *Miller v. Alabama* or *Graham v. Florida*, and is in violation of international human rights law.

SB1350 is in violation of human rights law because, in effect, juveniles would still be sentenced to life in prison. HRW opposes life without parole for any youth offender (persons below the age of 18 at the time of offense) for two main reasons.

First, in four decisions in recent years, the US Supreme Court has repeatedly emphasized a fundamental truth recognized by science, international human rights law, and any parent: that kids are different.<sup>1</sup> Science tells us that our brains are not fully developed until our mid- to late-twenties. By failing to provide an opportunity for sentence review after a juvenile offender has had a chance to develop, grow, and change, SB 1350 ignores this science and the Supreme Court's admonition that states must give youth offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."<sup>2</sup>

Second, the United States is currently the only country in the world that continues to sentence youth offenders to life without parole.<sup>3</sup> The imposition of life without parole sentences for any category of youth offender violates US treaty obligations. The Human Rights Committee (the oversight and enforcement body for the International Covenant on Civil and Political Rights, which the US ratified in 1992) has said that "sentencing children to life sentences without



U S PROGRAM

Julian Brookes, *Media Officer*  
Sara Darehshori, *Senior Counsel*  
Jamie Fellner, *Senior Advisor*  
Antonio Ginetta, *Advocacy Director*  
Natalie Kato, *Southern State Policy Advocate*  
Adam Lewis, *Associate*  
Maria McFarland, *Deputy Director*  
Grace Meng, *Researcher*  
Alba Morales, *Researcher*  
Alison Parker, *Director*  
Laura Pitter, *Counterterrorism Advisor*  
Nicole Pittman, *Soros Justice Fellow*  
Andrea Prasow, *Senior Counterterrorism Counsel*  
Samantha Reiser, *Associate*  
Brian Root, *Quantitative Analyst*  
Ricardo Sandoval Palos, *Researcher*  
Elena Vanko, *Senior Associate*

Human Rights Watch

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Jan Egeland, *Europe Director and Deputy Executive Director*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*  
Emma Daly, *Communications Director*  
Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Otugboji, *Deputy Program Director*  
Dinah PoKempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

<sup>1</sup> *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 130 S. Ct. 2011 (2010); *Miller v. Alabama*, 132 S. Ct. 2455 (2012); *JDB v. North Carolina*, 131 S. Ct. 2394 (2011).

<sup>2</sup> *Graham v. Florida*, No. 08-7412, slip. op. at 24.

<sup>3</sup> Connie de la Vega and Michelle Leighton, "Response to Amicus Briefs of Sixteen Members of Congress, the State of Florida, and Solidarity Center with Respect to International Law before the U.S. Supreme Court, *Graham v. Florida* (08-7412) and *Sullivan v. Florida* (08-7621)," October 13, 2009, <http://www.usfca.edu/law/docs/jlwop/graham/> (accessed April 4, 2013).

parole is of itself not in compliance with article 24(1) of the Covenant.”<sup>4</sup>

There is no question that the current law in Florida regarding life without parole for youth offenders must be reformed. However, SB 1350 is not the way forward. Human Rights Watch urges the members of the Senate Criminal Justice Committee to oppose this bill.

Sincerely,

A handwritten signature in black ink that reads "Alison Parker". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Alison Parker  
Director, US Program  
Human Rights Watch

---

<sup>4</sup> UN Human Rights Committee, "Concluding Observations of the Human Rights Committee on the United States of America," July 27, 2006, CCCPR/C/USA/CO/3/Rev.1, December 8, 2006, para. 34.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

**BILL:** CS/CS/SB 1448

**INTRODUCER:** Criminal Justice Committee; Health Policy Committee; and Senator Smith

**SUBJECT:** Controlled Substances

**DATE:** April 8, 2013

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davlantes</u>	<u>Stovall</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/CS/SB 1448 adds several substances that are misused as athletic performance-enhancing drugs or weight-loss drugs to Schedule III of the Florida Comprehensive Drug Abuse Prevention and Control Act.<sup>1</sup> The bill also re-enacts parts of ss. 893.13 and 921.0022, F.S., to incorporate the addition of these substances to Schedule III. These substances are available as prescription drugs, and possession of any prescription drug without a valid prescription is a second degree misdemeanor. Designation as a Schedule III controlled substance raises the penalty for possession to a third degree felony and also criminalizes possession or distribution of any possible non-prescription form of the substance.

This bill could have a major fiscal impact upon the Florida Department of Law Enforcement (FDLE), estimated between \$400,000 and \$2.4 million. Alternatively, it could have a fiscal impact on local law enforcement agencies and state attorney's offices if testing for the substances is performed by private laboratories.

The bill provides an effective date of October 1, 2013.

<sup>1</sup> This Act is found in ch. 893, F.S.

The bill amends section 893.03(3) of the Florida Statutes. The bill reenacts sections 893.13(1) - (6) and section 921.0022(3)(b) – (e), of the Florida Statutes.

## II. Present Situation:

### Controlled Substances

“Controlled substance” means any substance named or described in Schedules I-V of s. 839.03, F.S.<sup>2</sup> Drug schedules are specified by the United States Department of Justice Drug Enforcement Administration (DEA) in 21 C.F.R. ss. 1308.11-15 and in s. 893.03, F.S.

Schedule I controlled substances currently have no accepted medical use in treatment in the United States and therefore may not be prescribed, administered, or dispensed for medical use. These substances have a high potential for abuse and include heroin, lysergic acid diethylamide (LSD), and marijuana. Schedule II controlled substances have a high potential for abuse, which may lead to severe psychological or physical dependence, including morphine and its derivatives, amphetamines, cocaine, and pentobarbital. Schedule III controlled substances have lower abuse potential than Schedule II substances but may still cause psychological or physical dependence. Schedule III substances include products containing less than 15 milligrams (mg) of hydrocodone (such as Vicodin) or less than 90 mg of codeine per dose (such as Tylenol #3), ketamine, and anabolic steroids. Schedule IV substances have a low potential for abuse and include propoxyphene (Darvocet), alprazolam (Xanax), and lorazepam (Ativan). Schedule V controlled substances have an extremely low potential for abuse and primarily consist of preparations containing limited quantities of certain narcotics, such as cough syrup.<sup>3</sup>

### Anabolic Steroid Abuse

An anabolic steroid is any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth.<sup>4</sup> Anabolic steroids have both legitimate medical uses, such as treating delayed puberty and certain hormonal genetic disorders, and a plethora of illegitimate uses, such as building muscle bulk among athletes or bodybuilders.

Illegally obtained anabolic steroids are usually given at doses 10 to 100 times higher than their medically-indicated doses and may be administered as pills, injections, or skin creams. Steroid abusers often take two different types of steroids at once or may cycle between taking no drug and high doses of a drug over weeks to months.

Anabolic steroids can have serious and permanent effects if taken for extended periods. In addition to building bone density and muscle bulk, steroids can:<sup>5</sup>

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<sup>2</sup> Section 893.02(4), F.S.

<sup>3</sup> DEA, Office of Diversion Control, *Controlled Substance Schedules*, available at: <http://www.deadiversion.usdoj.gov/schedules/#define> (last visited on March 15, 2013).

<sup>4</sup> Section 893.03(3)(d)1., F.S.

<sup>5</sup> WebMD, *Anabolic Steroid Abuse*, available at: <http://men.webmd.com/guide/anabolic-steroid-abuse-topic-overview>. (last visited on March 15, 2013).

- Drastically reduce sperm count;
- Shrink the testicles;
- Cause infertility;
- Enlarge breast size in men and decrease it in women;
- Increase body hair in women;
- Make skin rough in women;
- Enlarge the clitoris;
- Deepen the voice of women;
- Halt bone growth in adolescents;
- Cause heart attacks, even in young and healthy people;
- Cause strokes, even in young and healthy people;
- Elevate blood pressure;
- Cause liver disease and liver cancer;
- Interfere with normal cholesterol levels;
- Cause acne;
- Cause balding; and
- Cause psychiatric problems.

Once someone is addicted to steroids, he or she will also need increasing amounts of the drug to achieve the same effect and will experience withdrawal symptoms.<sup>6</sup>

Anabolic steroids are already considered Schedule III by the state and can only be legally administered with a prescription.<sup>7</sup>

### **Specific Drugs Introduced in the Bill**

#### ***hCG***

Human chorionic gonadotropin, or hCG, is normally produced by the placenta to help maintain progesterone levels in the early stages of pregnancy. It can also be administered as injections to treat fertility problems in women or certain puberty problems in men.<sup>8</sup> Among anabolic steroid abusers, hCG is used to counteract the reduction in testosterone levels caused by steroids. The hCG has experienced recent popularity as a weight loss drug used in combination with a severely restricted caloric diet, although the U.S. Food and Drug Administration (FDA) has prohibited its sale as a homeopathic weight loss medication.<sup>9</sup>

#### ***HGH-Related Substances***

Human growth hormone (HGH), also known as somatotropin, is normally produced by the pituitary gland in the brain and spurs growth in children and in adolescents. The HGH also helps regulate many other functions related to homeostasis. Its medical indications include treatment of

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<sup>6</sup> *Id.*

<sup>7</sup> Section 893.03(3), F.S.

<sup>8</sup> WebMD, *Drugs & Medications- HCG*, available at: <http://www.webmd.com/drugs/drug-11192-HCG.aspx?drugid=11192&drugname=HCG> (last visited on March 15, 2013).

<sup>9</sup> FDA, *hCG Diet Products are Illegal*, available at: <http://www.fda.gov/forconsumers/consumerupdates/ucm281333.htm> (last visited on March 15, 2013).

poor growth in children, pituitary dysfunction, and muscle wasting caused by HIV/AIDS. It is also frequently abused for performance enhancement or anti-aging purposes.<sup>10</sup> Somatropin is a synthetic version of HGH.<sup>11</sup>

Growth hormone releasing factor (GHRH) stimulates the body to produce more HGH. GHRH is also known as growth hormone releasing factor (GHRF) or sermorelin.<sup>12</sup>

### **Penalties Related to Unlawful Possession or Distribution of Prescription Drugs**

The substances that are newly proscribed in the bill are available as prescription drugs. Section 499.03, F.S., provides that possession of any prescription drug that was obtained without a valid prescription of a licensed practitioner is a second degree misdemeanor, and that possession of a prescription drug that was obtained without a valid prescription of a licensed practitioner with the intent to sell, dispense, or deliver is a third degree felony. There are no recent reported appellate cases involving convictions for possession or distribution of prescription drugs that were not also controlled substances.

### **Penalties Related to Sale or Use of Schedule III Drugs**

It is unlawful for any unauthorized person<sup>13</sup> to sell, manufacture, deliver, or possess with the intent to sell, manufacture, or deliver any controlled substance. Such misuse of a Schedule III drug constitutes a third-degree felony.<sup>14</sup> Such an act is considered a second-degree felony if it occurs within 1000 feet of:

- A child care facility as defined in s. 402.302, F.S.;
- An elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight;
- A recreational facility;<sup>15,16</sup>
- A college, university, or other postsecondary institution;<sup>17</sup>
- A place of worship;
- A convenience business as defined in s. 812.171, F.S.;<sup>18</sup>
- A public housing facility;<sup>19</sup> or

<sup>10</sup> WebMD, *Human Growth Hormone*, available at: <http://www.webmd.com/fitness-exercise/human-growth-hormone-hgh> (last visited on March 15, 2013).

<sup>11</sup> FDA, *Somatotropin Information*, available at: <http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm237839.htm> (last visited on March 15, 2013).

<sup>12</sup> Entrez Gene, *GHRH Growth Hormone Releasing Hormone*, available at: [http://www.ncbi.nlm.nih.gov/gene?cmd=Retrieve&dopt=full\\_report&list\\_uids=2691](http://www.ncbi.nlm.nih.gov/gene?cmd=Retrieve&dopt=full_report&list_uids=2691) (last visited on March 15, 2013).

<sup>13</sup> Chapters 893 and 499, F.S., provide exceptions for those allowed to possess scheduled drugs, such as for medical or research purposes.

<sup>14</sup> Section 893.13(1)(a)2., F.S.

<sup>15</sup> Per s. 893.13(1)(c), F.S., recreational facilities include real property comprising a state, county, or municipal park; facilities operated by nonprofit, community-based organizations for the provision of recreational, social, or educational services to the public (“community centers”); or publicly-owned recreational facilities.

<sup>16</sup> Section 893.13(1)(c)2., F.S.

<sup>17</sup> Section 893.13(1)(d)2., F.S.

<sup>18</sup> Section 893.13(1)(e)2., F.S.

<sup>19</sup> Section 893.13(1)(f)2., F.S.



- As assisted living facility.<sup>20</sup>

Possession of any controlled substance that was not lawfully obtained by a practitioner or pursuant to a valid prescription or order of a practitioner is a third degree felony.<sup>21</sup> It is also a third degree felony to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a Schedule III controlled substance.<sup>22</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 893.03(3), F.S., to add hCG, HGH, somatropin, and GHRH (also known as sermorelin) to the list of Schedule III controlled substances in Florida. Designation as a Schedule III controlled substance raises the penalty for possession of these substances to a third degree felony and also criminalizes possession or distribution of any possible non-prescription form of the substance.

**Sections 2 and 3** reenact, respectively, s. 893.13(1) - (6)<sup>23</sup> and 921.0022(3)(b) – (e),<sup>24</sup> F.S., to incorporate the amendments made to s. 893.03, F.S., in Section 1 of the bill.

**Section 4** provides an effective date of October 1, 2013.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

<sup>20</sup> Section 893.13(1)(h)2., F.S.

<sup>21</sup> Section 893.13(6)(a), F.S.

<sup>22</sup> Section 893.13(1)(a)2., F.S.

<sup>23</sup> This provides prohibited acts and penalties for violating the Florida Comprehensive Drug Abuse Control and Prevention Act.

<sup>24</sup> This is the Offense Severity Ranking Chart of the Criminal Punishment Code.

**B. Private Sector Impact:**

Persons who use these drugs without a prescription may be more likely to be prosecuted and will be subject to significantly increased penalties.

**C. Government Sector Impact:**

FDLE estimates that it would experience a fiscal impact between \$400,000 and \$2.4 million. Because the substances added to Schedule III by this bill are too large and complex to be handled by FDLE's current laboratory equipment, one or more new analyzing machines would have to be purchased at a cost of approximately \$400,000 per machine. Ideally, a new machine would be purchased for each of FDLE's six regional crime laboratories. However, the required machines could be purchased for one or a few of the regional laboratories.

The bill's fiscal impact to the state could also be reduced by requiring local law enforcement agencies to contract with private laboratories for analysis of these substances, for which the fiscal impact has not been determined. Based on discussions with a private laboratory that has the capability to test for the substances, FDLE believes that the cost for a private laboratory to prepare standards and conduct tests could be as high as \$1,150 per sample. There could also be a need for personnel of the private testing laboratory to testify at trial. FDLE's experience with testimony in outsourced DNA-testing cases is that it costs between \$4000 to \$5000 to reimburse expenses and other costs for testimony by a private laboratory employee. The costs of outsourcing tests would be incurred by local law enforcement agencies or the state attorney's office.<sup>25</sup>

The Criminal Justice Impact Conference has determined that the bill will have an insignificant impact on the need for prison bed space.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Criminal Justice on April 8, 2013:**

Removes CJC-1295, GHRF-6, and tesamorelin from the bill. It also adds sermorelin back into the bill as a synonym for GHRH.

<sup>25</sup> FDLE, *2013 Bill Analysis of SB 1448*. A copy is on file with the Senate Health Policy Committee.

**CS by Health Policy on March 20, 2013:**

The CS eliminates mention of GHRF and sermorelin in the bill as they are alternate names for GHRH. The CS also recategorizes the drugs added to Schedule III by this bill to place them in the general listing of prohibited drugs rather than under the paragraph devoted to anabolic steroids.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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811210

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/08/2013	.	
	.	
	.	
	.	

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The Committee on Criminal Justice (Smith) recommended the following:

**Senate Amendment**

Delete lines 181 - 186  
and insert:

- (i) Human growth hormone (HGH).
- (j) Somatropin.
- (k) Growth hormone releasing hormone (GHRH, Sermorelin).
- (l) GRF 1-29.



640050

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2013	.	
	.	
	.	
	.	

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The Committee on Criminal Justice (Smith) recommended the following:

**Senate Amendment**

Delete lines 181 - 186  
and insert:

(i) Human growth hormone (HGH).

(j) Somatropin.

(k) Growth hormone releasing hormone (GHRH, Sermorelin).

1  
2  
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4  
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By the Committee on Health Policy; and Senator Smith

588-02788-13

20131448c1

1 A bill to be entitled  
 2 An act relating to controlled substances; amending s.  
 3 893.03, F.S.; adding to the list of Schedule III  
 4 controlled substances certain specified materials,  
 5 compounds, mixtures, or preparations that promote  
 6 muscle growth or otherwise enhance athletic  
 7 performance; adding human chorionic gonadotropin to  
 8 the list of Schedule III controlled substances;  
 9 reenacting s. 893.12(1)-(6), F.S., relating to  
 10 prohibited acts involving controlled substances, to  
 11 incorporate the amendments made to s. 893.03, F.S., in  
 12 references thereto; reenacting s. 921.0022(3)(b)-(e),  
 13 F.S., relating to the Criminal Punishment Code offense  
 14 severity ranking chart, to incorporate the amendments  
 15 made to s. 893.03, F.S., in references thereto;  
 16 providing an effective date.  
 17  
 18 Be It Enacted by the Legislature of the State of Florida:  
 19  
 20 Section 1. Paragraphs (h), (i), (j), (k), (l), (m), and (n)  
 21 are added to subsection (3) of section 893.03, Florida Statutes,  
 22 to read:  
 23 893.03 Standards and schedules.—The substances enumerated  
 24 in this section are controlled by this chapter. The controlled  
 25 substances listed or to be listed in Schedules I, II, III, IV,  
 26 and V are included by whatever official, common, usual,  
 27 chemical, or trade name designated. The provisions of this  
 28 section shall not be construed to include within any of the  
 29 schedules contained in this section any excluded drugs listed

Page 1 of 40

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

588-02788-13

20131448c1

30 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
 31 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
 32 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
 33 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
 34 Anabolic Steroid Products."  
 35 (3) SCHEDULE III.—A substance in Schedule III has a  
 36 potential for abuse less than the substances contained in  
 37 Schedules I and II and has a currently accepted medical use in  
 38 treatment in the United States, and abuse of the substance may  
 39 lead to moderate or low physical dependence or high  
 40 psychological dependence or, in the case of anabolic steroids,  
 41 may lead to physical damage. The following substances are  
 42 controlled in Schedule III:  
 43 (a) Unless specifically excepted or unless listed in  
 44 another schedule, any material, compound, mixture, or  
 45 preparation which contains any quantity of the following  
 46 substances having a depressant or stimulant effect on the  
 47 nervous system:  
 48 1. Any substance which contains any quantity of a  
 49 derivative of barbituric acid, including thiobarbituric acid, or  
 50 any salt of a derivative of barbituric acid or thiobarbituric  
 51 acid, including, but not limited to, butabarbital and  
 52 butalbital.  
 53 2. Benzphetamine.  
 54 3. Chlorhexadol.  
 55 4. Chlorphentermine.  
 56 5. Clortermine.  
 57 6. Lysergic acid.  
 58 7. Lysergic acid amide.

Page 2 of 40

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

588-02788-13

20131448c1

- 59 8. Methypylon.  
 60 9. Phendimetrazine.  
 61 10. Sulfondiethylmethane.  
 62 11. Sulfonethylmethane.  
 63 12. Sulfonmethane.  
 64 13. Tiletamine and zolazepam or any salt thereof.  
 65 (b) Nalorphine.  
 66 (c) Unless specifically excepted or unless listed in  
 67 another schedule, any material, compound, mixture, or  
 68 preparation containing limited quantities of any of the  
 69 following controlled substances or any salts thereof:  
 70 1. Not more than 1.8 grams of codeine per 100 milliliters  
 71 or not more than 90 milligrams per dosage unit, with an equal or  
 72 greater quantity of an isoquinoline alkaloid of opium.  
 73 2. Not more than 1.8 grams of codeine per 100 milliliters  
 74 or not more than 90 milligrams per dosage unit, with recognized  
 75 therapeutic amounts of one or more active ingredients which are  
 76 not controlled substances.  
 77 3. Not more than 300 milligrams of hydrocodone per 100  
 78 milliliters or not more than 15 milligrams per dosage unit, with  
 79 a fourfold or greater quantity of an isoquinoline alkaloid of  
 80 opium.  
 81 4. Not more than 300 milligrams of hydrocodone per 100  
 82 milliliters or not more than 15 milligrams per dosage unit, with  
 83 recognized therapeutic amounts of one or more active ingredients  
 84 that are not controlled substances.  
 85 5. Not more than 1.8 grams of dihydrocodeine per 100  
 86 milliliters or not more than 90 milligrams per dosage unit, with  
 87 recognized therapeutic amounts of one or more active ingredients

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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- 88 which are not controlled substances.  
 89 6. Not more than 300 milligrams of ethylmorphine per 100  
 90 milliliters or not more than 15 milligrams per dosage unit, with  
 91 one or more active, nonnarcotic ingredients in recognized  
 92 therapeutic amounts.  
 93 7. Not more than 50 milligrams of morphine per 100  
 94 milliliters or per 100 grams, with recognized therapeutic  
 95 amounts of one or more active ingredients which are not  
 96 controlled substances.  
 97  
 98 For purposes of charging a person with a violation of s. 893.135  
 99 involving any controlled substance described in subparagraph 3.  
 100 or subparagraph 4., the controlled substance is a Schedule III  
 101 controlled substance pursuant to this paragraph but the weight  
 102 of the controlled substance per milliliters or per dosage unit  
 103 is not relevant to the charging of a violation of s. 893.135.  
 104 The weight of the controlled substance shall be determined  
 105 pursuant to s. 893.135(6).  
 106 (d) Anabolic steroids.  
 107 1. The term "anabolic steroid" means any drug or hormonal  
 108 substance, chemically and pharmacologically related to  
 109 testosterone, other than estrogens, progestins, and  
 110 corticosteroids, that promotes muscle growth and includes:  
 111 a. Androsterone.  
 112 b. Androsterone acetate.  
 113 c. Boldenone.  
 114 d. Boldenone acetate.  
 115 e. Boldenone benzoate.  
 116 f. Boldenone undecylenate.

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117 g. Chlorotestosterone (4-chlortestosterone).  
 118 h. Clostebol.  
 119 i. Dehydrochlormethyltestosterone.  
 120 j. Dihydrotestosterone (4-dihydrotestosterone).  
 121 k. Drostanolone.  
 122 l. Ethylestrenol.  
 123 m. Fluoxymesterone.  
 124 n. Formebolone (formebolone).  
 125 o. Mesterolone.  
 126 p. Methandienone.  
 127 q. Methandranone.  
 128 r. Methandriol.  
 129 s. Methandrostenolone.  
 130 t. Methenolone.  
 131 u. Methyltestosterone.  
 132 v. Mibolerone.  
 133 w. Nandrolone.  
 134 x. Norethandrolone.  
 135 y. Nortestosterone.  
 136 z. Nortestosterone decanoate.  
 137 aa. Nortestosterone phenylpropionate.  
 138 bb. Nortestosterone propionate.  
 139 cc. Oxandrolone.  
 140 dd. Oxymesterone.  
 141 ee. Oxymetholone.  
 142 ff. Stanolone.  
 143 gg. Stanozolol.  
 144 hh. Testolactone.  
 145 ii. Testosterone.

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146 jj. Testosterone acetate.  
 147 kk. Testosterone benzoate.  
 148 ll. Testosterone cypionate.  
 149 mm. Testosterone decanoate.  
 150 nn. Testosterone enanthate.  
 151 oo. Testosterone isocaproate.  
 152 pp. Testosterone oleate.  
 153 qq. Testosterone phenylpropionate.  
 154 rr. Testosterone propionate.  
 155 ss. Testosterone undecanoate.  
 156 tt. Trenbolone.  
 157 uu. Trenbolone acetate.  
 158 vv. Any salt, ester, or isomer of a drug or substance  
 159 described or listed in this subparagraph if that salt, ester, or  
 160 isomer promotes muscle growth.  
 161 2. The term does not include an anabolic steroid that is  
 162 expressly intended for administration through implants to cattle  
 163 or other nonhuman species and that has been approved by the  
 164 United States Secretary of Health and Human Services for such  
 165 administration. However, any person who prescribes, dispenses,  
 166 or distributes such a steroid for human use is considered to  
 167 have prescribed, dispensed, or distributed an anabolic steroid  
 168 within the meaning of this paragraph.  
 169 (e) Ketamine, including any isomers, esters, ethers, salts,  
 170 and salts of isomers, esters, and ethers, whenever the existence  
 171 of such isomers, esters, ethers, and salts is possible within  
 172 the specific chemical designation.  
 173 (f) Dronabinol (synthetic THC) in sesame oil and  
 174 encapsulated in a soft gelatin capsule in a drug product

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175 approved by the United States Food and Drug Administration.

176 (g) Any drug product containing gamma-hydroxybutyric acid,  
177 including its salts, isomers, and salts of isomers, for which an  
178 application is approved under s. 505 of the Federal Food, Drug,  
179 and Cosmetic Act.

180 (h) Human chorionic gonadotropin (hCG).

181 (i) CJC-1295.

182 (j) Growth hormone releasing hormone (GHRH).

183 (k) Growth hormone releasing hexapeptide (GHRP-6).

184 (l) Human growth hormone (HGH).

185 (m) Somatropin.

186 (n) Tesamorelin.

187 Section 2. For the purpose of incorporating the amendment  
188 made by this act to section 893.03, Florida Statutes, in a  
189 reference thereto, subsections (1) through (6) of section  
190 893.13, Florida Statutes, are reenacted to read:

191 893.13 Prohibited acts; penalties.—

192 (1) (a) Except as authorized by this chapter and chapter  
193 499, it is unlawful for any person to sell, manufacture, or  
194 deliver, or possess with intent to sell, manufacture, or  
195 deliver, a controlled substance. Any person who violates this  
196 provision with respect to:

197 1. A controlled substance named or described in s.  
198 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c)4.,  
199 commits a felony of the second degree, punishable as provided in  
200 s. 775.082, s. 775.083, or s. 775.084.

201 2. A controlled substance named or described in s.  
202 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)5., (2) (c)6.,  
203 (2) (c)7., (2) (c)8., (2) (c)9., (3), or (4) commits a felony of

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204 the third degree, punishable as provided in s. 775.082, s.  
205 775.083, or s. 775.084.

206 3. A controlled substance named or described in s.  
207 893.03(5) commits a misdemeanor of the first degree, punishable  
208 as provided in s. 775.082 or s. 775.083.

209 (b) Except as provided in this chapter, it is unlawful to  
210 sell or deliver in excess of 10 grams of any substance named or  
211 described in s. 893.03(1) (a) or (1) (b), or any combination  
212 thereof, or any mixture containing any such substance. Any  
213 person who violates this paragraph commits a felony of the first  
214 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
215 775.084.

216 (c) Except as authorized by this chapter, it is unlawful  
217 for any person to sell, manufacture, or deliver, or possess with  
218 intent to sell, manufacture, or deliver, a controlled substance  
219 in, on, or within 1,000 feet of the real property comprising a  
220 child care facility as defined in s. 402.302 or a public or  
221 private elementary, middle, or secondary school between the  
222 hours of 6 a.m. and 12 midnight, or at any time in, on, or  
223 within 1,000 feet of real property comprising a state, county,  
224 or municipal park, a community center, or a publicly owned  
225 recreational facility. For the purposes of this paragraph, the  
226 term "community center" means a facility operated by a nonprofit  
227 community-based organization for the provision of recreational,  
228 social, or educational services to the public. Any person who  
229 violates this paragraph with respect to:

230 1. A controlled substance named or described in s.  
231 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c)4.,  
232 commits a felony of the first degree, punishable as provided in

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233 s. 775.082, s. 775.083, or s. 775.084. The defendant must be  
 234 sentenced to a minimum term of imprisonment of 3 calendar years  
 235 unless the offense was committed within 1,000 feet of the real  
 236 property comprising a child care facility as defined in s.  
 237 402.302.

238 2. A controlled substance named or described in s.  
 239 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 240 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 241 the second degree, punishable as provided in s. 775.082, s.  
 242 775.083, or s. 775.084.

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

247  
 248 This paragraph does not apply to a child care facility unless  
 249 the owner or operator of the facility posts a sign that is not  
 250 less than 2 square feet in size with a word legend identifying  
 251 the facility as a licensed child care facility and that is  
 252 posted on the property of the child care facility in a  
 253 conspicuous place where the sign is reasonably visible to the  
 254 public.

255 (d) Except as authorized by this chapter, it is unlawful  
 256 for any person to sell, manufacture, or deliver, or possess with  
 257 intent to sell, manufacture, or deliver, a controlled substance  
 258 in, on, or within 1,000 feet of the real property comprising a  
 259 public or private college, university, or other postsecondary  
 260 educational institution. Any person who violates this paragraph  
 261 with respect to:

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262 1. A controlled substance named or described in s.  
 263 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 264 commits a felony of the first degree, punishable as provided in  
 265 s. 775.082, s. 775.083, or s. 775.084.

266 2. A controlled substance named or described in s.  
 267 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 268 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 269 the second degree, punishable as provided in s. 775.082, s.  
 270 775.083, or s. 775.084.

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

275 (e) Except as authorized by this chapter, it is unlawful  
 276 for any person to sell, manufacture, or deliver, or possess with  
 277 intent to sell, manufacture, or deliver, a controlled substance  
 278 not authorized by law in, on, or within 1,000 feet of a physical  
 279 place for worship at which a church or religious organization  
 280 regularly conducts religious services or within 1,000 feet of a  
 281 convenience business as defined in s. 812.171. Any person who  
 282 violates this paragraph with respect to:

283 1. A controlled substance named or described in s.  
 284 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 285 commits a felony of the first degree, punishable as provided in  
 286 s. 775.082, s. 775.083, or s. 775.084.

287 2. A controlled substance named or described in s.  
 288 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 289 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 290 the second degree, punishable as provided in s. 775.082, s.

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291 775.083, or s. 775.084.

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

296 (f) Except as authorized by this chapter, it is unlawful  
 297 for any person to sell, manufacture, or deliver, or possess with  
 298 intent to sell, manufacture, or deliver, a controlled substance  
 299 in, on, or within 1,000 feet of the real property comprising a  
 300 public housing facility at any time. For purposes of this  
 301 section, the term "real property comprising a public housing  
 302 facility" means real property, as defined in s. 421.03(12), of a  
 303 public corporation created as a housing authority pursuant to  
 304 part I of chapter 421. Any person who violates this paragraph  
 305 with respect to:

306 1. A controlled substance named or described in s.  
 307 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.,  
 308 commits a felony of the first degree, punishable as provided in  
 309 s. 775.082, s. 775.083, or s. 775.084.

310 2. A controlled substance named or described in s.  
 311 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,  
 312 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of  
 313 the second degree, punishable as provided in s. 775.082, s.  
 314 775.083, or s. 775.084.

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

319 (g) Except as authorized by this chapter, it is unlawful

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320 for any person to manufacture methamphetamine or phencyclidine,  
 321 or possess any listed chemical as defined in s. 893.033 in  
 322 violation of s. 893.149 and with intent to manufacture  
 323 methamphetamine or phencyclidine. If any person violates this  
 324 paragraph and:

325 1. The commission or attempted commission of the crime  
 326 occurs in a structure or conveyance where any child under 16  
 327 years of age is present, the person commits a felony of the  
 328 first degree, punishable as provided in s. 775.082, s. 775.083,  
 329 or s. 775.084. In addition, the defendant must be sentenced to a  
 330 minimum term of imprisonment of 5 calendar years.

331 2. The commission of the crime causes any child under 16  
 332 years of age to suffer great bodily harm, the person commits a  
 333 felony of the first degree, punishable as provided in s.  
 334 775.082, s. 775.083, or s. 775.084. In addition, the defendant  
 335 must be sentenced to a minimum term of imprisonment of 10  
 336 calendar years.

337 (h) Except as authorized by this chapter, it is unlawful  
 338 for any person to sell, manufacture, or deliver, or possess with  
 339 intent to sell, manufacture, or deliver, a controlled substance  
 340 in, on, or within 1,000 feet of the real property comprising an  
 341 assisted living facility, as that term is used in chapter 429.  
 342 Any person who violates this paragraph with respect to:

343 1. A controlled substance named or described in s.  
 344 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.  
 345 commits a felony of the first degree, punishable as provided in  
 346 s. 775.082, s. 775.083, or s. 775.084.

347 2. A controlled substance named or described in s.  
 348 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,

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349 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of  
 350 the second degree, punishable as provided in s. 775.082, s.  
 351 775.083, or s. 775.084.

352 (2) (a) Except as authorized by this chapter and chapter  
 353 499, it is unlawful for any person to purchase, or possess with  
 354 intent to purchase, a controlled substance. Any person who  
 355 violates this provision with respect to:

356 1. A controlled substance named or described in s.  
 357 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.,  
 358 commits a felony of the second degree, punishable as provided in  
 359 s. 775.082, s. 775.083, or s. 775.084.

360 2. A controlled substance named or described in s.  
 361 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,  
 362 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of  
 363 the third degree, punishable as provided in s. 775.082, s.  
 364 775.083, or s. 775.084.

365 3. A controlled substance named or described in s.  
 366 893.03(5) commits a misdemeanor of the first degree, punishable  
 367 as provided in s. 775.082 or s. 775.083.

368 (b) Except as provided in this chapter, it is unlawful to  
 369 purchase in excess of 10 grams of any substance named or  
 370 described in s. 893.03(1) (a) or (1) (b), or any combination  
 371 thereof, or any mixture containing any such substance. Any  
 372 person who violates this paragraph commits a felony of the first  
 373 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 374 775.084.

375 (3) Any person who delivers, without consideration, not  
 376 more than 20 grams of cannabis, as defined in this chapter,  
 377 commits a misdemeanor of the first degree, punishable as

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378 provided in s. 775.082 or s. 775.083. For the purposes of this  
 379 paragraph, "cannabis" does not include the resin extracted from  
 380 the plants of the genus *Cannabis* or any compound manufacture,  
 381 salt, derivative, mixture, or preparation of such resin.

382 (4) Except as authorized by this chapter, it is unlawful  
 383 for any person 18 years of age or older to deliver any  
 384 controlled substance to a person under the age of 18 years, or  
 385 to use or hire a person under the age of 18 years as an agent or  
 386 employee in the sale or delivery of such a substance, or to use  
 387 such person to assist in avoiding detection or apprehension for  
 388 a violation of this chapter. Any person who violates this  
 389 provision with respect to:

390 (a) A controlled substance named or described in s.  
 391 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.,  
 392 commits a felony of the first degree, punishable as provided in  
 393 s. 775.082, s. 775.083, or s. 775.084.

394 (b) A controlled substance named or described in s.  
 395 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,  
 396 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of  
 397 the second degree, punishable as provided in s. 775.082, s.  
 398 775.083, or s. 775.084.

399 Imposition of sentence may not be suspended or deferred, nor  
 400 shall the person so convicted be placed on probation.

401 (5) It is unlawful for any person to bring into this state  
 402 any controlled substance unless the possession of such  
 403 controlled substance is authorized by this chapter or unless  
 404 such person is licensed to do so by the appropriate federal  
 405 agency. Any person who violates this provision with respect to:  
 406

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407 (a) A controlled substance named or described in s.  
 408 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 409 commits a felony of the second degree, punishable as provided in  
 410 s. 775.082, s. 775.083, or s. 775.084.

411 (b) A controlled substance named or described in s.  
 412 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 413 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 414 the third degree, punishable as provided in s. 775.082, s.  
 415 775.083, or s. 775.084.

416 (c) A controlled substance named or described in s.  
 417 893.03(5) commits a misdemeanor of the first degree, punishable  
 418 as provided in s. 775.082 or s. 775.083.

419 (6)(a) It is unlawful for any person to be in actual or  
 420 constructive possession of a controlled substance unless such  
 421 controlled substance was lawfully obtained from a practitioner  
 422 or pursuant to a valid prescription or order of a practitioner  
 423 while acting in the course of his or her professional practice  
 424 or to be in actual or constructive possession of a controlled  
 425 substance except as otherwise authorized by this chapter. Any  
 426 person who violates this provision commits a felony of the third  
 427 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 428 775.084.

429 (b) If the offense is the possession of not more than 20  
 430 grams of cannabis, as defined in this chapter, or 3 grams or  
 431 less of a controlled substance described in s. 893.03(1)(c)46.-  
 432 50. and 114.-142., the person commits a misdemeanor of the first  
 433 degree, punishable as provided in s. 775.082 or s. 775.083. For  
 434 the purposes of this subsection, "cannabis" does not include the  
 435 resin extracted from the plants of the genus *Cannabis*, or any

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436 compound manufacture, salt, derivative, mixture, or preparation  
 437 of such resin, and a controlled substance described in s.  
 438 893.03(1)(c)46.-50. and 114.-142. does not include the substance  
 439 in a powdered form.

440 (c) Except as provided in this chapter, it is unlawful to  
 441 possess in excess of 10 grams of any substance named or  
 442 described in s. 893.03(1)(a) or (1)(b), or any combination  
 443 thereof, or any mixture containing any such substance. Any  
 444 person who violates this paragraph commits a felony of the first  
 445 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 446 775.084.

447 (d) Notwithstanding any provision to the contrary of the  
 448 laws of this state relating to arrest, a law enforcement officer  
 449 may arrest without warrant any person who the officer has  
 450 probable cause to believe is violating the provisions of this  
 451 chapter relating to possession of cannabis.

452 Section 3. For the purpose of incorporating the amendment  
 453 made by this act to section 893.03, Florida Statutes, in a  
 454 reference thereto, paragraphs (b) through (e) of subsection (3)  
 455 of section 921.0022, Florida Statutes, are reenacted to read:

456 921.0022 Criminal Punishment Code; offense severity ranking  
 457 chart.-

458 (3) OFFENSE SEVERITY RANKING CHART

459 (b) LEVEL 2

Florida Statute	Felony Degree	Description
461 379.2431	3rd	Possession of 11 or fewer marine turtle

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 (1) (e)3. eggs in violation of the Marine Turtle  
 Protection Act.  
 462  
 379.2431 3rd Possession of more than 11 marine turtle  
 (1) (e)4. eggs in violation of the Marine Turtle  
 Protection Act.  
 463  
 403.413(5) (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.  
 464  
 517.07(2) 3rd Failure to furnish a prospectus meeting  
 requirements.  
 465  
 590.28(1) 3rd Intentional burning of lands.  
 466  
 784.05(3) 3rd Storing or leaving a loaded firearm  
 within reach of minor who uses it to  
 inflict injury or death.  
 467  
 787.04(1) 3rd In violation of court order, take,  
 entice, etc., minor beyond state limits.  
 468  
 806.13(1) (b)3. 3rd Criminal mischief; damage \$1,000 or more  
 to public communication or any other  
 public service.  
 469  
 810.061(2) 3rd Impairing or impeding telephone or power

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 to a dwelling; facilitating or  
 furthering burglary.  
 470  
 810.09(2) (e) 3rd Trespassing on posted commercial  
 horticulture property.  
 471  
 812.014(2) (c)1. 3rd Grand theft, 3rd degree; \$300 or more  
 but less than \$5,000.  
 472  
 812.014(2) (d) 3rd Grand theft, 3rd degree; \$100 or more  
 but less than \$300, taken from  
 unenclosed curtilage of dwelling.  
 473  
 812.015(7) 3rd Possession, use, or attempted use of an  
 antishoplifting or inventory control  
 device countermeasure.  
 474  
 817.234(1) (a)2. 3rd False statement in support of insurance  
 claim.  
 475  
 817.481(3) (a) 3rd Obtain credit or purchase with false,  
 expired, counterfeit, etc., credit card,  
 value over \$300.  
 476  
 817.52(3) 3rd Failure to redeliver hired vehicle.  
 477  
 817.54 3rd With intent to defraud, obtain mortgage  
 note, etc., by false representation.  
 478

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479	817.60(5)	3rd	Dealing in credit cards of another.
480	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
481	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
482	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
483	831.01	3rd	Forgery.
484	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
485	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
486	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
487	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
488	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.

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489	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
490	843.08	3rd	Falsely impersonating an officer.
491	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.
492	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
493	(c) LEVEL 3		
494	Florida Statute	Felony Degree	Description
495	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
496	316.066(3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
497	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
498	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

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499 319.30(4) 3rd Possession by junkyard of motor vehicle  
with identification number plate  
removed.

500 319.33(1)(a) 3rd Alter or forge any certificate of title  
to a motor vehicle or mobile home.

501 319.33(1)(c) 3rd Procure or pass title on stolen vehicle.

502 319.33(4) 3rd With intent to defraud, possess, sell,  
etc., a blank, forged, or unlawfully  
obtained title or registration.

503 327.35(2)(b) 3rd Felony BUI.

504 328.05(2) 3rd Possess, sell, or counterfeit  
fictitious, stolen, or fraudulent titles  
or bills of sale of vessels.

505 328.07(4) 3rd Manufacture, exchange, or possess vessel  
with counterfeit or wrong ID number.

506 376.302(5) 3rd Fraud related to reimbursement for  
cleanup expenses under the Inland  
Protection Trust Fund.

507 379.2431 3rd Taking, disturbing, mutilating,  
(1)(e)5. destroying, causing to be destroyed,

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588-02788-13 20131448c1

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.

508 379.2431 3rd Soliciting to commit or conspiring to  
(1)(e)6. commit a violation of the Marine Turtle  
Protection Act.

509 400.9935(4) 3rd Operating a clinic without a license or  
filing false license application or  
other required information.

510 440.1051(3) 3rd False report of workers' compensation  
fraud or retaliation for making such a  
report.

511 501.001(2)(b) 2nd Tampers with a consumer product or the  
container using materially  
false/misleading information.

512 624.401(4)(a) 3rd Transacting insurance without a  
certificate of authority.

513 624.401(4)(b)1. 3rd Transacting insurance without a  
certificate of authority; premium  
collected less than \$20,000.

514

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588-02788-13 20131448c1  
 626.902(1)(a) & 3rd Representing an unauthorized insurer.  
 (b)  
 515 697.08 3rd Equity skimming.  
 516 790.15(3) 3rd Person directs another to discharge  
 firearm from a vehicle.  
 517 796.05(1) 3rd Live on earnings of a prostitute.  
 518 806.10(1) 3rd Maliciously injure, destroy, or  
 interfere with vehicles or equipment  
 used in firefighting.  
 519 806.10(2) 3rd Interferes with or assaults firefighter  
 in performance of duty.  
 520 810.09(2)(c) 3rd Trespass on property other than  
 structure or conveyance armed with  
 firearm or dangerous weapon.  
 521 812.014(2)(c)2. 3rd Grand theft; \$5,000 or more but less  
 than \$10,000.  
 522 812.0145(2)(c) 3rd Theft from person 65 years of age or  
 older; \$300 or more but less than  
 \$10,000.  
 523 815.04(4)(b) 2nd Computer offense devised to defraud or

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588-02788-13 20131448c1  
 obtain property.  
 524 817.034(4)(a)3. 3rd Engages in scheme to defraud (Florida  
 Communications Fraud Act), property  
 valued at less than \$20,000.  
 525 817.233 3rd Burning to defraud insurer.  
 526 817.234 3rd Unlawful solicitation of persons  
 (8)(b)-(c) involved in motor vehicle accidents.  
 527 817.234(11)(a) 3rd Insurance fraud; property value less  
 than \$20,000.  
 528 817.236 3rd Filing a false motor vehicle insurance  
 application.  
 529 817.2361 3rd Creating, marketing, or presenting a  
 false or fraudulent motor vehicle  
 insurance card.  
 530 817.413(2) 3rd Sale of used goods as new.  
 531 817.505(4) 3rd Patient brokering.  
 532 828.12(2) 3rd Tortures any animal with intent to  
 inflict intense pain, serious physical  
 injury, or death.  
 533

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588-02788-13 20131448c1

534 831.28(2)(a) 3rd Counterfeiting a payment instrument with  
intent to defraud or possessing a  
counterfeit payment instrument.

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

535 838.021(3)(b) 3rd Threatens unlawful harm to public  
servant.

536 843.19 3rd Injure, disable, or kill police dog or  
horse.

537 860.15(3) 3rd Overcharging for repairs and parts.

538 870.01(2) 3rd Riot; inciting or encouraging.

539 893.13(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).

540 893.13(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.

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588-02788-13 20131448c1

541 893.13(1)(f)2. 2nd Sell, manufacture, or deliver s.  
893.03(1)(c), (2)(c)1., (2)(c)2.,  
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,  
(2)(c)8., (2)(c)9., (3), or (4) drugs  
within 1,000 feet of public housing  
facility.

542 893.13(6)(a) 3rd Possession of any controlled substance  
other than felony possession of  
cannabis.

543 893.13(7)(a)8. 3rd Withhold information from practitioner  
regarding previous receipt of or  
prescription for a controlled substance.

544 893.13(7)(a)9. 3rd Obtain or attempt to obtain controlled  
substance by fraud, forgery,  
misrepresentation, etc.

545 893.13(7)(a)10. 3rd Affix false or forged label to package  
of controlled substance.

546 893.13(7)(a)11. 3rd Furnish false or fraudulent material  
information on any document or record  
required by chapter 893.

547 893.13(8)(a)1. 3rd Knowingly assist a patient, other  
person, or owner of an animal in

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-02788-13 20131448c1  
 obtaining a controlled substance through  
 deceptive, untrue, or fraudulent  
 representations in or related to the  
 practitioner's practice.

548 893.13(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.

549 893.13(8)(a)3. 3rd Knowingly write a prescription for a  
 controlled substance for a fictitious  
 person.

550 893.13(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.

551 918.13(1)(a) 3rd Alter, destroy, or conceal investigation  
 evidence.

552 944.47 3rd Introduce contraband to correctional  
 (1)(a)1.-2. facility.

553 944.47(1)(c) 2nd Possess contraband while upon the  
 grounds of a correctional institution.

588-02788-13 20131448c1  
 554 985.721 3rd Escapes from a juvenile facility (secure  
 detention or residential commitment  
 facility).

555 (d) LEVEL 4

556 Florida Felony

557 Statute Degree Description

558 316.1935(3)(a) 2nd Driving at high speed or with wanton  
 disregard for safety while fleeing or  
 attempting to elude law enforcement  
 officer who is in a patrol vehicle with  
 siren and lights activated.

559 499.0051(1) 3rd Failure to maintain or deliver pedigree  
 papers.

560 499.0051(2) 3rd Failure to authenticate pedigree papers.

561 499.0051(6) 2nd Knowing sale or delivery, or possession  
 with intent to sell, contraband  
 prescription drugs.

562 517.07(1) 3rd Failure to register securities.

563 517.12(1) 3rd Failure of dealer, associated person, or  
 issuer of securities to register.

588-02788-13 20131448c1

564 784.07(2)(b) 3rd Battery of law enforcement officer,  
firefighter, etc.

565 784.074(1)(c) 3rd Battery of sexually violent predators  
facility staff.

566 784.075 3rd Battery on detention or commitment  
facility staff.

567 784.078 3rd Battery of facility employee by  
throwing, tossing, or expelling certain  
fluids or materials.

568 784.08(2)(c) 3rd Battery on a person 65 years of age or  
older.

569 784.081(3) 3rd Battery on specified official or  
employee.

570 784.082(3) 3rd Battery by detained person on visitor or  
other detainee.

571 784.083(3) 3rd Battery on code inspector.

572 784.085 3rd Battery of child by throwing, tossing,  
projecting, or expelling certain fluids  
or materials.

573

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787.03(1) 3rd Interference with custody; wrongly takes  
minor from appointed guardian.

574 787.04(2) 3rd Take, entice, or remove child beyond  
state limits with criminal intent  
pending custody proceedings.

575 787.04(3) 3rd Carrying child beyond state lines with  
criminal intent to avoid producing child  
at custody hearing or delivering to  
designated person.

576 787.07 3rd Human smuggling.

577 790.115(1) 3rd Exhibiting firearm or weapon within  
1,000 feet of a school.

578 790.115(2)(b) 3rd Possessing electric weapon or device,  
destructive device, or other weapon on  
school property.

579 790.115(2)(c) 3rd Possessing firearm on school property.

580 800.04(7)(c) 3rd Lewd or lascivious exhibition; offender  
less than 18 years.

581 810.02(4)(a) 3rd Burglary, or attempted burglary, of an  
unoccupied structure; unarmed; no  
assault or battery.

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582 588-02788-13 20131448c1

810.02(4)(b) 3rd Burglary, or attempted burglary, of an  
unoccupied conveyance; unarmed; no  
assault or battery.

583 810.06 3rd Burglary; possession of tools.

584 810.08(2)(c) 3rd Trespass on property, armed with firearm  
or dangerous weapon.

585 812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000 or more  
but less than \$20,000.

586 812.014 3rd Grand theft, 3rd degree, a will,  
(2)(c)4.-10. firearm, motor vehicle, livestock, etc.

587 812.0195(2) 3rd Dealing in stolen property by use of the  
Internet; property stolen \$300 or more.

588 817.563(1) 3rd Sell or deliver substance other than  
controlled substance agreed upon,  
excluding s. 893.03(5) drugs.

589 817.568(2)(a) 3rd Fraudulent use of personal  
identification information.

590 817.625(2)(a) 3rd Fraudulent use of scanning device or  
reencoder.

591

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588-02788-13 20131448c1

828.125(1) 2nd Kill, maim, or cause great bodily harm  
or permanent breeding disability to any  
registered horse or cattle.

592 837.02(1) 3rd Perjury in official proceedings.

593 837.021(1) 3rd Make contradictory statements in  
official proceedings.

594 838.022 3rd Official misconduct.

595 839.13(2)(a) 3rd Falsifying records of an individual in  
the care and custody of a state agency.

596 839.13(2)(c) 3rd Falsifying records of the Department of  
Children and Family Services.

597 843.021 3rd Possession of a concealed handcuff key  
by a person in custody.

598 843.025 3rd Deprive law enforcement, correctional,  
or correctional probation officer of  
means of protection or communication.

599 843.15(1)(a) 3rd Failure to appear while on bail for  
felony (bond estreature or bond  
jumping).

600 847.0135(5)(c) 3rd Lewd or lascivious exhibition using

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	588-02788-13		20131448c1	
			computer; offender less than 18 years.	
601	874.05(1)	3rd	Encouraging or recruiting another to join a criminal gang.	
602	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).	
603	914.14(2)	3rd	Witnesses accepting bribes.	
604	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.	
605	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.	
606	918.12	3rd	Tampering with jurors.	
607	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.	
608				
609	(e) LEVEL 5			
610				
	Florida	Felony		
	Statute	Degree	Description	
611	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.	

	588-02788-13		20131448c1	
612	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.	
613	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.	
614	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.	
615	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.	
616	379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.	
617	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.	
618	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.	
619	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.	
620	440.381(2)	2nd	Submission of false, misleading, or	

588-02788-13 20131448c1  
 incomplete information with the purpose  
 of avoiding or reducing workers'  
 compensation premiums.

621 624.401(4)(b)2. 2nd Transacting insurance without a  
 certificate or authority; premium  
 collected \$20,000 or more but less than  
 \$100,000.

622 626.902(1)(c) 2nd Representing an unauthorized insurer;  
 repeat offender.

623 790.01(2) 3rd Carrying a concealed firearm.

624 790.162 2nd Threat to throw or discharge  
 destructive device.

625 790.163(1) 2nd False report of deadly explosive or  
 weapon of mass destruction.

626 790.221(1) 2nd Possession of short-barreled shotgun or  
 machine gun.

627 790.23 2nd Felons in possession of firearms,  
 ammunition, or electronic weapons or  
 devices.

628 800.04(6)(c) 3rd Lewd or lascivious conduct; offender  
 less than 18 years.

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629 800.04(7)(b) 2nd Lewd or lascivious exhibition; offender  
 18 years or older.

630 806.111(1) 3rd Possess, manufacture, or dispense fire  
 bomb with intent to damage any  
 structure or property.

631 812.0145(2)(b) 2nd Theft from person 65 years of age or  
 older; \$10,000 or more but less than  
 \$50,000.

632 812.015(8) 3rd Retail theft; property stolen is valued  
 at \$300 or more and one or more  
 specified acts.

633 812.019(1) 2nd Stolen property; dealing in or  
 trafficking in.

634 812.131(2)(b) 3rd Robbery by sudden snatching.

635 812.16(2) 3rd Owning, operating, or conducting a chop  
 shop.

636 817.034(4)(a)2. 2nd Communications fraud, value \$20,000 to  
 \$50,000.

637 817.234(11)(b) 2nd Insurance fraud; property value \$20,000  
 or more but less than \$100,000.

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638 817.2341(1), 3rd Filing false financial statements,  
 (2) (a) & (3) (a) making false entries of material fact  
 or false statements regarding property  
 values relating to the solvency of an  
 insuring entity.

639 817.568(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.

640 817.625(2) (b) 2nd Second or subsequent fraudulent use of  
 scanning device or reencoder.

641 825.1025(4) 3rd Lewd or lascivious exhibition in the  
 presence of an elderly person or  
 disabled adult.

642 827.071(4) 2nd Possess with intent to promote any  
 photographic material, motion picture,  
 etc., which includes sexual conduct by  
 a child.

643 827.071(5) 3rd Possess, control, or intentionally view  
 any photographic material, motion

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644 picture, etc., which includes sexual  
 conduct by a child.

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.

645 843.01 3rd Resist officer with violence to person;  
 resist arrest with violence.

646 847.0135(5) (b) 2nd Lewd or lascivious exhibition using  
 computer; offender 18 years or older.

647 847.0137 3rd Transmission of pornography by  
 (2) & (3) electronic device or equipment.

648 847.0138 3rd Transmission of material harmful to  
 (2) & (3) minors to a minor by electronic device  
 or equipment.

649 874.05(2) 2nd Encouraging or recruiting another to  
 join a criminal gang; second or  
 subsequent offense.

650 893.13(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).

651



588-02788-13 20131448c1

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.

652 893.13(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.

653 893.13(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.

654 893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.

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655 893.13(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).

656 893.1351(1) 3rd Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

657

658

659 Section 4. This act shall take effect October 1, 2013.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic CONTROLLED SUBSTANCES

Bill Number CS/SB 1448  
*(if applicable)*

Name BRAD KING

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title STATE ATTORNEY, 5<sup>th</sup> CIRCUIT

Address 110 NW 1<sup>ST</sup> AVE SUITE 5000  
*Street*

Phone 352-671-5914

OCALA, FL. 34480  
*City State Zip*

E-mail bking@2005.org

Speaking:  For  Against  Information

Representing FLORIDA PROSECUTING ATTORNEYS ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13

Meeting Date

Topic Controlled Substances

Bill Number 1448  
*(if applicable)*

Name KRISTOPHER BROWNING

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Associate, Barney Bishop Consulting

Address 204 South Monroe St, Ste 201

Phone (850) 907-3436

Street

Tallahassee

City

FL

State

32301

Zip

E-mail Kristophe@barneybishop.com

Speaking:  For  Against  Information

Representing Florida Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/18/13

Meeting Date

Topic \_\_\_\_\_

Bill Number 1448  
*(if applicable)*

Name Chris Noland

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 1000 Riverside Ave #1115

Phone 904355-1555

Street

Jacksonville, FL 32204

E-mail nolandlaw@aol.com

City

State

Zip

Speaking:  For  Against  Information (waive in support)

Representing Florida Chapter, American College of Physicians

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/2013

*Meeting Date*

Topic Controlled Substances

Bill Number 1448  
*(if applicable)*

Name David Coffman

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Forensic Services Director

Address 2331 Phillips Road

Phone 850-410-7710

*Street*

Tallahassee

FL

32308

E-mail davidcoffman@fdle.state.fl.us

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing Florida Department of Law Enforcement

*- Here to answer questions*

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SPB 7148

INTRODUCER: For consideration by Criminal Justice Committee

SUBJECT: Drug Trafficking

DATE: April 8, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon		<b>Submitted as Committee Bill</b>
2.				
3.				
4.				
5.				
6.				

**I. Summary:**

SPB 7148’s most prominent feature is increasing from 4 to 14 grams the minimum weight threshold for trafficking in oxycodone and hydrocodone (prescription painkillers). Increasing weight thresholds for trafficking in prescription painkillers is an option that the Office of Program Policy Analysis and Government Accountability proposed in a 2012 report.

The bill removes reference to oxycodone and hydrocodone in s. 893.135(1)(c)1.-3., F.S., which punishes trafficking in these substances (as well as opium, morphine, heroin, and hydromorphone).

The bill creates a new drug trafficking provision that only applies to trafficking in oxycodone and hydrocodone. As a result of this new trafficking provision, some persons who unlawfully possess, sell, etc., relatively small quantities of oxycodone or hydrocodone will no longer be punished under s. 893.135, F.S., the drug trafficking statute (though they may be punished under s. 893.13, F.S., which prohibits unlawful possession, sale, etc., of controlled substances). Further, some persons who would be subject to trafficking penalties under both current law and the new trafficking provision will receive a shorter mandatory minimum term under the new trafficking provision than they would receive under current law.

Specifically, the bill punishes trafficking in oxycodone or hydrocodone as a first degree felony, for which a person who commits this offense is subject to the following mandatory minimum terms and fines:

- Trafficking in 14 grams or more, but less than 28 grams, of oxycodone or hydrocodone: 3-year mandatory minimum term and \$50,000 fine. (Under current law, a 3-year mandatory

minimum term and a \$50,000 fine are provided for trafficking in 4 grams or more, but less than 14 grams, of oxycodone or hydrocodone.)

- Trafficking in 28 grams or more, but less than 50 grams, of oxycodone or hydrocodone: 7-year mandatory minimum term and \$100,000 fine. (Under current law, a 15-year mandatory minimum term and a \$100,000 fine are provided for trafficking in 14 grams or more, but less than 28 grams, of oxycodone or hydrocodone.)
- Trafficking in 50 grams or more, but less than 200 grams, of oxycodone or hydrocodone: 15-year mandatory minimum term and \$50,000 fine. (Under current law, a 25-year mandatory minimum term and a \$500,000 fine are provided for trafficking in 28 grams or more, but less than 30 kilograms, of oxycodone or hydrocodone.)
- Trafficking in 200 grams or more of oxycodone or hydrocodone: 25-year mandatory minimum term and \$500,000 fine. (Under current law, a 25-year mandatory minimum term and a \$500,000 fine are provided for trafficking in 28 grams or more, but less than 30 kilograms, of oxycodone or hydrocodone. Trafficking in 30 kilograms or more of these drugs is punishable by life imprisonment.)

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the increase in the minimum weight threshold for trafficking in oxycodone and hydrocodone will result in the need for 595 fewer prison beds by FY 2017-2018 with the resulting cumulative savings of \$61 million.

This bill substantially amends section 893.135 of the Florida Statutes.

## II. Present Situation:

With one exception, persons who are sentenced for drug offenses (e.g., possession or sale offenses) are convicted under s. 893.13, F.S., and sentenced under the Criminal Punishment Code. A lowest permissible sentence is established under the Code and the sentencing range is often very broad. The exception is drug trafficking. Under s. 893.135, F.S., the drug trafficking statute, most trafficking offenses are first degree felonies and all trafficking offenses are subject to mandatory minimum terms, which supersede the lowest permissible sentence under the Code, narrow the sentencing range, and often result in significantly longer sentences than would be the case for a non-trafficking drug offense. Whether a person is charged with drug trafficking depends on the type of drug and whether the amount of the drug meets weight thresholds in the drug trafficking statute. The bill alters the weight thresholds for trafficking in oxycodone and hydrocodone, which are opioid prescription painkillers.

### Drug Trafficking/Opioids

Section 893.135, F.S., punishes drug trafficking. Section 893.135(1)(c), F.S., punishes trafficking in opium, opium derivatives, opiates, various opioids,<sup>1</sup> and any other substances covered under this paragraph. There are four categories of violations under this paragraph:

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<sup>1</sup> According to MedicineNet.com, an "opioid" is: "1. A synthetic narcotic that resembles the naturally occurring opiates. 2. Any substance that binds to or otherwise affects the opiate receptors on the surface of the cell." This information is available at <http://www.medterms.com/script/main/art.asp?articlekey=13744> (last visited on April 3, 2013). Other definitions of the term are broader. For example, WebMD LLC defines "opioids" "by their ability to bind to and influence opiate receptors on cell membranes" and states that they can be divided into 3 classes. The first class is "[n]aturally occurring

- “Trafficking in illegal drugs” (first degree felony).
- “Trafficking in illegal drugs” (first degree felony punishable by life imprisonment).
- “Trafficking in illegal drugs” (capital felony).
- “Capital importation of illegal drugs” (capital felony).

**“Trafficking in illegal drugs” (first degree felony)**

Section 893.135(1)(c)1., F.S., provides that any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession<sup>2</sup> of, 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., F.S., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a first degree felony.<sup>3</sup>

If a person violates s. 893.135(1)(c)1., F.S., and the quantity involved:

- Is 4 grams<sup>4</sup> or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and ordered to pay a fine of \$50,000.<sup>5</sup>
- Is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and ordered to pay a fine of \$100,000.<sup>6</sup>
- Is 28 grams or more, but less than 30 kilograms, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of \$500,000.<sup>7</sup>

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opioids: The classic natural opioids are opium and morphine. Opium is extracted from the plant *Papaver somniferum* (the opium poppy), and morphine is the primary active component of opium. Endogenous neural polypeptides such ... [as] endorphins and enkephalins are also natural opioids.” The second class is “[s]emi-synthetic opioids: Semisynthesis is a type of chemical synthesis that uses compounds isolated from natural sources (e.g., plants) as starting materials. Semi-synthetic opioids include heroin, oxycodone, oxymorphone, and hydrocodone.” The third class is “[s]ynthetic opioids: Synthetic opioids are made using total synthesis, in which large molecules are synthesized from a stepwise combination of small and cheap (petrochemical) building blocks. Synthetic opioids include buprenorphine, methadone, fentanyl, alfentanil, levorphanol, meperidine, codeine, and propoxyphene (withdrawn from US market).” This reference further states that “[t]he terms *opiate* and *narcotic* are generally used interchangeably with the term *opioid*.” This information is available at <http://emedicine.medscape.com/article/287790-overview> (last visited on April 3, 2013). For purposes of this analysis, staff generally applies the broader definition of “opioid.”

<sup>2</sup> One important and unique feature of the drug trafficking statute is that the prosecutor is not required to prove that the possession of the controlled substance was with the intent to sell, deliver, manufacture, etc., the substance.

<sup>3</sup> A first degree felony is generally punishable by up to 30 years in state prison. Section 775.082, F.S. Repeat offender sanctions may be available under ss. 775.082 and 775.084, F.S. Section 921.0024(1)(b), F.S., provides that if the primary offense is drug trafficking, the subtotal sentence points are multiplied, at the discretion of the court, for a Level 7 or Level 8 offense, by 1.5.

<sup>4</sup> For the purpose of comparison, the approximate weight of a U.S. currency note, regardless of denomination, is one gram. This information is available at <http://www.moneyfactory.gov/faqlibrary.html> (last visited on April 3, 2013).

<sup>5</sup> Section 893.135(1)(c)1.a., F.S. This offense is ranked in Level 7 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(g), F.S.

<sup>6</sup> Section 893.135(1)(c)1.b., F.S. This offense is ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(h), F.S.

<sup>7</sup> Section 893.135(1)(c)1.c., F.S. This offense is ranked in Level 9 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(i), F.S.



***“Trafficking in illegal drugs” (first degree felony punishable by life imprisonment)***

Section 893.135(1)(c)2., F.S., provides that any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., F.S., or 30 kilograms or more of any mixture containing any such substance, commits a first degree felony punishable by life imprisonment<sup>8</sup> and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149, F.S.

***“Trafficking in illegal drugs” (capital felony)***

Section 893.135(1)(c)2., F.S., also provides that a person who violates this subparagraph commits a capital felony<sup>9</sup> and shall also pay a fine of \$500,000 if the court determines that, in addition to committing this violation, either of the following applies:

- The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result.<sup>10</sup>
- The person’s conduct in committing that act led to a natural, though not inevitable, lethal result.<sup>11</sup>

***“Capital importation of illegal drugs” (capital felony)***

Section 893.135(1)(c)3., F.S., provides that any person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., F.S., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of any person, commits a capital felony and shall also pay a fine of \$500,000.

**Prescription Medications and Drug Trafficking**

There are numerous prescription medications that are within the ambit of s. 893.135(1)(c), F.S., including medications that contain morphine, oxycodone, hydrocodone, hydromorphone, methadone, and fentanyl. A person who unlawfully possesses, purchases, sells, etc., these prescription medications in a trafficking weight may be subject to prosecution for drug trafficking under s. 893.135(1)(c), F.S.

Trafficking weight involving pills or tablets is determined by the total weight of each pill or tablet multiplied by the number of pills or tablets possessed, etc. The total weight of a pill or tablet includes the weight of the controlled substance in the pill or tablet (e.g., hydrocodone) and the weight of noncontrolled substances or matter in the pill or tablet, such as coating, binders,

<sup>8</sup> As previously indicated, in general, a first degree felony is punishable by up to 30 years in state prison under s. 775.082, F.S. However, this section also provides that a first degree felony may be punished by a term of years not exceeding life imprisonment when specifically provided by statute.

<sup>9</sup> A capital felony is punishable by life imprisonment or death. Section 775.082, F.S. See s. 921.142, F.S. (further proceedings to determine sentence for capital trafficking felonies).

<sup>10</sup> Section 893.135(1)(c)2.a., F.S.

<sup>11</sup> Section 893.135(1)(c)2.b., F.S.

and nonprescription drugs (e.g., acetaminophen).<sup>12</sup> A relatively small number of pills or tablets may meet the 4 gram threshold for trafficking.

In a 2012 report, the Office of Program Policy Analysis and Government Accountability (OPPAGA) provided a table<sup>13</sup> indicating how many hydrocodone and oxycodone pills would be necessary to meet the threshold gram weight for each gram weight range in s. 893.135(1)(c)1.a.-c., F.S. The weight ranges are:

- 4 grams or more, but less than 14 grams.
- 14 grams or more, but less than 28 grams.
- 28 grams or more, but less than 30 kilograms.

The table is based on a hydrocodone pill that weighs 0.65 grams with 10 mg. of hydrocodone and an oxycodone pill that weighs 0.13 grams with 30 mg. of oxycodone. Due to the different compositions of prescription opioids, noncontrolled substances may add significantly to the total weight of the pill or tablet as, for example, is the case with medication that contains hydrocodone and acetaminophen. Provided is the information from OPPAGA’s table and the mandatory minimum term applicable to the threshold weight for each gram weight range in s. 893.135(1)(c)1.a.-c., F.S. (i.e., 4 grams, 14 grams, and 28 grams):

<b>Number of Pills and Gram Weight Thresholds to Meet Mandatory Minimum Term</b>				
<b>Prescription Drug</b>	<b>Pill Weight</b>	<b>3-year mandatory minimum term</b>	<b>15-year mandatory minimum term</b>	<b>25-year mandatory minimum term</b>
Hydrocodone (10 mg.)	0.65 grams	7 pills (4 grams)	22 pills (14 grams)	44 pills (28 grams)
Oxycodone (30 mg.)	0.13 grams	31 pills (4 grams)	108 pills (14 grams)	215 pills (28 grams)

**OPPAGA Report No. 12-02: Prison Admissions for Opioid Trafficking and Sample Information Regarding Prescription Opioid Offenders**

Using Department of Corrections’ data for FY 2006-07 to FY 2010-11, the OPPAGA found that prescription admissions for trafficking quadrupled over those five fiscal years and that this substantial increase in admissions was primarily attributable to oxycodone trafficking convictions:

Department of Corrections data shows that prison admissions for trafficking in opioids have more than quadrupled over the past five years, from 262 admissions in Fiscal Year 2006-07 to 1,200 in Fiscal Year 2010-11.... This data does not distinguish among the types of opioids, and as a result, offenses involving heroin are grouped with those

<sup>12</sup> See ss. 893.02(16) and 893.135(6), F.S.

<sup>13</sup> *Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking*, Report No. 12-02 (January 2012), at p. 5 (Exhibit 6), Office of Program Policy Analysis and Government Accountability, available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=12-02> (last visited on April 3, 2013). This report is further cited as “OPPAGA Report.”

involving prescription painkillers. This is because these two controlled substances are addressed in the same section of the drug trafficking statute, and thus subject to the same weight thresholds and minimum mandatory sentences.

To evaluate the factors leading to the recent increase in prison admissions for trafficking in opioids, we reviewed data for a statewide random sample of 194 offenders admitted to prison for this offense during Fiscal Year 2010-11. We determined the type and amount of drugs involved in their offenses and the circumstances surrounding their arrests and convictions. Our analyses found that the recent increase in prison admissions for opioid trafficking was primarily due to convictions for prescription painkillers rather than heroin.....<sup>14</sup>

A noteworthy postscript to the OPPAGA report is that the quadrupled prison admissions for trafficking in opioids began to wane in FY 2011-12. Between FY 2010-11 and FY 2011-12 there was a 14.1% decline in prison admissions for trafficking in opioids.<sup>15</sup> Although the cause of this decline is empirically unknown, it is most likely attributable to a number of measures taken by Florida designed to reduce prescription drug abuse, such as removing the so called “pill mills” in the state.

The OPPAGA analyzed arrest reports for the 194 offenders and determined that “almost all (93%) were convicted of trafficking in prescription painkillers.... [A]rrests most commonly involved oxycodone (73%) or hydrocodone (28%). In comparison, 6% of the offenders were convicted of trafficking in heroin.”<sup>16</sup>

The OPPAGA provided the following information regarding how most of these arrests occurred:

Most offenders in our sample (62%) were arrested for selling prescription painkillers to an undercover law enforcement officer or confidential informant.... In these cases, officers worked undercover to buy drugs from known dealers or monitored confidential informants during meetings they arranged to make purchases. In other cases, offenders were arrested for trafficking after a traffic stop or other law enforcement contact, or after being reported by a pharmacist for possible prescription fraud.<sup>17</sup>

The majority of the offenders in the OPPAGA’s sample illegally possessed or sold 30 to 90 pills:

For most of the offenders convicted of trafficking in oxycodone or hydrocodone, their convictions were based on the illegal possession or sale of a number of pills equivalent to one or two prescriptions. For those offenders sentenced for trafficking in hydrocodone, 50% were arrested for possessing or selling fewer than 30 pills and 25% were arrested for fewer than 15 pills. For offenders sentenced for trafficking in oxycodone, offenders possessed or sold a median number of 91 pills at the time of their arrests.

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<sup>14</sup> OPPAGA Report, at pp. 2-3 (footnotes omitted).

<sup>15</sup> Information provided on April 4, 2013, to staff (via e-mail) by the Office of Economic and Demographic Research.

<sup>16</sup> OPPAGA Report, at p. 3.

<sup>17</sup> *Id.*

Following accepted medical practice, physicians may prescribe 30 or more prescription painkillers for patients with chronic pain<sup>18</sup> or recovering from surgery. For example, a patient recovering from surgery may receive a one-time prescription of 30 to 60 hydrocodone or oxycodone pills, often in forms that also contain acetaminophen. Illegal possession of such an amount could trigger a minimum mandatory sentence.<sup>19</sup>

Most of the offenders in the OPPAGA sample did not have a prior drug trafficking record and were determined by prison staff to need substance abuse treatment:

Our analysis of Department of Corrections data on the 1,200 offenders admitted to prison for opioid trafficking in Fiscal Year 2010-11 found that 74% had not previously been admitted to prison.... Half had either never been on probation or had been on probation solely for drug possession, and 81% did not have a prior history of offenses involving selling or trafficking drugs. Most (84%) had no current or past violent offenses.

These offenders tended to have substance abuse problems and were at low risk for recidivism. Prison staff assessments determined that 65% of these offenders needed substance abuse treatment and 61% were at low risk for recidivism.<sup>20</sup>

### **Drug Trafficking Sentencing**

The Criminal Punishment Code (Code)<sup>21</sup> is Florida's framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense, additional offenses, and prior offenses. Points may be added or multiplied for other factors, such as victim injury. Trafficking offenses are generally first degree felonies but levels assigned to these trafficking offenses vary depending on the offense.

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible sentence. The permissible sentencing range is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense and any additional offenses before the court for

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<sup>18</sup> Drug trafficking penalties (including mandatory minimum terms) may influence whether a "dose tolerant" chronic pain management patient continues to receive a prescription opioid. "Medical information indicates that chronic pain management patients are rarely addicted to the opioid analgesics prescribed them for pain but over time may develop a tolerance to and physical dependence upon opioid analgesics that may be misperceived as addiction rather than the 'normal consequences of sustained opioid use.' Some practitioners may be reluctant to treat chronic management cases for fear that regulatory and law enforcement agencies may not understand or appreciate this distinction." *A Policy Analysis of Minimum Mandatory Sentencing for Drug Trafficking*, Interim Report 2010-109 (October 2009), at p. 9 (footnotes omitted), Committee on Criminal Justice, The Florida Senate, quoting June L. Dahl, "How to Reduce Fears of Legal/Regulatory Scrutiny in Managing Pain in Cancer Patients," 3 *Journal of Supportive Oncology* 5 (September – October 2005), at p. 386.

<sup>19</sup> OPPAGA Report, at p. 4. In a footnote (n. 7, at p. 4) at the end of the second paragraph of this quote, the OPPAGA notes: "Law enforcement and other stakeholders reported that pain clinics they would consider as being 'pill mills' routinely prescribe much higher amounts of prescription painkillers, such as 180 oxycodone pills per month."

<sup>20</sup> *Id.* In a footnote (n. 8, at p. 4) at the end of the second paragraph of this quote, the OPPAGA noted: "Prison staff assessed offenders' risk of recidivism using the risk assessment instrument developed by the Department of Corrections. Recidivism is defined as return to prison within three years of release." OPPAGA Report.

<sup>21</sup> Sections 921.002 - 921.0027, F.S.

sentencing. The court is permitted to impose sentences concurrently or consecutively. “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the ... Code and any mandatory minimum penalties apply.”<sup>22</sup>

The Code includes a list of ‘mitigating’ factors. If a mitigating factor is found by the sentencing court, the court may decrease an offender’s sentence below the lowest permissible sentence (a “downward departure”). A mandatory minimum term is not subject to these mitigating factors.<sup>23</sup>

Mandatory minimum terms are often longer than a prison sentence scored as the lowest permissible sentence, so the sentencing range is narrowed. Further, with few exceptions, the sentencing court must impose the mandatory minimum term. Staff found only two circumstances in which a sentencing court is authorized by law to impose a sentence below the mandatory minimum term: when the court sentences a defendant as a youthful offender;<sup>24</sup> and when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant.<sup>25</sup>

Because s. 893.135(1)(c), F.S., punishes both trafficking in certain ‘street’ opioids, like heroin, and trafficking in prescription opioids, it is not possible to precisely determine the number of prescription opioid trafficking arrests, prosecutions, convictions, and prison admissions (including length of sentences), or the disposition of cases in which drug trafficking was charged based upon unlawful possession, sale, etc., of a prescription opioid.

Typically there are three weight ranges for each first degree felony trafficking provision. Weight thresholds applicable to each range can be significantly greater, and mandatory minimum terms applicable to those ranges can be significantly longer, for trafficking under s. 893.135(1)(c), F.S., than for trafficking under some other trafficking provisions. For example, the following table compares trafficking in illegal drugs with some other trafficking provisions.

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<sup>22</sup> Rule 3.704(26) (“The Criminal Punishment Code”), Florida Rules of Criminal Procedure. A trafficking mandatory minimum term is a minimum sentencing ‘floor’ for the court and there is no prohibition to gain-time. If the court only sentences the defendant to the mandatory term specified by statute, the Department of Corrections (DOC) establishes an 85% minimum service date on the term and the offender is subject to s. 944.275(4)(b)3., F.S., which does not allow release prior to serving a minimum of 85% of the sentence. If the court imposes a sentence that exceeds the mandatory term specified by statute, the DOC establishes an 85% minimum service date on the sentence. *See Mastay v. McDonough*, 928 So.2d 512 (Fla. 1st DCA 2006) (Section 893.135, F.S., does not preclude earning gain-time during the mandatory term as long as it does not result in the prisoner’s release prior to serving a minimum of 85% of the sentence).

<sup>23</sup> *See State v. Vanderhoff*, 14 So.3d 1185 (Fla. 5th DCA 2009).

<sup>24</sup> Section 958.04, F.S. *See Christian v. State*, 84 So.3d 437 (Fla. 5th DCA 2012).

<sup>25</sup> Section 893.135(4), F.S., authorizes a state attorney to move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of s. 893.135, F.S., and who provides substantial assistance in the identification, arrest, or conviction of any of that person’s accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances.

<b>COMPARISON OF TRAFFICKING WEIGHT RANGES AND MANDATORY MINIMUM TERMS FOR CERTAIN CONTROLLED SUBSTANCES</b>			
<b>Trafficking Provision</b>	<b>First Weight Range</b>	<b>Second Weight Range</b>	<b>Third Weight Range</b>
Trafficking in illegal drugs (includes <b>prescription opioids</b> ) (s. 893.135(1)(c)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>4 grams</b> to less than 14 grams)	<b>15-year</b> mandatory minimum term ( <b>14 grams</b> to less than 28 grams)	<b>25-year</b> mandatory minimum term ( <b>28 grams</b> to less than 30 kilograms)
Trafficking in <b>cocaine</b> (s. 893.135(1)(b)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>28 grams</b> to less than 200 grams)	<b>7-year</b> mandatory minimum term ( <b>200 grams</b> to less than 400 grams)	<b>15-year</b> mandatory minimum term ( <b>400 grams</b> to less than 150 kilograms)
Trafficking in <b>phencyclidine</b> (s. 893.135(1)(d)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>28 grams</b> to less than 200 grams)	<b>7-year</b> mandatory minimum term ( <b>200 grams</b> to less than 400 grams)	<b>15-year</b> mandatory minimum term ( <b>400 grams</b> or more)
Trafficking in <b>methaqualone</b> (s. 893.135(1)(e)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>200 grams</b> to less than 5 kilograms)	<b>7-year</b> mandatory minimum term ( <b>5 kilograms</b> to less than 25 kilograms)	<b>15-year</b> mandatory minimum term ( <b>25 kilograms</b> or more)
Trafficking in <b>amphetamine or methamphetamine</b> (s. 893.135(1)(f)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>14 grams</b> to less than 28 grams)	<b>7-year</b> mandatory minimum term ( <b>28 grams</b> to less than 200 grams)	<b>15-year</b> mandatory minimum term ( <b>200 grams</b> or more)

**OPPAGA Report No. 12-02: Increasing Weight Thresholds for Trafficking in Prescription Painkillers is an Option**

In its report the OPPAGA provided a number of options for addressing trafficking in prescription painkillers. One of those options was to “[r]evise Florida statutes to increase the weight thresholds for prescription painkillers so that it would take more pills to be charged with drug trafficking offenses subject to minimum mandatory sentences.”<sup>26</sup>

**III. Effect of Proposed Changes:**

SPB 7148’s most prominent feature is increasing from 4 to 14 grams the minimum weight threshold for trafficking in oxycodone and hydrocodone (prescription painkillers). Increasing weight thresholds for trafficking in prescription painkillers is an option that the Office of Program Policy Analysis and Government Accountability proposed in a 2012 report.

<sup>26</sup> OPPAGA Report, at p. 8.

The bill removes reference to “oxycodone” and “hydrocodone” wherever those words appear in current subparagraphs 893.135(1)(c)1.-3., F.S. (which punish trafficking in opium, morphine, heroin, hydromorphone, oxycodone, and hydrocodone, and mixtures containing any of these substances).

The bill creates a new subparagraph s. 893.135(1)(c)2., F.S., which punishes as a first degree felony “trafficking in illegal prescription drugs.” The new trafficking provision only applies to a person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 14 grams or more of any oxycodone or hydrocodone, or 14 grams or more of any mixture containing any such substance.<sup>27</sup>

Under the new trafficking provision, the minimum gram weight threshold for trafficking in these drugs, which is 14 grams, differs from current law in which the minimum gram weight threshold for trafficking in these drugs is 4 grams. Gram weight ranges and applicable mandatory minimum terms and fines also differ from current law:

<b>CURRENT LAW AND SPB 7148 ON MANDATORY MINIMUM TERMS</b>		
<b>Drug Trafficking Mandatory Minimum Term</b>	<b>Quantity/Weight Required for Hydrocodone and Oxycodone Under Current Law</b>	<b>Quantity/Weight Required for Hydrocodone and Oxycodone Under SPB 7148</b>
3 years	4 grams or more but less than 14 grams	14 grams or more but less than 28 grams
7 years	N/A	28 grams or more but less than 50 grams
15 years	14 grams or more but less than 28 grams	50 grams or more but less than 200 grams
25 years	28 grams or more but less than 30 kilograms	200 grams or more
Life	30 kilograms or more	N/A

Section 893.135(1)(c), F.S., currently includes a life imprisonment penalty (s. 893.135(1)(c)2., F.S.)<sup>28</sup> and two capital felonies (s. 893.135(1)(c)2. and 3., F.S.). Under the bill, the life imprisonment penalty and the two capital felonies would not apply to trafficking in oxycodone and hydrocodone.

The effective date of the bill is July 1, 2013.

<sup>27</sup> The bill does not rank this offense in the Code offense severity ranking chart. Section 921.0023, F.S., assigns a Level 7 ranking to a first degree felony not ranked in the chart. Accordingly, trafficking in these oxycodone or hydrocodone, regardless of the quantity involved, will be a Level 7 offense.

<sup>28</sup> According to the OPPAGA, “[i]n Fiscal Year 2010-11, there were no offenders imprisoned for life for trafficking in opioids.” OPPAGA Report, at p. 2, n. 1.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill will result in a positive fiscal impact (cost avoidance) in several ways. First, drug offenders who are convicted of possessing, selling, etc., less than 14 grams of oxycodone or hydrocodone will no longer be subject to the drug trafficking 3-year mandatory minimum term, but instead will be sentenced under the Criminal Punishment Code (based on a conviction for a drug offense under s. 893.13, F.S.). Absent a mandatory minimum term, the court may impose a sentence of less than 3 years.<sup>29</sup> According to a preliminary estimate from the Legislature's Office of Economic and Demographic Research (EDR), this change alone is estimated to result in the need for 595 fewer prison beds by FY 2017-2018 with the resulting cumulative savings of \$61 million. Given the current prison bed surplus situation, however, a more realistic savings projection will be closer to \$21 million over the next five years, which represents a savings in operational expenditures associated with 595 fewer inmates.

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<sup>29</sup> However, the court does have the discretion to impose a greater sentence (up to the maximum penalty for the felony degree of the offense) and the sentence actually imposed will depend on particular facts of the case and the offender's prior criminal history and any additional offenses committed. A nonprison sanction may be imposed if the court departs downward from the lowest permissible sentence scored based on a finding of mitigating circumstances under s. 921.0026, F.S.



The following table depicts this projected fiscal impact:

<b>Fiscal Impact of Senate Criminal Justice SPB 7148                      Increasing from 4 Grams to 14 Grams the Threshold for the 3-Year Minimum Mandatory for Trafficking in                      Hydrocodone or Oxycodone                      For offenses committed on or after July 1, 2013</b>						
Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2013-2014	0	0	\$0	(\$3,180,318)	<b>(\$3,180,318)</b>	<b>(\$3,180,318)</b>
2014-2015	-53	-53	(\$500,002)	(\$11,540,742)	<b>(\$12,040,744)</b>	<b>(\$15,221,062)</b>
2015-2016	-239	-186	(\$2,798,820)	(\$15,861,846)	<b>(\$18,660,666)</b>	<b>(\$33,881,728)</b>
2016-2017	-486	-247	(\$7,074,188)	(\$7,230,733)	<b>(\$14,304,921)</b>	<b>(\$48,186,649)</b>
2017-2018	-595	-109	(\$10,737,573)	(\$2,105,830)	<b>(\$12,843,403)</b>	<b>(\$61,030,052)</b>
<b>TOTAL</b>	<b>-595</b>	<b>-595</b>	<b>(\$21,110,583)</b>	<b>(\$39,919,469)</b>	<b>(\$61,030,052)</b>	<b>(\$61,030,052)</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, April 3, 2013

Second, an additional but indeterminate cost avoidance will also be achieved based on the inclusion of a 7-year mandatory minimum term (not a feature of current s. 893.135(1)(c), F.S.) and changes to other weight thresholds and to weight ranges, but the impact will most likely be significantly smaller and will not be experienced for many years out.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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236166

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/08/2013	.	
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	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment**

Delete line 102  
and insert:  
Section 2. This act shall take effect July 1, 2013.

FOR CONSIDERATION By the Committee on Criminal Justice

591-03337A-13

20137148\_\_

A bill to be entitled

An act relating to drug trafficking; amending s.

893.135, F.S.; providing that a person who knowingly

sells, purchases, manufactures, delivers, or brings

into this state specified quantities of oxycodone or

hydrocodone, or who is knowingly in actual or

constructive possession of such quantities of such

drugs, commits a felony of the first degree; providing

criminal penalties; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 893.135, Florida Statutes, is amended to read:

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

(c)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, ~~oxycodone, hydrocodone,~~ hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and ordered to pay a fine of \$500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 14 grams or more of any oxycodone or hydrocodone, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in illegal prescription drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and ordered to pay a fine of \$50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and ordered to pay a fine of \$100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and ordered to pay a fine of \$500,000.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 d. Is 200 grams or more, such person shall be sentenced to  
 60 a mandatory minimum term of imprisonment of 25 calendar years  
 61 and ordered to pay a fine of \$750,000.

62 ~~3.2.~~ Any person who knowingly sells, purchases,  
 63 manufactures, delivers, or brings into this state, or who is  
 64 knowingly in actual or constructive possession of, 30 kilograms  
 65 or more of any morphine, opium, ~~oxycodone, hydrocodone,~~  
 66 hydromorphone, or any salt, derivative, isomer, or salt of an  
 67 isomer thereof, including heroin, as described in s.  
 68 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or  
 69 more of any mixture containing any such substance, commits the  
 70 first degree felony of trafficking in illegal drugs. A person  
 71 who has been convicted of the first degree felony of trafficking  
 72 in illegal drugs under this subparagraph shall be punished by  
 73 life imprisonment and is ineligible for any form of  
 74 discretionary early release except pardon or executive clemency  
 75 or conditional medical release under s. 947.149. However, if the  
 76 court determines that, in addition to committing any act  
 77 specified in this paragraph:

78 a. The person intentionally killed an individual or  
 79 counseled, commanded, induced, procured, or caused the  
 80 intentional killing of an individual and such killing was the  
 81 result; or

82 b. The person's conduct in committing that act led to a  
 83 natural, though not inevitable, lethal result,

84  
 85 such person commits the capital felony of trafficking in illegal  
 86 drugs, punishable as provided in ss. 775.082 and 921.142. Any  
 87 person sentenced for a capital felony under this paragraph shall

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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20137148\_\_

88 also be sentenced to pay the maximum fine provided under  
 89 subparagraph 1.

90 ~~4.3.~~ Any person who knowingly brings into this state 60  
 91 kilograms or more of any morphine, opium, ~~oxycodone,~~  
 92 ~~hydrocodone,~~ hydromorphone, or any salt, derivative, isomer, or  
 93 salt of an isomer thereof, including heroin, as described in s.  
 94 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or  
 95 more of any mixture containing any such substance, and who knows  
 96 that the probable result of such importation would be the death  
 97 of any person, commits capital importation of illegal drugs, a  
 98 capital felony punishable as provided in ss. 775.082 and  
 99 921.142. Any person sentenced for a capital felony under this  
 100 paragraph shall also be sentenced to pay the maximum fine  
 101 provided under subparagraph 1.

102 Section 2. This act shall take effect October 1, 2013.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.



January 2012

Report No. 12-02

# Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking

## *at a glance*

Recent increases in prison admissions for opioid trafficking are primarily due to convictions for the prescription painkiller oxycodone. The majority of offenders admitted to prison for painkiller trafficking sold prescription painkillers to a confidential informant or undercover law enforcement officer. Most of these offenders have substance abuse problems and minimal prior criminal involvement.

Criminal justice stakeholders, including judges, prosecutors, public defenders, and law enforcement officials, have mixed opinions about the statute that addresses painkiller trafficking. Some are in favor of continuing the statute as written. Others have concerns about the impact of trafficking weight thresholds and minimum mandatory sentences, particularly as they relate to lower potency hydrocodone.

If the Legislature wishes to modify the statutory provisions for trafficking in prescription painkillers, options include

- reclassifying hydrocodone offenses;
- allowing courts to commit certain addicted offenders to treatment rather than prison;
- increasing weight thresholds for trafficking in prescription painkillers or changing how weights are calculated; and
- aligning minimum mandatory sentence lengths with those for most other drugs.

## Scope

The Legislature directed OPPAGA to examine sentencing laws for trafficking in prescription opioids such as oxycodone and hydrocodone. This report presents analyses of prison admissions for opioid trafficking, describes issues raised by criminal justice stakeholders about the statutory weight thresholds and sentences for trafficking in prescription opioids, and provides options for the Legislature to consider if it wishes to modify the drug trafficking statute.

## Background

Prescription drugs such as oxycodone and hydrocodone are opioids and often referred to as painkillers.<sup>1</sup> These drugs are classified as controlled substances in s. 893.03, *Florida Statutes*, which groups controlled substances based on the extent to which they have accepted medical uses and potential for abuse, physical or psychological dependence, and/or physical damage. Controlled substances are subject to stringent statutory provisions for sale, manufacture, delivery, and possession.

People who illegally possess, sell, or otherwise distribute controlled substances can be punished under either s. 893.13, *Florida*

<sup>1</sup>Opioids include opiates such as morphine, heroin, and codeine, which are derived from opium. Opioids also include synthetic drugs that have similar properties, such as oxycodone and hydrocodone. These drugs are commonly used for pain-relieving or euphoric effects.

*Statutes* (prohibited acts), or s. 893.135, *Florida Statutes* (trafficking). The length of sentence and severity of the charge depends on the type of drug and whether the amount of drug possessed or sold meets weight thresholds in the drug trafficking statute. Offenses involving lower amounts are second or third degree felonies punishable under sentencing guidelines in the Criminal Punishment Code.<sup>2</sup> For example, offenders with less than an ounce of cocaine could be charged with possession and sentenced to probation, jail, or prison depending on their criminal histories.

If the amount of drugs exceeds statutory weight thresholds, the offense is considered trafficking. Trafficking offenses are first degree felonies punishable by minimum mandatory prison sentences. For example, an offender with a pound of cocaine could be charged with trafficking.

The thresholds for trafficking in opioids, including prescription painkillers, are based on the weight of the entire mixture or pills containing the controlled substance. As shown in Exhibit 1, possession or sale of amounts between 4 and 14 grams is subject to a minimum mandatory sentence of three years.<sup>3</sup> For the second threshold, the sentence is 15 years. Offenses involving 28 grams to 30 kilograms (approximately 1 ounce to over 60 pounds), result in a 25-year sentence.

**Exhibit 1  
Four or More Grams of Opioids Meet Weight  
Thresholds for Minimum Mandatory Sentences**

Weight Threshold	Minimum Mandatory Sentence
4 grams to less than 14 grams	3 years
14 grams to less than 28 grams	15 years
28 grams to less than 30 kilograms	25 years
Over 30 kilograms	Life in prison <sup>1</sup>

<sup>1</sup> In Fiscal Year 2010-11, there were no offenders imprisoned for life for trafficking in opioids.

Source: Section [893.135\(1\)\(c\)](#), *F.S.*

<sup>2</sup> Section 775.082, *F.S.*

<sup>3</sup> Four grams is equal to 0.14 ounces.

Although trafficking offenses are subject to minimum mandatory sentences, prosecutors have discretion on whether to prosecute a case as drug trafficking or a lesser drug offense. For example, if the defendant cooperates and assists in the investigation of others responsible for distributing drugs, a prosecutor may choose to charge the defendant with another drug offense, such as possession or selling, or seek a prison sentence for a lower trafficking threshold.

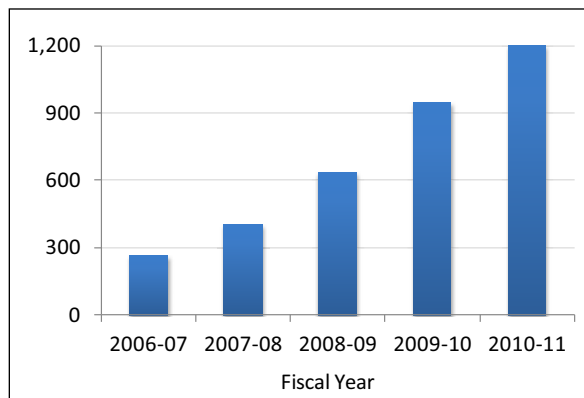
## Findings

### Prison admissions for opioid trafficking

Department of Corrections data shows that prison admissions for trafficking in opioids have more than quadrupled over the past five years, from 262 admissions in Fiscal Year 2006-07 to 1,200 in Fiscal Year 2010-11. (See Exhibit 2.) This data does not distinguish among the types of opioids, and as a result, offenses involving heroin are grouped with those involving prescription painkillers. This is because these two controlled substances are addressed in the same section of the drug trafficking statute, and thus subject to the same weight thresholds and minimum mandatory sentences.<sup>4</sup>

<sup>4</sup> Section [893.135\(1\)\(c\)](#), *F.S.*

**Exhibit 2  
Prison Admissions for Trafficking in Opioids  
Have Quadrupled Over the Last Five Years**



Source: Information compiled by the Office of Economic and Demographic Research based on Department of Corrections data.

To evaluate the factors leading to the recent increase in prison admissions for trafficking in opioids, we reviewed data for a statewide random sample of 194 offenders admitted to prison for this offense during Fiscal Year 2010-11.<sup>5, 6</sup> We determined the type and amount of drugs involved in their offenses and the circumstances surrounding their arrests and convictions.

Our analyses found that the recent increase in prison admissions for opioid trafficking was primarily due to convictions for prescription painkillers rather than heroin. The majority of these offenders sold prescription painkillers to a confidential informant or undercover law enforcement officer. In addition, most offenders who were involved in opioid trafficking had substance abuse problems and minimal prior criminal involvement.

<sup>5</sup> We reviewed data from various documents, including arrest reports, affidavits for arrest, state attorneys' charging documents, and sentencing score sheets. We also analyzed Department of Corrections data on offenders' prior criminal histories, substance abuse treatment needs, and risk of recidivism.

<sup>6</sup> With a sample size of 194, we had a 90% confidence level that the sample was representative of statewide prison admissions for opioid trafficking.

***Most offenders admitted to prison for opioid trafficking were arrested for selling prescription painkillers***

Our review of arrest reports for sampled offenders admitted to prison for opioid trafficking found that almost all (93%) were convicted of trafficking in prescription painkillers. As shown in Exhibit 3, arrests most commonly involved oxycodone (73%) or hydrocodone (28%). In comparison, 6% of the offenders were convicted of trafficking in heroin.

**Exhibit 3  
In Fiscal Year 2010-11, Most Arrests Leading to Prison Admissions for Opioid Trafficking Involved Prescription Painkillers**

Controlled Substance	Percentage of Sample Cases <sup>1</sup>
Oxycodone	73%
Hydrocodone	28%
Heroin	6%

<sup>1</sup> Percentages add to more than 100% because some offenders were trafficking in more than one opioid. For example, 13% were trafficking in two opioids, primarily oxycodone and hydrocodone, and 1% were trafficking in three opioids.

Source: OPPAGA analysis of arrest reports for a sample of 194 offenders admitted to prison in Fiscal Year 2010-11.

Most offenders in our sample (62%) were arrested for selling prescription painkillers to an undercover law enforcement officer or confidential informant. (See Exhibit 4.) In these cases, officers worked undercover to buy drugs from known dealers or monitored confidential informants during meetings they arranged to make purchases. In other cases, offenders were arrested for trafficking after a traffic stop or other law enforcement contact, or after being reported by a pharmacist for possible prescription fraud.

**Exhibit 4  
Sale to an Undercover Officer or Confidential Informant Was the Most Common Reason for an Arrest**

Reason for Arrest	Percentage
Selling to undercover law enforcement officer or confidential informant	62%
Search during law enforcement contact	16%
Prescription fraud	11%
Traffic stop	8%

Source: OPPAGA analysis of arrest reports for a sample of 194 offenders admitted to prison in Fiscal Year 2010-11.

**The majority of the offenders illegally possessed or sold 30 to 90 pills.** For most of the offenders convicted of trafficking in oxycodone or hydrocodone, their convictions were based on the illegal possession or sale of a number of pills equivalent to one or two prescriptions. For those offenders sentenced for trafficking in hydrocodone, 50% were arrested for possessing or selling fewer than 30 pills and 25% were arrested for fewer than 15 pills. For offenders sentenced for trafficking in oxycodone, offenders possessed or sold a median number of 91 pills at the time of their arrests.

Following accepted medical practice, physicians may prescribe 30 or more prescription painkillers for patients with chronic pain or recovering from surgery. For example, a patient recovering from surgery may receive a one-time prescription of 30 to

60 hydrocodone or oxycodone pills, often in forms that also contain acetaminophen. Illegal possession of such an amount could trigger a minimum mandatory sentence.<sup>7</sup>

***The majority of offenders had minimal prior criminal involvement and substance abuse problems***

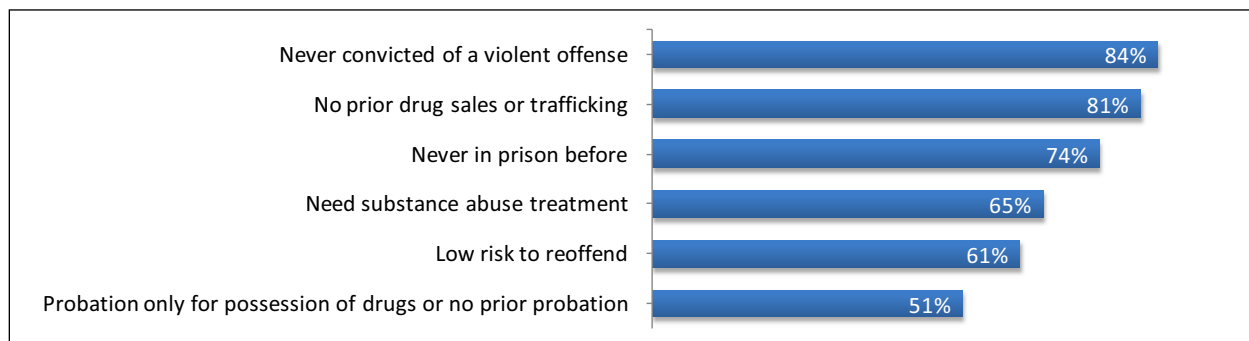
Our analysis of Department of Corrections data on the 1,200 offenders admitted to prison for opioid trafficking in Fiscal Year 2010-11 found that 74% had not previously been admitted to prison. (See Exhibit 5.) Half had either never been on probation or had been on probation solely for drug possession, and 81% did not have a prior history of offenses involving selling or trafficking drugs. Most (84%) had no current or past violent offenses.

These offenders tended to have substance abuse problems and were at low risk for recidivism. Prison staff assessments determined that 65% of these offenders needed substance abuse treatment and 61% were at low risk for recidivism.<sup>8</sup>

<sup>7</sup> Law enforcement and other stakeholders reported that pain clinics they would consider as being ‘pill mills’ routinely prescribe much higher amounts of prescription painkillers, such as 180 oxycodone pills per month.

<sup>8</sup> Prison staff assessed offenders’ risk of recidivism using the risk assessment instrument developed by the Department of Corrections. Recidivism is defined as return to prison within three years of release.

**Exhibit 5  
Offenders Recently Admitted to Prison for Opioid Trafficking Tended to Have Substance Abuse Problems and Minimal Criminal Histories**



Source: OPPAGA analysis of data from the Florida Department of Corrections.



## Issues raised by stakeholders

To gain the perspective of criminal justice stakeholders about prescription painkiller trafficking and the current trafficking statute, we interviewed judges, prosecutors (state attorneys and statewide prosecutors), public defenders, and law enforcement officials. Some of these stakeholders were in favor of continuing the trafficking statute as written. They cited the statewide problem with abuse of prescription painkillers and the need to address this problem by prosecuting pain clinics and physicians who overprescribe these medications, as well as offenders who sell painkillers to addicts. For example, some prosecutors said the trafficking statute provides them with leverage by giving those who are arrested the incentive to cooperate in investigations of more serious offenders.

However, other stakeholders had concerns about the impact of the current weight thresholds and sentences. For example, some said that the statutes may impose harsh penalties for lower potency prescription painkillers and pointed out differences between the sentences for painkillers compared to other controlled substances such as cocaine and methamphetamine.

### *Fewer hydrocodone than oxycodone pills are needed to meet thresholds for trafficking*

The current method of calculating weights for prescription painkillers includes the weight of the entire pill, which often contains other ingredients such as

acetaminophen (a common over-the-counter pain medication), binders, and coating. As a result, offenders can meet the trafficking weight thresholds with a relatively small number of lower potency pills that include other ingredients.

A notable example is hydrocodone, which is only available in a pill form that combines the controlled substance with acetaminophen. The acetaminophen makes the pill heavier, so fewer pills are needed to meet the thresholds. As illustrated in Exhibit 6, it takes 7 pills of 10 milligram hydrocodone, which are large pills with 325 to 750 milligrams of acetaminophen, to reach the threshold of 4 grams for a minimum mandatory prison sentence of three years.

In comparison, it takes approximately 31 pills of 30 milligram oxycodone to reach the threshold of 4 grams since this type of oxycodone is a smaller pill and does not include acetaminophen. Thus, it takes more oxycodone pills than hydrocodone pills to trigger a minimum mandatory sentence, even though oxycodone is more potent and likely to lead to adverse outcomes, such as addiction and overdose. For example, a 2010 Medical Examiners Commission report cited oxycodone as the drug that caused the most deaths in Florida. Stakeholders also told us that this high strength oxycodone pill is in the most demand by addicts. In addition, our review of sampled offender arrest records found that 30 milligram oxycodone was the predominant drug involved in trafficking offenses.

### Exhibit 6

#### Fewer Hydrocodone than Oxycodone Pills Are Needed to Meet Trafficking Weight Thresholds

Prescription Drug	Pill Weight	Number of Pills to Meet Weight Threshold		
		4 grams	14 grams	28 grams
Hydrocodone, 10 mg	0.65 grams	7	22	44
Oxycodone, 30 mg	0.13 grams	31	108	215

Source: OPPAGA analysis of information in arrest reports contained in court case files.

**Exhibit 7  
Minimum Mandatory Sentences Are Shorter for Many Other Controlled Substances than for Prescription Painkillers**

Controlled Substance	Minimum Mandatory Sentence		
	1 <sup>st</sup> Threshold	2 <sup>nd</sup> Threshold	3 <sup>rd</sup> Threshold
Prescription Painkillers	<b>3 years</b> (4 to 14 grams)	<b>15 years</b> (14 to 28 grams)	<b>25 years</b> (28 grams to 30 kg)
Cocaine	<b>3 years</b> (28 to 200 grams)	<b>7 years</b> (200 to 400 grams)	<b>15 years</b> (400 grams to 150 kg)
Methamphetamine	<b>3 years</b> (14 to 28 grams)	<b>7 years</b> (28 to 200 grams)	<b>15 years</b> (200 grams or more)

Source: Section 893.135, F.S.

***Minimum mandatory sentences for prescription opioid trafficking are longer than for most other controlled substances***

The current drug trafficking statutes can result in longer sentences for trafficking in prescription painkillers than for other controlled substances, most of which cannot be legally prescribed or possessed. According to some stakeholders we interviewed, the sentences and weight thresholds for opioid trafficking were established based on those for trafficking in heroin.

Minimum mandatory sentences are the same for the lowest weight thresholds for prescription painkillers and most other controlled substances. However, sentences for the majority of other controlled substances are shorter for the two higher thresholds.<sup>9</sup> For example, as shown in Exhibit 7, the first three levels of sentences for cocaine and methamphetamine are 3 years, 7 years, and 15 years. In comparison, the sentences for prescription painkillers are 3 years, 15 years, and 25 years.

<sup>9</sup> The first three levels of minimum mandatory sentences for trafficking are 3 years, 7 years, and 15 years for cannabis, cocaine, methaqualone, amphetamine and methamphetamine, phencyclidine (PCP), gamma-hydroxybutyric (GHB), gamma-butyrolactone (GBL), butanediol, 3,4-methylenedioxymethamphetamine (MDMA) and similar substances, and lysergic acid (LSD).

**Options for Legislative Consideration**

Based on stakeholder input and other research, we developed six options the Legislature could consider if it wishes to revise the sentencing structure for prescription painkillers.

**Option 1. Address weight thresholds and sentences for offenses involving hydrocodone by revising Florida statutes so that these offenses will be prosecuted in the same manner as offenses involving other Schedule III drugs.** This would require

- removing provisions from s. 893.03(3)(c)7, *Florida Statutes*, that specify for purposes of charging trafficking, offenses involving hydrocodone pills that meet the requirements for Schedule III drugs will be charged under the drug trafficking statute as if these were Schedule II drugs. The requirements for Schedule III are that the pills contain 15 milligrams or less of hydrocodone in a dosage unit that includes another active ingredient that is not a controlled substance; and
- modifying s. 893.135(1)(c), *Florida Statutes*, to state that it does not apply to hydrocodone in a mixture that meets the requirements in s. 893.03(3)(c), *Florida Statutes*.

Controlled substances that are subject to drug trafficking penalties are generally Schedule I or Schedule II drugs, which have a high potential for abuse and addiction. Hydrocodone is an exception because it is classified as both a Schedule II and Schedule III drug; Schedule III drugs have less potential for abuse than Schedule I and II drugs. Schedule II includes hydrocodone, but the pills are Schedule III drugs if they contain less than 15 milligrams of hydrocodone and include another active ingredient that is not a controlled substance. All hydrocodone pills currently available from U.S. manufacturers meet these requirements.<sup>10</sup>

Although medical practitioners tend to prescribe hydrocodone more frequently than oxycodone, data from the Medical Examiners Commission shows that oxycodone was the drug that caused the most deaths in Florida in 2010. According to a medical expert, the acetaminophen in hydrocodone pills is more likely to cause harm with an overdose than the hydrocodone. In addition, addicts often want higher potency drugs such as oxycodone.

This option would address issues raised about lower potency hydrocodone and reduce the number of offenders admitted to prison for minimum mandatory sentences, while not precluding penalties for illegal possession or sale. If the statutes were modified to no longer make offenses involving Schedule III hydrocodone subject to trafficking provisions, illegal possession or sale of these pills would become a third degree felony, subject to the normal provisions of the controlled substance

statute and the Florida Criminal Punishment Code. This change would also allow the courts to consider post-adjudicatory drug courts for offenders who otherwise met eligibility criteria under current statutes. However, some prosecutors would not support imposing different penalties for various opioids.

**Option 2. Allow courts to consider committing addicted offenders with minimal prior criminal histories to secure community-based residential drug treatment programs as an alternative to prison.**

Florida has experienced a substantial increase in substance abuse treatment admissions resulting from prescription drug abuse. According to stakeholders we interviewed, they frequently encounter defendants whose criminal activities are the result of addiction to prescription painkillers.

According to Department of Corrections staff, a program similar to the department's secure residential treatment and work release program, with an average length of stay of 12 months, would be the most appropriate for these offenders. This program provides four months of intensive residential treatment followed by work release during the day and treatment at night. Offenders convicted of trafficking in prescription painkillers could be eligible for commitment to treatment as an alternative to prison if they met certain criteria. Such criteria could include

- substance abuse treatment needs;
- no prior prison admissions;
- no prior convictions for violent offenses and drug sales; and
- a low-risk of recidivism.

Of the 1,200 offenders sentenced to prison for opioid trafficking during Fiscal Year 2010-11, an estimated 310 offenders would have met all of these criteria.

<sup>10</sup> Currently, manufactured hydrocodone pills contain from 5 to 10 milligrams of hydrocodone and 325 or more milligrams of acetaminophen. However, drug manufacturers are developing a new version of hydrocodone pills that does not include acetaminophen; if approved for sale, this medication would be considered a Schedule II drug.

One advantage of allowing treatment as an alternative to prison is cost avoidance. The average cost of the department’s residential treatment and work release program is \$19,130 for an average stay of 12 months. If a similar program were implemented for offenders convicted of prescription painkiller trafficking, the state could avoid an estimated \$39,280 per offender successfully diverted from prison compared to the cost of housing an offender in prison for a three-year minimum mandatory prison sentence (approximately \$58,400).<sup>11</sup> If half of the 310 offenders meeting potential criteria for treatment were diverted from prison and successfully completed a treatment program, the total costs avoided over a three-year period would be approximately \$6 million.<sup>12</sup> For those diverted from longer sentences, cost savings would be greater. In addition, treatment could help reduce the likelihood that offenders will commit future crimes and thus decrease future prison costs.

However, offering treatment to additional offenders may require an investment or redirection of state funds. The number of available secure residential treatment beds is limited. In Fiscal Year 2011-12, the Department of Corrections was authorized to fund 1,061 residential beds statewide, which are being used for other criminal justice programs. Although federal funds are currently available for post-adjudicatory drug courts, these funds are time-limited and will expire March 2013.

Another disadvantage is that prosecutors are generally opposed to allowing the courts to depart from minimum mandatory sentences. Some prosecutors said they have already considered factors such as addiction when exercising their discretion to prosecute cases as trafficking instead of lesser offenses.

**Option 3. Revise Florida statutes to increase the weight thresholds for prescription painkillers so that it would take more pills to be charged with drug trafficking offenses subject to minimum mandatory sentences.** Exhibit 8 presents a hypothetical example of the effect of higher thresholds on the number of pills considered trafficking. This example increases the first threshold to 28 grams and creates a wider range between the second and third thresholds. Making this change would increase the number of hydrocodone pills needed to reach the first threshold from 7 to 44.

**Exhibit 8  
Raising the Weight Thresholds Would Increase the Number of Pills Needed for a Trafficking Charge**

Minimum Mandatory Sentence	Hypothetical Higher Threshold	Number of Pills	
		10 mg Hydrocodone	30 mg Oxycodone
3 years	28 grams	44	215
15 years	50 grams	77	386
25 years	200 grams	308	1,539

Source: OPPAGA analysis.

As with some of the other options, increasing the weight thresholds would increase the number of hydrocodone pills that meet trafficking levels. Illegal possession or sale of amounts that do not meet the thresholds would be second degree felonies punishable under normal sentencing guidelines in the Criminal Punishment Code.

Although some prosecutors would oppose this option, increasing the weight thresholds had more support from prosecutors than other options presented in this report.

<sup>11</sup> Convictions for the lowest weight threshold of 4 to 14 grams are subject to a three-year minimum mandatory sentence. Offenses meeting the higher weight thresholds result in longer sentences.

<sup>12</sup> A 2009 [OPPAGA report](#) on Florida’s post-adjudicatory drug courts found that 49% of program participants admitted to drug courts in 2004 successfully completed drug court while 51% were terminated before completion. Program completion rates for individual drug courts ranged from 39% to 74%. Participants in these drug courts may be addicted to prescription painkillers or other types of controlled substances.

Prosecutors we talked with generally favored minimum mandatory sentences, but some thought the thresholds were too low for prescription painkillers. Others said they were not in favor of any changes to the trafficking statute, but if the Legislature were to make revisions, they would be most amenable to small increases in the thresholds.

**Option 4. Reduce the minimum mandatory sentence lengths for prescription painkillers so that they are consistent with the penalties for most other drug trafficking offenses, which are 3, 7, and 15 years rather than 3, 15, and 25 years.** This option would create more uniformity within the drug trafficking statute while retaining the current weight thresholds, method of calculating weights, and the types of prescription painkillers for which minimum mandatory sentences would apply. However, there may still be opposition to reducing the severity of penalties for trafficking in painkillers, given their addictive properties and fatalities from oxycodone overdoses.

**Option 5. Modify the method used to calculate the weight of prescription painkillers to only include the weight of the controlled substance rather than the weight of the entire pill.** This would have the effect of raising the thresholds and result in longer sentences for higher potency oxycodone than for hydrocodone and other drugs that contain a higher percentage of active ingredients that are not controlled substances. Some stakeholders have suggested using an approved pharmacological reference to determine the weight of the controlled substance.

Exhibit 9 illustrates the effect this option would have on the number of pills that meet trafficking weight thresholds. As shown in the exhibit, it would take 400 pills of 10 milligram hydrocodone to meet the threshold of 4 grams compared to 133 pills of 30 milligram oxycodone.

**Exhibit 9  
Basing Weight Calculations on the Weight of the Controlled Substance Would Increase the Number of Pills Needed for a Trafficking Offense**

Prescription Drug	Number of Pills Required to Meet Weight Threshold		
	4 grams (3 years)	14 grams (15 years)	28 grams (25 years)
Hydrocodone, 10 mg	400	1,400	2,800
Oxycodone, 30 mg	133	467	933

Source: OPPAGA analysis.

This option has the advantage of aligning thresholds with the potency of painkillers. It would take significantly more hydrocodone and other pills containing acetaminophen to meet trafficking thresholds. As with some of the other options, this option would also reduce the number of offenders admitted to prison for minimum mandatory sentences, while not precluding penalties for illegal possession or sale of painkillers.

However, this option would also increase the number of higher strength pills that would meet thresholds, including 30 milligram oxycodone. As shown in Exhibit 9, it would take 133 of these pills to reach the first threshold of 4 grams, compared to the current number of 31 pills. (See Exhibit 6.)

In addition, prosecutors have raised concerns about whether this method of calculating pill weights would meet court requirements for ‘proof beyond a reasonable doubt’ without expensive laboratory testing of every pill to prove that each one contains the same amount of controlled substance stated in a pharmaceutical reference. Currently, when the pills seized at arrest are of uniform size and appearance, laboratories test a sample of the pills to determine the type of controlled substance and then weigh all of the pills to prove the amount meets a trafficking threshold. According to Florida

Department of Law Enforcement officials, more complex and costly analyses may be needed to verify the weight of the controlled substance if this option were adopted.

**Option 6. For illegal possession of an amount of prescription painkillers weighing less than 28 grams, require proof of intent to sell to be charged with trafficking; without proof, sanctions for possession would apply. This option also could be limited to first offenses.** The current trafficking statute does not require proof of intent to sell the drugs when defendants illegally possess an amount that meets weight thresholds.

As with the other options, this option would reduce the number of offenders admitted to prison for minimum mandatory sentences,

while not precluding other sanctions. Illegal possession of painkillers weighing between 4 and 28 grams would become a third degree felony, subject to the normal provisions of the controlled substance statute and the Florida Criminal Punishment Code. This change would also allow courts to consider post-adjudicatory drug courts for offenders who otherwise met eligibility criteria under current statutes.

However, prosecutors we interviewed are opposed to requiring proof of intent to sell in order to charge a defendant with trafficking in cases where only illegal possession has been established. They said it would make it more difficult to prosecute cases and create a precedent for other controlled substances included in the drug trafficking statute.





*The Florida Legislature*  
*Office of Program Policy Analysis*  
*and Government Accountability*



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OPPAGA provides performance and accountability information about Florida government in several ways.

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**OPPAGA website:** [www.oppaga.state.fl.us](http://www.oppaga.state.fl.us)

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R. Philip Twogood, Coordinator



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-13

Meeting Date

Topic Drug Trafficking

Bill Number SB 7148  
*(if applicable)*

Name MARK FONTAINE

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Executive Director

Address 2868 MAHAN Drive  
*Street*

Phone 878-2196

Tallahassee FL 32308  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Alcohol + Drug Abuse Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13  
Meeting Date

Topic Sentencing / Drug Trafficking

Bill Number SPB 7148  
*(if applicable)*

Name Greg Newburn

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Florida Project Director

Address PO Box 140933

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City State Zip

E-mail gnewburn@famm.org

Speaking:  For  Against  Information

Representing Families Against Mandatory Minimums

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-13

Meeting Date

Topic Sentencing

Bill Number 7148  
*(if applicable)*

Name ROB JOHNSON

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title LEG. AFFAIRS DIRECTOR

Address PL-01 THE CAPITOL  
*Street*

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TALL. FL  
*City State Zip*

E-mail rob.johnson@myfloridalegal.com

Speaking:  For  Against  Information

Representing AG PAM BOND

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/2013

Meeting Date

Topic Prescription Drug Trafficking

Bill Number SPB7148  
*(if applicable)*

Name Jorge Chamizo

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

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Tallahassee, FL 32301  
City State Zip

E-mail jorgeflapartners.com

Speaking:  For  Against  Information

Representing Florida Association of Criminal Defense Lawyers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4/8/2013  
Meeting Date

Topic Prescription Drug Trafficking

Bill Number SPB 7148  
*(if applicable)*

Name Stephen Stanfield

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address 4809 SW 91 Terrace

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Gainesville, FL 32608  
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E-mail stanfield@gainesvilledefense.com

Speaking:  For  Against  Information

Representing himself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13

Meeting Date

Topic CRIMINAL SENTENCING

Bill Number SPB 7148  
*(if applicable)*

Name BRAD KING

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title STATE ATTORNEY 5TH CIRCUIT

Address 110 NW 1ST AVE SUITE 5000

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Street

OCALA, FL

E-mail bking@sao5.org

City

State

Zip

Speaking:  For  Against  Information

Representing FPAA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/13

Meeting Date

Topic DRUG TRAFFICKING

Bill Number SB 7148  
*(if applicable)*

Name AMY MERCER

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title EXECUTIVE DIRECTOR

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Street

TALLAHASSEE FLA 32303

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing THE FLORIDA POLICE CHIEFS ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 8, 2013

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 7148  
*(if applicable)*

Name Nancy Daniels

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Public Defender, 2nd Judicial Circuit

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*Street*

Phone 850-488-1010

Tallahassee                      FL                      32301  
*City*                                      *State*                                      *Zip*

E-mail nancy.daniels@flpda2.org

Speaking:     For     Against     Information

Representing Florida Public Defender Association

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***form is part of the public record for this meeting.***

S-001 (10/20/11)



# CourtSmart Tag Report

**Room:** LL 37

**Case:**

**Type:**

**Caption:** Senate Criminal Justice Committee

**Judge:**

**Started:** 4/8/2013 1:08:28 PM

**Ends:** 4/8/2013 2:59:55 PM **Length:** 01:51:28

1:08:31 PM Meeting to Order  
1:08:52 PM Roll Call  
1:09:10 PM Tab 6 - SB 974 by Sobel - Human Trafficking  
1:11:36 PM Prof. Terry Coonan, FSU Human Rights  
1:13:43 PM Roll Call  
1:14:11 PM Tab 1 - SB 250 by Ring - Florida Law Enforcement Officers' Hall of Fame  
1:14:46 PM Roll Call  
1:15:22 PM Tab 3 - CS/SB 644 by Banking and Insurance / Richter - Licensure by the Office of Financial Regulation  
1:16:37 PM Roll Call  
1:17:30 PM Tab 4 - CS/SB 650 by Agriculture / Sachs - Artificial Coloring and Sale of Certain Animals and Fowls  
(presented by Caitlan Lewis)  
1:21:09 PM Roll Call  
1:23:56 PM Tab 5 - SB 876 by Stargel - Offenses Against Unborn Children  
1:44:28 PM Roll Call  
1:45:46 PM Tab 2 - SB 634 by Simpson - Motor Vehicles, presented by Patrick Weightman  
1:48:36 PM Major Chris Connell, Florida Police Chiefs Association, Tallahassee, FL  
1:59:16 PM Roll Call  
2:00:10 PM Tab 8 - CS/SB 1448 by Health Policy / Smith - Controlled Substances  
2:03:24 PM Brad King, State Attorney, Florida Prosecuting Attorneys Association (FPAA), Ocala, FL  
2:07:41 PM Roll Call  
2:08:23 PM Tab 7 - SB 1350 by Bradley - Criminal Penalties  
2:32:22 PM Jerry Siegmeister, State Attorney, Third Circuit, FPAA, Live Oak, FL  
2:33:48 PM Nancy Daniels, Public Defender, 2nd Judicial Circuit, FPDA, Tallahassee, FL  
2:40:54 PM Janet Ferris, Retired Circuit Judge, Tallahassee, FL  
2:43:12 PM Sheila Hopkins, Florida Conference of Catholic Bishops, Tallahassee, FL  
2:45:28 PM Dr. Burt Hayner, Clinical Director, Tallahassee, FL  
2:50:24 PM Roll Call  
2:51:09 PM Tab 9 - SPB 7148 by Criminal Justice - Drug Trafficking  
2:59:05 PM Roll Call  
2:59:20 PM Meeting Adjourned



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Military Affairs, Space, and Domestic Security, *Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Finance and Tax  
Children, Families, and Elder Affairs  
Criminal Justice  
Environmental Preservation and Conservation

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

**SENATOR THAD ALTMAN**

16th District

April 5, 2013

The Honorable Greg Evers, Chair  
Senate Committee on Criminal Justice  
308 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Evers:

I respectfully request an excused absence for the Committee on Criminal Justice meeting on April 8, 2013 at 1:00 pm. Please contact me or my Legislative Assistants Rick Kendust or Selene Bruns if you have any questions.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

cc: Amanda Cannon, Staff Director, 510 Knott Building  
Sue Arnold, Committee Administrative Assistant, 510 Knott Building

### REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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President of the Senate

**GARRETT RICHTER**  
President Pro Tempore