

SPB 7180 by CJ; Community Correction Reentry Programs

890272 A S FAV CJ, Evers Delete L.93: 01/31 07:08 PM

SB 732 by Bogdanoff (CO-INTRODUCERS) Joyner; (Similar to H 0561) Sentences of Inmates

186548 A S UNFAV CJ, Bennett Delete L.24 - 580: 01/31 07:08 PM

939132 A S RCS CJ, Bennett Delete L.972. 01/31 07:08 PM

SB 346 by Ring; (Identical to H 0223) Flag Etiquette

167066 D S RCS CJ, Bennett Delete everything after 01/25 07:57 PM

SB 872 by Fasano; (Similar to CS/H 0667) Murder

718770 D S RCS CJ, Bennett Delete everything after 01/25 07:57 PM

SB 964 by Benacquisto; (Similar to CS/H 0437) Protection of Minors

840994 A S RCS CJ, Dean Delete L.80 - 82: 01/25 07:57 PM

SB 1276 by Latvala; (Similar to CS/H 0729) Hiring, Leasing, or Obtaining Personal Property or Equipment With the Intent to Defraud

820280 A S RS CJ, Dean Delete L.75 - 121: 01/25 07:57 PM

237778 SA S RCS CJ, Dean Delete L.5 - 55: 01/25 07:57 PM

SB 1502 by Evers; (Similar to CS/H 1175) Controlled Substances

883742 A S RCS CJ, Evers Delete L.147 - 231: 01/31 07:08 PM

803350 A S RCS CJ, Evers Delete L.479 - 486: 01/31 07:08 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Dean, Vice Chair

MEETING DATE: Wednesday, January 25, 2012
TIME: 3:30 —5:30 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Evers, Chair; Senator Dean, Vice Chair; Senators Bennett, Hays, Margolis, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Presentation by the Criminal Justice Standards and Training Commission on officer misconduct and disciplinary action.		Not Considered
2	Consideration of proposed committee bill:		
	SPB 7180	Community Correction Reentry Programs; Requiring the Department of Corrections to develop an operational plan to implement a pilot community corrections reentry program in certain designated counties; requiring that all inmates who are within 36 months of their release date be considered for participation in the pilot community corrections reentry program; deleting a provision limiting the modes of transportation an inmate may use when traveling to and from his or her place of employment, education, or training, etc.	Not Considered
Workshop - Discussion and testimony only on the following (no vote to be taken):			
3	SB 732 Bogdanoff (Similar H 561)	Sentences of Inmates; Revising the quantity of a controlled substance which a person must knowingly sell, purchase, manufacture, deliver, or bring into this state with the intent to distribute in order to be subject to the automatic imposition of a mandatory minimum term of imprisonment; providing the method for determining the weight of a controlled substance in a mixture that is a prescription drug; revising legislative intent; repealing provisions relating to legislative findings and intent relative to knowledge of a person to the possession of a controlled substance, etc. CJ 01/25/2012 Workshop-Discussed JU BC	Workshop-Discussed
4	SB 346 Ring (Identical H 223)	Flag Etiquette; Requiring the Governor to order flags to be flown at half-staff to honor fallen law enforcement officers and firefighters, etc. CJ 01/25/2012 Fav/CS GO	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Wednesday, January 25, 2012, 3:30 —5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 872 Fasano (Similar CS/H 667)	Murder; Providing that the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, the offense of aggravated fleeing or eluding, is murder of a specified degree, dependent upon certain circumstances; revising provisions of the offense severity ranking chart of the Criminal Punishment Code to conform to changes made by the act, etc. CJ 01/25/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
6	SB 964 Benacquisto (Similar CS/H 437, Compare H 215, S 436)	Protection of Minors; Citing this act as the "Protect Our Children Act of 2012"; requiring a person convicted of a second or subsequent violation of a specified video voyeurism provision to register as a sexual offender if the victim of the violation was a minor; providing that if more than one child is involved in a violation of provisions prohibiting sexual performance by a child, each child involved in the violation creates a separate offense; requiring a person convicted of a video voyeurism violation to register as a sexual offender if the victim of the violation was a minor; revising the definition of the term "place and time when a person has a reasonable expectation of privacy" to include the interior of a residential dwelling; increasing the classification of specified video voyeurism offenses involving minors; ranking a violation of s. 810.145(8)(b), F.S., above its default value for purposes of the offense severity ranking chart of the Criminal Punishment Code, etc. CJ 01/25/2012 Fav/CS CF BC	Fav/CS Yeas 5 Nays 1
7	SB 1276 Latvala (Similar CS/H 729)	Hiring, Leasing, or Obtaining Personal Property or Equipment With the Intent to Defraud; Providing that in a prosecution for failing to return leased property or equipment within a specified time to the lawful owner, failure to return the property after a demand made by certified mail or courier service creates a rebuttable presumption that the lessee abandoned or refused to return the property to the lessor; providing that notice mailed by certified mail, return receipt requested, or by delivery by courier with tracking capabilities, to the address given by the renter at the time of the rental is sufficient and equivalent to notice having been received by the renter, if the notice is returned undelivered, etc. CJ 01/25/2012 Fav/CS JU BI	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Wednesday, January 25, 2012, 3:30 —5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1502 Evers (Similar CS/H 1175)	Controlled Substances; Adding to the list of Schedule I controlled substances certain specified materials, compounds, mixtures, or preparations that contain hallucinogenic substances or that contain any of these substances' salts, isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, etc. CJ 01/25/2012 Not Considered HR BC	Not Considered

Other related meeting documents

Frequently Asked Questions About

The Criminal Justice Standards and Training Commission

What is the Criminal Justice Standards and Training Commission?

The Criminal Justice Standards and Training Commission (CJSTC) is a statutorily created group whose mission is to ensure that all citizens of Florida are served by criminal justice officers who are ethical, qualified, and well-trained.

Who are the members of the CJSTC?

The CJSTC is comprised of 19 members -- 16 are appointed by the Governor and three are ex-officio members, i.e., they serve by virtue of the position they hold in State government.

Members Appointed by Governor	Ex-Officio Members
3 sheriffs	The Secretary of Corrections or a designated assistant
3 chiefs of police	The Attorney General or a designee
5 law enforcement officers whose rank is sergeant or below	The Director of the Florida Highway Patrol
2 correctional officers -- one who is an administrator of a state correctional institution, and one whose rank is sergeant or below	
1 director of a CJSTC-certified criminal justice training center	
1 head of a county correctional institution	
1 state resident who does not fall into any previous category	

Are there specific qualifications for appointment to the CJSTC?

To be considered for appointment to the CJSTC, Florida Statute requires a sheriff, chief of police, law enforcement officer, and correctional officer to have at least four years of experience as a law enforcement or correctional officer. In addition, each member appointed by the Governor is accountable to the Governor for the proper performance of the duties of his or her office. The Governor may remove from office any such member for malfeasance, misfeasance, neglect of duty, incompetence, or permanent inability to perform official duties, or for pleading guilty or nolo contendere to, or being found guilty of, a felony.

How does the Governor select the members he appoints?

Florida Statute directs the Governor to consider geography, population, and other relevant factors in order that the representation on the commission reflects the state at large rather than a particular area. Of the appointed members, and except for correctional officers of a state institution, there may be only one appointment from any employing agency.

In appointing each of the three sheriffs, the Governor must choose from a list of six nominees submitted by the Florida Sheriffs Association. In appointing each of the three police chiefs, the Governor must choose from a list of six nominees submitted by the Florida Police Chiefs Association. In appointing each of the five law enforcement officers and one correctional officer, the Governor must choose from a list of six nominees submitted by a committee comprised of representatives from the state's collective bargaining agents for certified law enforcement bargaining units. At least one of the names submitted for each of the five law enforcement officer appointments must be an officer who is not in a collective bargaining unit.

What are the Commission's responsibilities?

The primary duties and responsibilities of the CJSTC are to:

- establish uniform minimum standards for the employment and training of criminal justice officers;
- establish and maintain officer training programs, curricula requirements, and certification of training schools and training school instructors;
- certify officers who complete a Florida Basic Recruit Training Program, or who are diversely qualified through experience and training, and who meet minimum employment standards;
- review and administer appropriate administrative sanctions in instances when an officer, a training school instructor, or a training school is found in violation of Florida Statutes and Commission standards;
- promulgate rules and procedures to administer the requirements of Florida Statutes;
- develop, maintain, and administer the State Officer Certification Examination for criminal justice officers;
- maintain a central repository of records of all certified officers; and
- hold meetings, at least quarterly, to discuss issues and approve rules that relate to officer standards and training.

What is the relationship between FDLE and the CJSTC?

Florida Statute created the CJSTC within the Florida Department of Law Enforcement to “actively provide statewide leadership in the establishment, implementation, and evaluation of criminal justice standards and training for all law enforcement officers, correctional officers, and correctional probation officers.” Members of FDLE’s Criminal Justice Professionalism Program serve as staff of the CJSTC, supporting and assisting the commission in executing, administering, implementing, and evaluating its statutory powers, duties, and functions.

Although created by statute within FDLE, the CJSTC is an independent commission that receives staff support and assistance from the FDLE. The FDLE does not have the statutory authority to override decisions that are made by the Commission.

Does the CJSTC have guiding principles that govern their actions and decisions?

Florida Statute authorizes the CJSTC to adopt rules for the administration of their duties and responsibilities.

How does the CJSTC become aware of discipline cases?

Commission staff presents sustained moral character violations to the Commission for disciplinary action. The Professional Compliance Section of the Bureau of Standards may initiate an officer misconduct case when:

- a) requested by the Governor;
- b) documentation completed when an officer leaves an agency indicates “unfavorable misconduct” as the reason for leaving;
- c) an internal investigation report indicates sustained violation of Florida Statute;
- d) a signed verifiable complaint that contains specific allegations of non-compliance by an officer is received;
- e) newspaper articles indicating an arrest or violation of moral character by an officer is obtained; or
- f) staff develops information indicating that an officer has been arrested or is in violation of Commission-ordered probation.

Who investigates cases brought before the CJSTC for disciplinary action?

Florida Statute and Florida Administrative Code delegate the investigation of potential moral character violations to the officer’s employing agency. Commission staff evaluates case information to determine if grounds for disciplinary action exist, and makes penalty recommendations to the Commission based on recent past similar cases decided by the Commission.

The Commission is not bound by staff recommendation; it has the authority to deny the recommendation and adopt a penalty it chooses.

What actions are the CJSTC authorized to take?

The Commission is authorized by Florida Statute and Florida Administrative Code to administer certain penalties for specific violations. Penalties range from revocation of the officer’s certification (for felony conviction, misdemeanor conviction involving perjury or false statement, dishonorable discharge from US Armed Forces), to suspension of certification, placement on probationary status, retraining, and/or a reprimand.

How is Probable Cause determined?

A finding of probable cause is the first step in the disciplinary process. Commission staff presents sustained officer discipline cases to a three member panel of the Commission. This panel evaluates the internal affairs investigation, arrest documents, court documents, and any other pertinent documentation that enabled the officer’s employing agency to sustain the moral character violation against the officer. The panel then determines whether or not there is sufficient evidence to proceed further with an officer discipline case. The probable cause panel has the following options when determining whether or not to move forward with a disciplinary case: find probable cause, issue a Letter of Guidance, allow the respondent to enter into a probable cause intervention program, find insufficient information and require staff to present the case at a later date once information is identified, find no probable cause and close the case.

Can past disciplinary complaints be used against an officer?

Florida Administrative Code allows the Commission to consider prior disciplinary actions taken by the Commission when determining penalties for future acts of officer misconduct. Previous complaints can only

be considered if the officer's employing agency investigated and determined that the complaint rose to the level of a moral character violation as outlined in Florida Administrative Code.

What are the minimum standards for certification in Florida to become a law enforcement or a corrections officer?

- Be at least 19 years of age.
- Be a citizen of the United States, notwithstanding any law of the state to the contrary.
- Be a high school graduate or its "equivalent" as the commission has defined the term by rule.
- Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. Any person who, after July 1, 1981, pleads guilty or nolo contendere to or is found guilty of any felony or of a misdemeanor involving perjury or a false statement is not eligible for employment or appointment as an officer, notwithstanding suspension of sentence or withholding of adjudication. Notwithstanding this subsection, any person who has pled nolo contendere to a misdemeanor involving a false statement, prior to December 1, 1985, and has had such record sealed or expunged shall not be deemed ineligible for employment or appointment as an officer.
- Have documentation of his or her processed fingerprints on file with the employing agency or, if a private correctional officer, have documentation of his or her processed fingerprints on file with the Department of Corrections or the Criminal Justice Standards and Training Commission. If administrative delays are caused by the department or the Federal Bureau of Investigation and the person has complied with subsections (1)-(4) and (6)-(9), he or she may be employed or appointed for a period not to exceed 1 calendar year from the date he or she was employed or appointed or until return of the processed fingerprints documenting noncompliance with subsections (1)-(4) or subsection (7), whichever occurs first. Beginning January 15, 2007, the department shall retain and enter into the statewide automated fingerprint identification system authorized by s. 943.05 all fingerprints submitted to the department as required by this section. Thereafter, the fingerprints shall be available for all purposes and uses authorized for arrest fingerprint cards entered in the statewide automated fingerprint identification system pursuant to s. 943.051. The department shall search all arrest fingerprint cards received pursuant to s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system pursuant to this section and report to the employing agency any arrest records that are identified with the retained employee's fingerprints. By January 1, 2008, a person who must meet minimum qualifications as provided in this section and whose fingerprints are not retained by the department pursuant to this section must be refingerprinted. These fingerprints must be forwarded to the department for processing and retention.
- Have passed a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the commission. In order to be eligible for the presumption set forth in s. 112.18 while employed with an employing agency, a law enforcement officer, correctional officer, or correctional probation officer must have successfully passed the physical examination required by this subsection upon entering into service as a law enforcement officer, correctional officer, or correctional probation officer with the employing agency, which examination must have failed to reveal any evidence of tuberculosis, heart disease, or hypertension. A law enforcement officer, correctional officer, or correctional probation officer may not use a physical examination from a former employing agency for purposes of claiming the presumption set forth in s. 112.18 against the current employing agency.

- Have a good moral character as determined by a background investigation under procedures established by the commission.
- Execute and submit to the employing agency or, if a private correctional officer, submit to the appropriate governmental entity an affidavit-of-applicant form, adopted by the commission, attesting to his or her compliance with subsections (1)-(7). The affidavit shall be executed under oath and constitutes an official statement within the purview of s. 837.06. The affidavit shall include conspicuous language that the intentional false execution of the affidavit constitutes a misdemeanor of the second degree. The affidavit shall be retained by the employing agency.
- Complete a commission-approved basic recruit training program for the applicable criminal justice discipline, unless exempt under this subsection. An applicant who has: completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government; and served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an 8-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for an exemption under this section, is exempt in accordance with s. 943.131(2) from completing the commission-approved basic recruit training program.
- Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline.
- Comply with the continuing training or education requirements of s. 943.135.

The Criminal Justice Standards and Training Commission and Commission staff works with the 41 CJSTC certified training centers to develop courses of instruction, including, but not necessarily limited to, education and training in the areas of criminal justice administration and all allied and supporting disciplines. The Commission also establishes the minimum curricular requirements for criminal justice training schools, and ensures that the curriculum delivered is consistent throughout the state.

How many officers are certified in Florida?

Number of Officers Certified by Year						
Year	Aux Cott	Aux LE	Correctional	CPO	Law Enforcement	Total
2002	0	134	2,245	47	3,113	3,529
2003	0	99	3,045	176	2,900	6,220
2004	3	77	3,479	199	3,097	6,855
2005	0	49	2,904	291	3,076	6,260
2006	0	83	3,234	210	3,186	6,703
2007	1	75	4,119	294	3,261	7,770
2008	0	96	3,090	63	2,428	5,677
2009	0	24	2,934	1	2,447	5,426
2010	0	57	2,567	99	2,181	4,898
2011	0	71	1,969	10	2,120	4,164
2012	0	0	26	0	116	142
Total	4	735	29,616	1,924	27,943	39,644

How many officers have passed/failed the state officer certification examination in the past 10 years (2002 – 2011)?

2002 - 2011 State Officer Certification Examinees			
	Pass	Fail	Total
Law Enforcement	35235 (82%)	7592 (18%)	42827
Corrections	30514 (80%)	7750 (20%)	38264
Correctional Probation	1354 (88%)	187 (12%)	1541

How many complaints have been received/reviewed by the CJSTC in the last 10 years? In addition, during the last 10 years how many officers have been decertified (had their certification revoked as a result of disciplinary action by the CJSTC)?

10-Year Officer Discipline Statistics								
Year	Cases Reviewed			Revocations		Officer Population (as of December 31)	% Officer Population with Case Reviewed	
	Cases Reviewed	% Change from Previous Year	Number Revoked	%Cases Resulting in Revocation	% Change from Previous Year			
2002	1487	N/A	145	10%	N/A	78,982	1.88%	
2003	1574	6%	134	9%	-8%	81,381	1.93%	
2004	1783	13%	170	10%	27%	82,546	2.16%	
2005	1606	-10%	171	11%	1%	83,513	1.92%	
2006	1506	-6%	151	10%	-12%	85,342	1.76%	
2007	1520	1%	175	12%	16%	87,169	1.74%	
2008	1799	18%	182	10%	4%	87,299	2.06%	
2009	1744	-3%	226	13%	24%	87,619	1.99%	
2010	1781	2%	252	14%	12%	87,363	2.04%	
2011	1609	-10%	280	17%	11%	84,273	1.91%	
Totals	16409		1886	11%				

How are law enforcement and corrections agencies notified of an officer that loses his/her certification?

When the Commission takes disciplinary action against an officer’s certification, Commission staff prepares a final order that outlines the specific penalty that is levied by the Commission. Staff sends a copy of this final order to the officer’s employing agency, and maintains the original order on file in the Professionalism Program. Anyone requesting copies of a final order may contact Commission staff at 850.410.8600.

Commission staff maintains the Automated Training Management System (ATMS) which contains the employment history, training information, state examination information, and any Commission disciplinary action on all officers in Florida. Rule 11B-27.0022, F.A.C. requires an employing agency to conduct a thorough background investigation of each applicant. The rule also requires verification of prior criminal justice employments and the facts and reasons for any prior separations of employment. Potential employers must verify this information via ATMS or by contacting Commission staff at 850.410.8600. Anyone with questions regarding the establishment of ATMS user accounts should contact Officer Records at 850.410.8600.

How can members of the public get information on the disciplinary actions taken by the CJSTC?

The Criminal Justice Professionalism Program's Professional Compliance Section publishes the disciplinary findings by the Commission in the Commission's Quarterly Update. The public can access the Commission's Quarterly Updates at: <http://www.fdle.state.fl.us/Content/getdoc/dd4f5584-4e22-4b0f-a04a-6acbe8734661/Quarterly-Updates.aspx>. Commission staff also publishes the Professional Compliance Bulletin which provides a few examples of specific cases heard after the Commission meetings and highlights topics of interest relating to the officer discipline process. The public can access the Professional Compliance Bulletins at: <http://www.fdle.state.fl.us/Content/getdoc/59610e7c-3fd0-47c7-b97f-8ac1f99b2966/Professional-Compliance-Bulletins.aspx>.

The Criminal Justice Standards and Training Commission meeting dates are publicly noticed in the Florida Administrative Weekly and are published on FDLE's website. You can access this information at <http://www.fdle.state.fl.us/Content/getdoc/91a75023-5a74-40ef-814d-8e7e5b622d4d/CJSTC-Home-Page.aspx>, or you can contact Donna Hunt, Commission Clerk, at 850.410.8600. Commission meetings are open to the general public.

Are members of the Commission compensated for their service?

CJSTC members are not compensated for their service but are reimbursed for per diem and travel expenses based on State of Florida guidelines.

THE FLORIDA SENATE
APPEARANCE RECORD

Tab 1

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

1/25/12

Meeting Date

Topic Criminal Justice Standards and Training Commission

Bill Number _____
(if applicable)

Name Mark Zadra

Amendment Barcode _____
(if applicable)

Job Title Assistant Commissioner

Address 2331 Phillips Road

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32308

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City

State

Zip

Speaking: For Against Information

Representing Florida Department of Law Enforcement

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 Criminal Justice Committee

BILL: SPB 7180

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Community Correction Reentry Programs

DATE: January 21, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7180 requires the Department of Corrections (department) to develop an operational plan to implement a pilot community corrections reentry program in 15 counties in northwest Florida. The bill requires that inmates who are within 36 months of their release date be considered for participation in the pilot program based upon a risk assessment process.

The bill also amends statutes in order to allow the department to expand the permissible means by which a work-release inmate can travel to and from his or her place of employment, education, or training.

This bill substantially amends section 945.091 and repeals section 945.0913 of the Florida Statutes.

II. Present Situation:

Reentry Programs for Nonviolent Offenders

Inmates who enter prison often have shortcomings in one or more areas of education, employment skills, substance abuse-free living, and mental health that contributed to their current situation. For example, almost two-thirds of Florida inmates who enter prison for any crime also have a substance abuse problem.¹ Unless addressed, these deficiencies are likely to contribute to re-offending and a return to prison.

¹ Office of Program Policy Analysis and Governmental Accountability (OPPAGA), *Corrections Rehabilitative Programs Effective, But Serve Only a Portion of the Eligible Population*, Report No. 07-14 (February 2007), p. 6.

In the past decade the executive and legislative branches of state government have acknowledged the importance of reentry services and post-release planning and transition. Various initiatives have been undertaken to improve an inmate's post-release success. However, barriers to successful reentry abound despite this commitment by policymakers to address the problem.

In May 2007, the department revised its mission statement to include assisting offenders with reentry into society in order to reduce recidivism and to lower crime rates. The department's goal was to bring down the recidivism rate from its current 32 percent to 20 percent by 2012. Although it has made some progress, it has been unable to meet that goal.

The department currently provides the following reentry programming to a segment of the inmate population:

- Substance abuse treatment programs;
- Educational and academic programs;
- Career and technical education programs; and
- Faith and character-based programs.²

Within the 15 northwest Florida counties affected by the bill, approximately 32,000 inmates are housed in 20 major correctional facilities, 12 work camps, 2 forestry camps, and 4 work release centers. The department reports that during Fiscal Year 2010-2011, 3,939 inmates were admitted to the department's custody from the affected counties and 3,955 were released to the counties. The following table indicates the admissions/releases for each county:

Admissions and Releases in FY 2010-2011 For Counties Included in Senate Proposed Bill 7180		
County	Admissions	Releases
Bay	867	724
Calhoun	43	62
Escambia	925	1009
Franklin	52	55
Gadsden	191	236
Gulf	33	28
Holmes	55	54
Jackson	186	153
Leon	774	767
Liberty	23	33
Okaloosa	316	321
Santa Rosa	263	225
Wakulla	51	77
Walton	82	105
Washington	78	106
Total	3939	3955

² Florida Department of Corrections, *Recidivism Reduction Strategic Plan Fiscal Year 2009-2014*, available at <http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (last visited November 10, 2011).

Correctional Integrated Needs Assessment System

The department assesses inmates and places them into programs using the Correctional Integrated Needs Assessment System (CINAS), which is based on the “Risk-Needs-Responsivity (RNR)” principle. The RNR principle refers to predicting which inmates have a higher probability of recidivating, and providing appropriate programming and services to higher risk inmates based on their level of need. The services would be focused on “criminogenic needs,” which are factors associated with recidivism that can be changed such as lack of education, substance abuse, criminal thinking, and lack of marketable job skills. High risk offenders have multiple risk factors, and the department provides a range of services and interventions to target the specific crime producing characteristics.

The Recidivism Index (RI) is a component of CINAS developed by the department to give a score that is used to assess an inmate’s program needs, determine the inmate’s priority for intervention and services, and guide program placement. RI scores range from 1 to 5, with those in RI 1 the least likely to recidivate.

The department reports that CINAS allows it to develop and implement programs that increase the likelihood of successful reentry. It also reports that use of the RI and CINAS “avoids focusing resources on individuals ill-equipped to handle specific behavior problems, and ensures the most appropriate treatment-setting possible is being assigned, based on an inmate’s characteristics.”

The RI is administered to an inmate when he or she is received at the initial parent institution and again after 42 months, with updates conducted every 6 months thereafter to evaluate the inmate’s progress and ensure enrollment in needed programs.³

As of January 19, 2012, the department indicates that 47,824 inmates within 3 years of release had been assessed using CINAS. The number of inmates in each RI score category are as follows:

Recidivism Index Scores for CINAS-Assessed Inmates Within 36 Months of Release		
<i>RI Score</i>	<i>Number of Inmates</i>	<i>Percentage of Assessed Inmates</i>
1	6,768	14.2%
2	7,666	16%
3	7,494	15.7%
4	15,868	33.2%
5	10,028	21%
Total	47,824	100%

³ Florida Department of Corrections, Analysis of SB 448.

Inmate Eligibility for Program Placement

The department offers programs in three core areas: academic, vocational, and substance abuse. Including all department and private facilities, there are 8,825 slots available in academic programs, 2,991 in vocational programs, and 3,228 in substance abuse programs.

Inmates with RI scores of 3 and 4 are ranked for placement in core programs if they have an identified need for a specific core program and are within 36 months of release.⁴ They are enrolled in programs based on their priority ranking number, which is itself based on a three-part weighted formula that considers the inmates: (1) program score; (2) current release date; and (3) core program-specific equalization score that is designed to move inmates more in need ahead of others.

Reentry Facilities

The department has dedicated certain facilities throughout the state to function as reentry facilities. These facilities house inmates who are within 36 months of release and who have been assigned to the facility based upon their RI score and programming needs. To the extent possible, inmates are placed in reentry facilities in the area in which they live in order to foster support from family, friends, and community volunteers. Reentry facility staff and community volunteers help inmates with housing, employment, and other needs in preparation for release.⁵ There are currently four reentry facilities, with three more scheduled to open in the near future:

- Baker Correctional Institution in Baker County (1,332 inmates)
- Sago Palm Reentry Center in Palm Beach County (384 inmates)
- Polk Correctional Institution in Polk County (1,393 inmates)
- DeMilly Correctional Institution in Polk County (342 inmates, but scheduled to be closed with functions absorbed by Polk Correctional Institution)
- Baker Reentry Facility scheduled to open in Baker County (432 inmates)
- Everglades Reentry Facility scheduled to open in Dade County (432 inmates)
- Gadsden Reentry Facility scheduled to open in Gadsden County (432 inmates)

The reentry facilities each have or will have a “portal of entry” in the community. This portal of entry is the designated release site for state, federal, and local jail inmates who are released to a particular county. The purpose of the portal of entry is to connect the released offender with needed services that have been identified during release planning and to help them with administrative requirements. Among other things, these services may include:

- Access to a clothing closet
- Food or meal vouchers
- Medical/disability assistance
- Assistance with employment
- Assistance with obtaining housing

⁴ Because of funding constraints, the department does not prioritize programming for R1, R2 or R5 inmates. This is based upon the assumption that R1 and R2 inmates have a relatively low likelihood of recidivating even without programming, and that programming is not likely to reduce the high likelihood that R5 inmates will recidivate.

⁵ In addition to other programming, the department provides the 100-Hour Transition Training Program required by s. 944.7065, F.S., for inmates who are within 12 months of their release.

- Mentoring
- Life skill training
- Felony registration
- Contact with community corrections staff if on community supervision

The portals of entry are cooperative efforts that involve the department, local law enforcement agencies, social service agencies, and community volunteers. Although they have not been operational long enough to calculate three-year recidivism rates, the department reports that a study of one-year recidivism at Baker Reentry Facility indicates some improvement over the recidivism rates before the facility was dedicated to the reentry process.

Community Work Release Centers

Work release is a transition program through which the department selects inmates to work at paid employment in the community while they serve the remainder of their sentence.⁶ The department is statutorily authorized to place an inmate in work release programs during the last 36 months of his or her sentence, but has limited that time to 14 months by rule. Inmates who are on work release have jobs in the community, but live at a non-secure correctional facility. Work release inmates are required to pay room and board and victim restitution, and to contribute to savings. The program is designed to give inmates a chance to enhance employment skills and to re-establish ties with family and the community prior to release.

The department currently has approximately 4,000 work release beds in work release facilities and transition facilities throughout the state. These are separate from the reentry facilities and from work camps, which are secure facilities under the administration of a parent correctional facility. There are four work release centers within the northwest Florida area encompassed by the bill. These are:

- Panama City Work Release Center (71 beds)
- Pensacola Work Release Center (84 beds)
- Tallahassee Work Release Center (121 beds)
- Shisa House West, a facility operated by a private provider in Tallahassee (32 beds)

Inmate Transportation at Work Release Centers

Section 945.091, F.S., specifies the means by which inmates who are in work release centers can travel to and from their jobs, educational programs, or training facilities. Such inmates can walk, bicycle, ride public transportation, or use transportation provided by a family member or employer. The statute also provides that, subject to specific appropriation, the department can transport an inmate in a state-owned vehicle if there is no other means of transportation. Section 945.0913, F.S., prohibits inmates from driving a state-owned vehicle to transport work-release inmates.

The department does not currently transport work release inmates. However, vendors who operate work release centers under contract with the department are permitted to transport inmates using vans driven by the vendor's staff.

⁶ Work release is authorized by s. 945.091, F.S.

Prior to 2003, the majority of work release inmates used department-provided transportation to travel to their places of employment. Inmate drivers were used for transporting these inmates prior to suspension of the inmate driver program in October of 2002 and subsequent enactment of Chapter 2003-141, Laws of Florida. The new law resulted in the current language in ss. 945.091, and 945.0913, F.S., that limits the methods by which work release inmates can travel.

III. Effect of Proposed Changes:

Pilot Community Corrections Reentry Program

Section 1 of the bill directs the department to develop an operational plan to implement a pilot community corrections reentry program in 15 northwest Florida counties for Fiscal Year 2013-2014. Leon County is the eastern boundary of the included area, which extends westward to Escambia County and the state line.

The pilot program must be designed to provide residential care, custody, control, and reentry services to eligible inmates. Substance abuse treatment, housing assistance, money management training, employment assistance, vocational education, and life skills training are reentry services specifically required to be provided by the program.

The bill requires the department to consider all inmates who are within 36 months of their release date for participation in the pilot program. Selection must be based on a risk assessment process that includes, but is not limited to, whether:

- The inmate has potential for rehabilitation and the need for reentry services;
- The reduction of risk of harm to the community after completion of the inmate's sentence which would result from his or her participation in the pilot program is outweighed by any risk of harm to the community which would be posed by the inmate while participating in the pilot program; and
- The inmate is from the geographic area of the pilot program, or has family or identified friends in the area, and intends to reside in the area upon release from custody.

These criteria appear to be consistent with the CINAS risk assessment tool and the Recidivism Index that the department currently uses for assessing and prioritizing reentry services.

An inmate who is selected for the pilot program must be transferred into it not later than 24 months before his or her current release date. If the inmate is already within the 24 month window when selected, he or she must be transferred into the program as soon as a position is available.

The minimum requirements for the operational plan include description and documentation of:

- Resources needed for the pilot project, including, but not limited to, specific buildings, grounds, and property that must be obtained or redesignated for residential community corrections facilities and reentry services.

- Placement of facilities and services in specific areas to maximize the opportunity for participating inmates to benefit from being located near where they plan to live after completion of their sentences.
- Additional staff or changes to staff qualifications necessary to operate the pilot program.
- Contracts the pilot project intends to use for private providers who desire to provide a portion of the reentry services and programming to eligible inmates.
- Security staffing, programming, and budgeting plans.
- The process and method for selecting an inmate to participate in the pilot project, including any initial screening process, the criteria used in the risk assessment, and any prioritization of placement.
- Any changes in law that are necessary to implement the pilot project.

The department is required to submit a status report and proposed budget request to the Governor, President of the Senate, and Speaker of the House of Representatives by December 1, 2012. The report must document the number of inmates that are intended be served in Fiscal Year 2013-2014 and the funding needed to implement the plan.

Sections 2 and 3 of the bill amend s. 945.091, F.S., and repeal s. 945.0913, F.S., respectively, to remove statutory restrictions on the means by which work release center inmates travel to their jobs, school, or training. As a result, the department will have the flexibility to determine appropriate means of transportation. This is expected to result in increased opportunities for employment because many potential employers are not on public transportation routes or within walking or biking distance of work release centers.

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 provides for the department to develop a plan that could ultimately have a fiscal impact, but does not authorize implementation of the plan.

VI. Technical Deficiencies:

On line 93, the reference to a “joint” status report should be removed.

The portion of s. 945.091, F.S., that is set forth on lines 122-125 should be stricken because the bill’s striking of the preceding sentence in the statute makes it unnecessary.

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.



890272

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/31/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 93

and insert:

status report and proposed budget request by December 1,

Delete lines 122 - 125

and insert:

~~Contingent upon specific appropriations, the department may transport an inmate in a state-owned vehicle if the inmate is unable to obtain other means of travel to his or her place of employment, education, or training.~~



890272

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

14 And the title is amended as follows:

15 Delete line 21

16 and insert:

17 place of employment, education, or training; deleting
18 a provision requiring a specific appropriation for the
19 Department of Corrections to transport an inmate in a
20 state-owned vehicle; repealing

FOR CONSIDERATION By the Committee on Criminal Justice

591-01979-12

20127180__

1 A bill to be entitled
 2 An act relating to community correction reentry
 3 programs; requiring the Department of Corrections to
 4 develop an operational plan to implement a pilot
 5 community corrections reentry program in certain
 6 designated counties; requiring that the operational
 7 plan describe the necessary facilities, staff, budget,
 8 and methods for selecting inmates to participate in
 9 the reentry program; providing examples of reentry
 10 services; requiring that all inmates who are within 36
 11 months of their release date be considered for
 12 participation in the pilot community corrections
 13 reentry program; providing criteria to assess the risk
 14 of placing an inmate in the reentry program; requiring
 15 that an inmate who is selected for participation in
 16 the reentry program be transferred into the pilot
 17 program no later than 24 months before his or her
 18 release date; amending s. 945.091, F.S.; deleting a
 19 provision limiting the modes of transportation an
 20 inmate may use when traveling to and from his or her
 21 place of employment, education, or training; repealing
 22 s. 945.0913, F.S., relating to a prohibition on the
 23 driving of inmates participating in a work-release
 24 program in state-owned vehicles; providing an
 25 effective date.

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

29 Section 1. Pilot community corrections; reentry program.-

Page 1 of 6

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

591-01979-12

20127180__

30 (1) (a) The Department of Corrections shall develop an
 31 operational plan to implement a pilot community corrections
 32 reentry program in Bay, Calhoun, Escambia, Franklin, Gadsden,
 33 Gulf, Holmes, Jackson, Leon, Liberty, Okaloosa, Santa Rosa,
 34 Wakulla, Walton, and Washington Counties within the Northern
 35 Florida Region for the 2013-2014 fiscal year.
 36 (b) At a minimum, the operational plan for the pilot
 37 program must describe and document:
 38 1. The resources needed for the pilot project, including,
 39 but not limited to, specific buildings, grounds, and property
 40 that must be obtained or redesignated for residential community
 41 corrections facilities and reentry services.
 42 2. The placement of facilities and services in specific
 43 areas to maximize the opportunity for participating inmates to
 44 benefit from being located near where they plan to live after
 45 completion of their sentences.
 46 3. The additional staff or changes to staff qualifications
 47 necessary to operate the pilot program.
 48 4. The contracts the pilot project intends to use for
 49 private providers who desire to provide a portion of the reentry
 50 services and programming to eligible inmates.
 51 5. The security staffing plan.
 52 6. The programming plan.
 53 7. The proposed budget.
 54 8. The process and method for selecting an inmate to
 55 participate in the pilot project, including any initial
 56 screening process, the criteria used in the risk assessment, and
 57 any prioritization of placement.
 58 9. The changes in law that are necessary to implement the

Page 2 of 6

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591-01979-12

20127180__

59 pilot project.

60 (2) (a) The pilot program shall be designed to provide
 61 residential care, custody, control, and reentry services to
 62 eligible inmates.

63 (b) For the purpose of the pilot program, the reentry
 64 services include, but are not limited to, substance abuse
 65 treatment, housing assistance, money management training,
 66 employment assistance, vocational education, and life skills
 67 training.

68 (3) All inmates who are within 36 months of their release
 69 date shall be considered for participation in the pilot program.
 70 The selection shall be based upon a risk assessment process that
 71 includes, but is not limited to, whether:

72 (a) The inmate has potential for rehabilitation and the
 73 need for reentry services.

74 (b) The reduction of risk of harm to the community after
 75 completion of the inmate's sentence which would result from his
 76 or her participation in the pilot program is outweighed by any
 77 risk of harm to the community which would be posed by the inmate
 78 while participating in the pilot program.

79 (c) The inmate is from the geographic area of the pilot
 80 program, or has family or identified friends in the area, and
 81 intends to reside in the area upon release from custody.

82 (4) An inmate who is selected for participation must be
 83 transferred into the pilot program not later than 24 months
 84 before his or her current release date. An inmate who is already
 85 within 24 months of his or her current release date when
 86 selected must be placed into the pilot program as soon as a
 87 position is available.

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20127180__

88 (5) The pilot program may include an existing community
 89 work release program established pursuant to s. 945.091, Florida
 90 Statutes, as a service provider, but the existing program must
 91 provide enhanced reentry services to participating inmates.

92 Section 2. The Department of Corrections shall submit a
 93 joint status report and proposed budget request by December 1,
 94 2012, to the Executive Office of the Governor, the President of
 95 the Senate, and the Speaker of the House of Representatives. The
 96 report must document the projected number of inmates to be
 97 served in the 2013-2014 fiscal year and the funding needed to
 98 implement the operational plan.

99 Section 3. Paragraph (b) of subsection (1) of section
 100 945.091, Florida Statutes, is amended to read:

101 945.091 Extension of the limits of confinement; restitution
 102 by employed inmates.-

103 (1) The department may adopt rules permitting the extension
 104 of the limits of the place of confinement of an inmate as to
 105 whom there is reasonable cause to believe that the inmate will
 106 honor his or her trust by authorizing the inmate, under
 107 prescribed conditions and following investigation and approval
 108 by the secretary, or the secretary's designee, who shall
 109 maintain a written record of such action, to leave the confines
 110 of that place unaccompanied by a custodial agent for a
 111 prescribed period of time to:

112 (b) Work at paid employment, participate in an education or
 113 a training program, or voluntarily serve a public or nonprofit
 114 agency or faith-based service group in the community, while
 115 continuing as an inmate of the institution or facility in which
 116 the inmate is confined, except during the hours of his or her

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117 employment, education, training, or service and traveling
118 thereto and therefrom. ~~An inmate may travel to and from his or~~
119 ~~her place of employment, education, or training only by means of~~
120 ~~walking, bicycling, or using public transportation or~~
121 ~~transportation that is provided by a family member or employer.~~
122 Contingent upon specific appropriations, the department may
123 transport an inmate in a state-owned vehicle if the inmate is
124 unable to obtain other means of travel to his or her place of
125 employment, education, or training.

126 1. An inmate may participate in paid employment only during
127 the last 36 months of his or her confinement, unless sooner
128 requested by the Parole Commission or the Control Release
129 Authority.

130 2. While working at paid employment and residing in the
131 facility, an inmate may apply for placement at a contracted
132 substance abuse transition housing program. The transition
133 assistance specialist shall inform the inmate of program
134 availability and assess the inmate's need and suitability for
135 transition housing assistance. If an inmate is approved for
136 placement, the specialist shall assist the inmate. If an inmate
137 requests and is approved for placement in a contracted faith-
138 based substance abuse transition housing program, the specialist
139 must consult with the chaplain prior to such placement. The
140 department shall ensure that an inmate's faith orientation, or
141 lack thereof, will not be considered in determining admission to
142 a faith-based program and that the program does not attempt to
143 convert an inmate toward a particular faith or religious
144 preference.

145 Section 4. Section 945.0913, Florida Statutes, is repealed.

Page 5 of 6

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146 Section 5. This act shall take effect July 1, 2012.

Page 6 of 6

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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)

4/25/12

Meeting Date

Topic Re-Entry

Bill Number SB 7180
(if applicable)

Name Steve Tomlin

Amendment Barcode _____
(if applicable)

Job Title Regional VP CEC INC

Address 35 Fairfield Pl

Phone 201-452-8682

Street

West Caldwell NJ 07006

City

State

Zip

E-mail Stomlin@cecintl.com

Speaking: For Against Information

Representing Community Education Centers

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)

1/25/2012
Meeting Date

Topic REENTRY

Bill Number SPB-7180
(if applicable)

Name RALPH FRETZ

Amendment Barcode _____
(if applicable)

Job Title COMMUNITY EDUCATION CENTERS

Address 35 FAIRFIELD PLACE

Phone 973-390-2151

Street

W. CALDWELL, NJ 07006

City

State

Zip

E-mail RFretz@decintl.com

Speaking: For Against Information

Representing COMMUNITY EDUCATION CENTERS

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)

1-25-12
Meeting Date

Topic Re Entry Program

Bill Number 7180
(if applicable)

Name Frank Mervenski

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2901 Sh Bradford
Street

Phone _____

Tall FL
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Sheriffs 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-25-12

Meeting Date

Topic Inmate Reentry Bill Number 7180
(if applicable)

Name Adam Corey Amendment Barcode _____
(if applicable)

Job Title Lobbyist, ~~at~~ Gunster Law Firm

Address _____ Phone _____
Street

_____ E-mail _____
City State Zip

Speaking: For Against Information

Representing Broward Sheriff's Office

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 Criminal Justice Committee

BILL: SB 732

INTRODUCER: Senators Bogdanoff and Joyner

SUBJECT: Sentences of Inmates

DATE: January 9, 2012 REVISED: 01/30/12 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill makes a number of changes to ch. 893, F.S., relating to controlled substances. Specifically, the bill:

- Requires that prosecutors prove “intent to distribute” for various trafficking offenses when the trafficking charge is based on knowing possession of a relevant controlled substance in a trafficking quantity.
- Increases minimum weight thresholds and weight ranges for various trafficking offenses involving cocaine, phenacylidine, amphetamine/methamphetamine, gamma-hydroxybutyric acid (GHB), gamma-butyrolactone (GBL), 1,4-Butanediol, and various phenethylamines.
- Specifies that if a mixture is a prescription drug and the weight of the controlled substance in the mixture can be identified using the national drug code, the weight of the controlled substance is the weight identified in the national drug code (NDC).
- Provides that a judge hearing a motion from the state attorney to reduce or suspend a sentence for substantial assistance rendered may reduce or suspend, defer, or withhold, the sentence or adjudication of guilt (current law authorizes the judge to reduce or suspend the sentence).
- Revises current legislative findings regarding cases relevant to construction of controlled substance scheduling language in relation to drug trafficking weight thresholds.
- Repeals s. 893.101, F.S., which provides that lack of knowledge of the illicit nature of a controlled substance may be raised as an affirmative defense.

This bill substantially amends sections 893.135 and 921.0022, Florida Statutes; reenacts sections 775.087(2)(a) and 782.04(1)(a), (3), and (4), Florida Statutes; and repeals section 893.101, Florida Statutes.

II. Present Situation:

The Drug Trafficking Statute (s. 893.135, F.S.) and Sentencing

Section 893.135, F.S., punishes drug trafficking, which is generally the knowing sale, purchase, manufacture, delivery, or bringing into this state, or the knowing actual or constructive possession of, certain controlled substances (such as cocaine, cannabis, methamphetamine, hydrocodone, and oxycodone) that meet a specified minimum weight threshold or fall within a specified weight range. Section 893.13, F.S., does not require proof of possession with the intent to sell, etc.

In addition to covering specified controlled substances, s. 893.135, F.S., covers any salt, derivative, isomer, or salt of an isomer of the controlled substance, and any mixture containing the substance or its salt, derivative, etc.

There is a minimum weight threshold for trafficking in each relevant controlled substance or mixture. There are also escalating weight ranges. A mandatory minimum term and fine apply to each trafficking offense. As weight ranges escalate, so do mandatory minimum terms and fines. For example, knowing possession of less than 28 grams of cocaine is not a trafficking offense (28 grams is the minimum weight threshold for cocaine trafficking). There is a 3-year mandatory minimum term and \$50,000 fine for knowing possession of 28 grams or more, but less than 200 grams of cocaine. Mandatory minimum terms and fines increase to a 7-year mandatory minimum term and \$100,000 fine for 200 grams or more, but less than 400 grams of cocaine, and a 15-year mandatory minimum term and \$250,000 fine for 400 grams or more of cocaine.

If the controlled substance appears in a mixture, the total weight of the mixture is treated as the weight of the controlled substance. For example, “street cocaine” is frequently adulterated (“cut”) with other agents, which increases the quantity of cocaine available for sale and the seller’s profits. In the case of opioid mixtures, these often involve pharmaceutical medications that have been unlawfully obtained. These mixtures, typically in tablet or pill form, contain the controlled substance (e.g., hydrocodone) and other constituents of the tablet/pill that are not controlled substances. The total weight of the tablets/pills is treated as the weight of the controlled substance.

The Criminal Punishment Code (Code) is Florida’s general framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Non-capital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level assigned (sentence points escalate as the level escalates). Level rankings and points are assigned to the primary offense, additional offenses, and prior offenses. Points may also accrue based upon other factors specified in the law. These points are entered into a mathematical calculation to determine the lowest permissible sentence. Absent a permissible mitigating factor, the lowest permissible sentence is the “floor” for sentencing (a mandatory minimum term effectively becomes the floor if it exceeds the scored

lowest permissible sentence). The “ceiling” is generally the statutory maximum penalty for the degree of the felony as provided in s. 775.082, F.S. The court may impose any sentence within this range (floor to ceiling).

Typically, trafficking offenses are first degree felonies but levels assigned to these trafficking offenses vary depending on the offense. For example, trafficking in 28 grams or more, but less than 200 grams of cocaine is a Level 7 offense, but trafficking in 200 grams or more, but less than 400 grams of cocaine is a Level 8 offense. Additionally, the Code authorizes the sentencing court to multiply subtotal sentence points by 1.5 for a Level 7 or Level 8 trafficking primary offense.

Even if a person knowingly possesses, sells, etc., a relevant controlled substance in a trafficking quantity, a mandatory minimum term may be avoided in some instances through the charging decision or plea offered. In some instances, the person is charged with or offered a plea to attempted trafficking or another controlled substance offense in which there is no mandatory minimum term (the prosecutor could charge a non-trafficking quantity in the information).

However, once a person is convicted of a drug trafficking offense, it appears the sentencing court has little discretion to elect not to impose the mandatory minimum term. To staff’s knowledge, this discretion may only be exercised in instances in which the defendant is a youthful offender¹ or when the court grants a motion from the State to reduce or suspend a sentence based on substantial assistance rendered.²

Knowledge of the Illicit Nature of a Controlled Substance

In 2002, the Legislature enacted s. 893.101, F.S.³ The statute provides that the “[l]ack of knowledge of the illicit nature of a controlled substance is an affirmative defense”⁴ to the crime of possession of a controlled substance. If a defendant raises this affirmative defense, the trial court must instruct the jury that “possession of a controlled substance, whether actual or constructive, shall give rise to a permissive presumption that the possessor knew of the illicit nature of the substance.”⁵

Section 893.101, F.S., was intended to legislatively supersede *Chicone v. State*,⁶ in which the Florida Supreme Court held that knowledge of the illicit nature of a substance is an element of

¹ Section 958.04, F.S. See *State v. Dishman*, 5 So.3d 773 (Fla. 4th DCA 2009) and *Inman v. State*, 842 So.2d 862 (Fla. 2d DCA 2003).

² Section 893.135(4), F.S. This mitigation cannot occur without the State’s motion. *State v. Agerton*, 523 So.2d 1241 (Fla. 5th DCA 1988), *rev. den.*, 531 So.2d 1352 (Fla.1988).

³ Chapter 2002-258, L.O.F.

⁴ Section 893.101(2), F.S. “An ‘affirmative defense’ is any defense that assumes the complaint or charges to be correct but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question.” *State v. Cohen*, 568 So. 2d 49, 51 (Fla.1990). Florida courts have also recognized a defense (not in statute) where possession is based on temporary control of a controlled substance for legal disposition by throwing the substance away, destroying the substance, or giving the substance to police. See *Robinson v. State*, 57 So.3d 278, 281 (Fla. 4th DCA 2011); *Keller v. State*, 946 So.2d 1233, 1235 (Fla. 4th DCA 2007), *rev. den.*, 958 So.2d 919 (Fla.2007); *Ramsubhag v. State*, 937 So.2d 1192, 1194-1195 (Fla. 4th DCA 2006); and *Stanton v. State*, 746 So.2d 1229, 1230 (Fla. 3d DCA 1999).

⁵ Section 893.101(3), F.S.

⁶ 684 So.2d 736 (Fla.1996).

the crime of possession even though not explicitly stated in the law. Stated another way, *Chicone* (and other later cases) “stand for the proposition that ‘guilty knowledge’ is an element of the offense of possession and must be proven beyond a reasonable doubt.”⁷

On July 21, 2011, Judge Mary Scriven, who presides in the U.S. District Court, Middle District of Florida, Orlando Division, found s. 893.13, F.S., “to be unconstitutional on substantive due process grounds.”⁸ This case was *Shelton v. Secretary, Department of Corrections*.⁹ “In *Shelton*, the court concluded that Florida Statute § 893.13 is facially unconstitutional. The court reasoned that the Florida Legislature’s 2002 amendment to Florida’s Drug Abuse Prevention and Control law, codified at Fla. Stat. § 893.101, eliminated any *mens rea* requirement for the drug offenses enumerated in Fla. Stat. § 893.13, thus rendering these offenses strict liability offenses. The court then held that the statute could not pass constitutional muster as a strict liability statute because it subjects its offenders to ‘harsh penalties,’ ‘gravely besmirches an individual’s reputation,’ and ‘punishes otherwise innocuous conduct without proof of knowledge or other criminal intent,’ which violates the Due Process Clause of the United States Constitution.”¹⁰

Attorney General Pam Bondi appealed the order in *Shelton* to the United States Court of Appeals, Eleventh Circuit.¹¹ To date there has not been a decision on that appeal.

Subsequent to Judge Scriven’s order, at least one other Florida federal district court judge in the U.S. District Court, Middle District of Florida, Tampa Division, disagreed with *Shelton* that s. 893.13, F.S., is facially unconstitutional.¹² It appears that only two Florida circuit court judges have agreed with *Shelton*.¹³ Further, Florida’s First, Third, Fourth, and Fifth district courts of appeal have rejected *Shelton*. All of these courts have held that s. 893.13, F.S., as amended by s. 893.101, F.S., is constitutional.¹⁴ The Second District Court of Appeal did not consider the merits of *Shelton* but rather certified the constitutionality issue to the Florida Supreme Court as an issue of great public importance.¹⁵ The Florida Supreme Court accepted jurisdiction to hear this question and briefs have been filed and oral argument has taken place.¹⁶ To date there has not been a decision.

⁷ *Garcia v. State*, 901 So.2d 788, 793 (Fla.2005).

⁸ *Maestas v. State*, --- So.3d --- (Fla. 4th DCA 2011), 2011 WL 5964337 (Fla. 4th DCA November 30, 2011), at *3 (citation omitted), describing the *Shelton* holding.

⁹ --- F.Supp.2d ---, No. 6:07-cv-839-ORL-35, 2011 WL 3236040 (M.D. Fla. July 27, 2011).

¹⁰ *United States v. Bunton*, No. 8:10-cr-327-T-30EAJ (M.D. Fla. October 26, 2011), 2011 WL 5080307 (M.D. Fla. October 26, 2011), at *1, citing *Shelton*, supra, at *9.

¹¹ *Secretary, Florida Department of Corrections v. Shelton*, No. 11-13515-G, United States Court of Appeals, Eleventh Circuit.

¹² *Bunton*, supra. Further, *Shelton* appears to conflict with another order out of the U.S. District Court, Middle District of Florida, Jacksonville Division, in which the court rejected the petitioner’s assertion that sale or delivery of cocaine was a strict liability offense. *Knox v. Secretary of the Florida Department of Corrections*, No. 8:10-cv-306-J-20TEM (M.D. Fla. August 11, 2011) (on file with the Committee on Criminal Justice).

¹³ *State v. Washington*, Nos. F11-11019, et al. (Fla. 11th Cir.Ct. August 17, 2011) and *State v. Adkins*, Nos. 2011 CF 002001, et al. (Fla. 12th Cir.Ct. September 14, 2011).

¹⁴ See *Flagg v. State*, 74 So.3d 138 (Fla. 1st DCA 2011); *Little v. State*, --- So.3d --- (Fla. 3d DCA 2011), 2011 WL 5554812 (Fla. 3d DCA November 16, 2011); *Maestas*, supra; and *Holcy v. State*, --- So.3d --- (Fla. 5th DCA 2011), 2011 WL 5299328 (Fla. 5th DCA November 1, 2011).

¹⁵ *State v. Adkins*, 71 So.3d 184 (Fla. 2d DCA 2011), rev. granted, 71 So.3d 117 (Fla. Oct 12, 2011).

¹⁶ *State v. Adkins*, No. SC11-1878, Supreme Court of Florida.

The holdings of those district courts of appeal that have considered the merits are based on a number of findings. Perhaps the finding of greatest importance in regard to the question of whether *Shelton* was correctly decided is the finding that s. 893.101, F.S., does not create strict liability crimes. For example, the Fourth District in *Maestas* held that “section 893.101 did not remove scienter from section 893.13 offenses and did not create an unconstitutional strict liability crime.”¹⁷ The court found a *mens rea* requirement for drug possession: “Although knowledge of presence is not expressly required by the text of section 893.13, such knowledge has always been required in drug possession cases. Section 893.13 is no exception. Indeed, the standard jury instruction for possession of a controlled substance requires the jury find that ‘([d]efendant) had knowledge of the presence of the substance.’ Fla. Std. Jury Instr. (Crim.) 25:2.”¹⁸ The offenses in s. 893.13, F.S., are “general intent crimes and, although not expressly stated in the statute, require that the defendant *voluntarily* commit the proscribed act. Contrary to the holding in *Shelton*, the statute does not punish strictly an unknowing possession or delivery.”¹⁹

Hydrocodone Trafficking and Weighing Mixtures

Prior to legislative changes in 2000 (and subsequent changes in 2001), s. 893.03, Florida’s controlled substance scheduling statute, provided that, unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing not more than 300 milligrams of hydrocodone (or its salts) per 100 milliliters or not more than 15 milligrams per dosage unit (e.g., tablet or pill), with recognized therapeutic amounts of one or more active ingredients which are not controlled substances, was a Schedule III controlled substance. However, hydrocodone in amounts in excess of 300 milligrams per 100 milliliters or 15 milligrams per dosage unit was a Schedule II controlled substance.

In *Hayes v. State*, 750 So.2d 1 (Fla. 1999), a hydrocodone trafficking case, the Florida Supreme Court reviewed this scheduling language and s. 893.135, F.S. The court found that s. 893.135, F.S., applied only to Schedule I or Schedule II controlled substances (or mixtures containing such substances). Reading together s. 893.135, F.S., and s. 893.03, F.S., the court concluded that Hayes, who unlawfully possessed Lorcet tablets (which contain hydrocodone) could not be charged with hydrocodone trafficking because the tablets possessed by Hayes each contained not more than 15 milligrams of hydrocodone and were, therefore, Schedule III controlled substances outside the purview of s. 893.135, F.S. The court also found it of further significance that the Schedule III scheduling language did not provide that aggregate weight of the dosage units should be considered in order to determine whether the hydrocodone was a Schedule III controlled substance.

In 2000, in reaction to the *Hayes* decision, the Legislature amended Schedule III to delete reference to hydrocodone.²⁰ The effect of this change was that hydrocodone was a Schedule II

¹⁷ *Maestas*, at *4.

¹⁸ *Maestas*, at *2 (other citations omitted).

¹⁹ *Maestas*, at *2 (citation omitted). “A ‘general intent’ statute is one that prohibits either a specific voluntary act or something that is substantially certain to result from the act (e.g., damage to a building is the natural result of the act of setting a building afire. A person’s subjective intent to cause the particular result is irrelevant to general intent crimes because the law ascribes to him a presumption that he intended such result.” *Linehan v. State*, 442 So.2d 244, 247 (Fla. 2d DCA 1983).

²⁰ Chapter 2000-320, L.O.F.

controlled substance subject to s. 893.135, F.S., if the weight threshold for trafficking was met. However, in 2001, the Legislature partially reversed itself.²¹ It reinstated the prior Schedule III scheduling language for hydrocodone (while retaining the existing Schedule II scheduling language). However, new language was added that specified that, for purposes of charging a trafficking violation involving hydrocodone, hydrocodone that meets Schedule III scheduling is a Schedule III controlled substance but the weight of the hydrocodone per milliliter or per dosage unit is not relevant to the charging of a trafficking violation. The weight of the hydrocodone is to be determined pursuant to s. 893.135(6), F.S. (a provision created by the 2001 legislation), which provides that the weight of a controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. Further, aggregate weighing is authorized. The Legislature also added a findings provision indicating disagreement with the *Hayes* decision and agreement with two district court of appeal decisions which authorized aggregate weighing [*States v. Hayes*, 720 So.2d 1095 (Fla. 4th DCA 1998), which the *Hayes* decision quashed, and *State v. Baxley*, 684 So.2d 831 (Fla. 5th DCA 1996), which the *Hayes* decision abrogated].²²

Effect of Hydrocodone Trafficking on Possession Cases

In a 2009 interim project report, staff of the Senate Committee on Criminal Justice noted a concern that had been raised that a person could be subject to a trafficking mandatory minimum term and other trafficking penalties for knowing possession of a relatively small number of prescription tablets or pills containing hydrocodone, oxycodone, and hydromorphone:

Hydrocodone, oxycodone, and hydromorphone, which are listed in s. 893.135, F.S., are powerful opioid analgesics. Section 893.135, F.S., punishes trafficking in these controlled substances. The minimum weight threshold for trafficking in these substances is 4 grams. The minimum weight threshold as well as applicable weight ranges and mandatories have raised a concern that unlawful possession of relatively small numbers of tablets/pills containing these substances may result in trafficking penalties, including mandatories. For example, 6.25 tablets of Vicodin® that contain 10 milligrams per tablet weigh 4 grams. A person who unlawfully possesses 7 such tablets could be subject to a 3-year mandatory. The 28 gram threshold (potentially triggering a 25-year mandatory) for hydrocodone trafficking can be reached by possession of 44 of these tablets (43.75 of these tablets equals 28 grams). As a point of comparison, a person trafficking in 149 kilograms of cocaine or 10,000 pounds or more of cannabis is subject to a 15-year mandatory. As another point of comparison, a person who commits lewd molestation on a child less than 12 years of age and who is sentenced under the statutory split-sentence option receives a minimum 25-year prison sentence.²³

²¹ Chapter 2001-55, L.O.F.

²² The *Hayes* decision has no relevancy to hydrocodone trafficking cases charged under the scheduling and/or trafficking statutes as amended in 2000 and 2001 since the law no longer exists in the form reviewed by the Florida Supreme Court in *Hayes*. Further, the *Hayes* decision did not address aggregate weighing of other mixtures, like oxycodone tablets. *State v. Travis*, 808 So.2d 194, 196 (Fla.2002).

²³ *A Policy Analysis of Mandatory Minimum Sentencing for Drug Traffickers*, Interim Report 2010-109 (October 2009), p. 8 (footnotes omitted), Committee on Criminal Justice, The Florida Senate.

Staff also noted a concern that had been raised about the application of trafficking mandatory minimum terms to chronic pain management cases involving patients who unlawfully procure pain medication because of limitations on access to those medications:

Important to understanding the concern about the potential application of mandatories to chronic pain management patients is an understanding of some of the issues involving the use of opioid analgesics for chronic pain management. Expanded use of opioid analgesics in the treatment of chronic or acute pain has “magnified opportunities for diversion and abuse.” However, “[e]fforts to address prescription opioid abuse may have the undesirable consequence of diminishing legitimate access to opioids; conversely, actions to improve access to opioids for legitimate pain may fuel the prescription opioid abuse problem.” 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.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 893.135, F.S., to make the following changes:

- Requires that prosecutors prove “intent to distribute” for various trafficking offenses when the trafficking charge is based on knowing possession of a relevant controlled substance in a trafficking quantity. This is a significant departure from current law in which the trafficking charge can be based on knowing possession of a relevant controlled substance in a trafficking quantity. (See “Technical Deficiencies” section of this analysis.)
- Increases minimum weight thresholds and weight ranges for various trafficking offenses involving cocaine, phenacylidine, amphetamine/methamphetamine, gamma-hydroxybutyric acid, (GHB), gamma-butyrolactone (GBL), 1,4-Butanediol, and various phenethylamines.

Offense	Current minimum weight threshold or weight range	Revised weight threshold or weight range (SB 732)
Trafficking in cocaine (s. 893.13(1)(b)1., F.S.)	Minimum weight threshold: 28 grams.	Minimum weight threshold: 50 grams.
Trafficking in cocaine (s. 893.13(1)(b)1.a., F.S.)	Weight range: 28 grams or more, but less than 200 grams.	Weight range: 50 grams or more, but less than 400 grams.
Trafficking in cocaine (s. 893.13(1)(b)1.b., F.S.)	Weight range: 200 grams or more, but less than 400 grams.	Weight range: 400 grams or more, but less than 4 kilograms.

²⁴ *Id.*, at p. 9 (footnotes omitted).

Offense	Current minimum weight threshold or weight range	Revised weight threshold or weight range (SB 732)
Trafficking in cocaine (s. 893.13(1)(b)1.c., F.S.)	Weight range: 400 grams or more, but less than 150 kilograms.	Weight range: 4 kilograms or more, but less than 150 kilograms.
Trafficking in phencyclidine (s. 893.13(1)(d)1., F.S.)	Minimum weight threshold: 28 grams.	Minimum weight threshold: 50 grams.
Trafficking in phencyclidine (s. 893.13(1)(d)1.a., F.S.)	Weight range: 28 grams or more, but less than 200 grams.	Weight range: 50 grams or more, but less than 200 grams.
Trafficking in phencyclidine (s. 893.13(1)(d)1.b., F.S.)	Weight range: 200 grams or more, but less than 400 grams.	Weight range: 400 grams or more, but less 4 kilograms.
Trafficking in phencyclidine (s. 893.13(1)(d)1.c., F.S.)	Weight range: 400 grams or more.	Weight range: 4 kilograms or more.
Capital importation of phencyclidine (s. 893.13(1)(d)2., F.S.)	Weight range: 800 grams or more.	Weight range: 8 kilograms or more.
Trafficking in amphetamine (s. 893.13(1)(f)1., F.S.)	Minimum weight threshold: 14 grams.	Minimum weight threshold: 30 grams.
Trafficking in amphetamine (s. 893.13(1)(f)1.a, F.S.)	Weight range: 14 grams or more, but less than 28 grams.	Weight range: 30 grams or more, but less than 200 grams.
Trafficking in amphetamine (s. 893.13(1)(f)1.b., F.S.)	Weight range: 28 grams or more, but less than 200 grams.	Weight range: 200 grams or more, but less than 400 grams.
Trafficking in amphetamine (s. 893.13(1)(f)1.c., F.S.)	Weight range: 200 grams or more.	Weight range: 400 grams or more.
Capital importation of amphetamine (s. 893.13(1)(f)2., F.S.)	Weight range: 400 grams or more.	Weight range: 1.5 kilograms or more.
Trafficking in GHB (s. 893.13(1)(h)1., F.S.)	Minimum weight threshold: 1 kilogram.	Minimum weight threshold: 5 kilograms.
Trafficking in GHB (s. 893.13(1)(h)1.a., F.S.)	Weight range: 1 kilogram or more, but less than 5 kilograms.	Weight range: 5 kilograms or more, but less than 15 kilograms.
Trafficking in GHB (s. 893.13(1)(h)1.b., F.S.)	Weight range: 5 kilograms or more, but less than 10 kilograms.	Weight range: 15 kilograms or more, but less than 30 kilograms.
Trafficking in GHB (s. 893.13(1)(h)1.c., F.S.)	Weight range: 10 kilograms or more.	Weight range: 30 kilograms or more.
Trafficking in GBL (s. 893.13(1)(i)1., F.S.)	Minimum weight threshold: 1 kilogram.	Minimum weight threshold: 5 kilograms.
Trafficking in GBL (s. 893.13(1)(i)1.a., F.S.)	Weight range: 1 kilogram or more, but less than 5 kilograms.	Weight range: 5 kilograms or more, but less than 15 kilograms.

Offense	Current minimum weight threshold or weight range	Revised weight threshold or weight range (SB 732)
Trafficking in GBL (s. 893.13(1)(i)1.b., F.S.)	Weight range: 5 kilograms or more, but less than 10 kilograms.	Weight range: 15 kilograms or more, but less than 30 kilograms.
Trafficking in GBL (s. 893.13(1)(i)1.c., F.S.)	Weight range: 10 kilograms or more.	Weight range: 30 kilograms or more.
Trafficking in 1,4-Butanediol (s. 893.13(1)(j)1., F.S.)	Minimum weight threshold: 1 kilogram.	Minimum weight threshold: 5 kilograms.
Trafficking in 1,4-Butanediol (s. 893.13(1)(j)1.a., F.S.)	Weight range: 1 kilogram or more, but less than 5 kilograms.	Weight range: 5 kilograms or more, but less than 15 kilograms.
Trafficking in 1,4-Butanediol (s. 893.13(1)(j)1.b., F.S.)	Weight range: 5 kilograms or more, but less than 10 kilograms.	Weight range: 15 kilograms or more, but less than 30 kilograms.
Trafficking in 1,4-Butanediol (s. 893.13(1)(j)1.c., F.S.)	Weight range: 10 kilograms or more.	Weight range: 30 kilograms or more.
Trafficking in phenethylamine (s. 893.13(1)(k)1., F.S.)	Minimum weight threshold: 10 grams.	Minimum weight threshold: 30 grams.
Trafficking in phenethylamine (s. 893.13(1)(k)1.a., F.S.)	Weight range: 10 grams or more, but less than 200 grams.	Weight range: 30 grams or more, but less than 200 grams.

- Specifies that if a mixture is a prescription drug as defined in s. 499.003, F.S., and the weight of the controlled substance in the mixture can be identified using the national drug code, the weight of the controlled substance is the weight identified in the national drug code. This weighing method applies only to those mixtures that meet the criteria. (See “Technical Deficiencies” section of this analysis.) The weight of other mixtures containing a relevant controlled substance would be the total weight of the mixtures possessed, sold, etc. (current law).
- Provides that a judge hearing a motion from the state attorney to reduce or suspend a sentence for substantial assistance rendered may reduce or suspend, defer, or withhold, the sentence or adjudication of guilt (current law authorizes the judge to reduce or suspend the sentence).
- Revises current legislative finding relevant to construction of controlled substance scheduling language in relation to drug trafficking weight thresholds. Specifically, current legislative findings are that *Hayes v. State*, 750 So.2d 1 (Fla. 1999) does not correctly construe legislative intent, and that *State v. Hayes*, 720 So.2d 1095 (Fla. 4th DCA 1998) and *State v. Baxley*, 684 So.2d 831 (Fla. 5th DCA 1996) do correctly construe legislative intent. The bill amends the findings provisions to reflect the complete opposite, i.e., support for the construction in *Hayes v. State*, 750 So.2d 1 (Fla. 1999). (See “Technical Deficiencies” section of this analysis.)

Section 2 amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to make technical changes to a number of descriptions of ranked trafficking offenses to reflect changes made to weight ranges in Section 1 of the bill.

Sections 3 and 4 reenact, respectively, some provisions of s. 775.087, F.S. (the “10-20-Life” statute) and s. 782.04, F.S. (murder) for the purpose of incorporating amendments made by the act to s. 893.135, F.S., in reference to s. 893.135, F.S. These reenactments do not make any changes to these statutes.

Section 5 repeals s. 893.101, F.S., which provides that lack of knowledge of the illicit nature of a controlled substance may be raised as an affirmative defense. This is a substantial departure from current law. It appears that were the statute to be repealed, knowledge of the illicit nature of a substance would be an element of the crime of possession, as specifically held in *Chicone v. State*.

Section 6 provides that the act takes effect July 1, 2012.

Other Potential Implications:

The Florida Department of Law Enforcement (FDLE) has indicated a potential issue with regard to the new language in the bill on weighing mixtures that are prescription drugs: “There are also questions as to the veracity of the information contained within the NDC. On the Food and Drug Administration’s website it clearly states that ‘Inclusion of information in the NDC Directory does not indicate that FDA has verified the information provided. The content of each NDC Directory entry is the responsibility of the labeler submitting the SPL file. Assignment of an NDC number does not in any way denote FDA approval of the product.’”²⁵

If the new language in the bill on weighing mixtures that are prescription drugs were to become law it would mean that a substantial number of tablets/pills containing hydrocodone or oxycodone would be required to charge trafficking: As stated by the FDLE: “The increased weight thresholds for trafficking prescription drugs and the requirements to separate and weigh only the drug in determining weight will increase the total number of pills or tablets that can be possessed or sold before minimum mandatory trafficking sentences could be applied. For example: The first level of trafficking in opiates is 4 grams. If a Lortab preparation consists of 5 milligrams of hydrocodone, it would take 800 or more tablets to reach the trafficking threshold. Similarly, it would take 133 or more tablets containing 30 milligrams [of] Oxycodone to constitute a trafficking weight. This is a substantial change in the number of tablets and potency one could possess without being subjected to trafficking penalties.”²⁶

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁵ Analysis of SB 732, Florida Department of Law Enforcement, dated January 4, 2012 (on file with the Committee on Criminal Justice). Further references to this source are cited as “FDLE Analysis.”

²⁶ *Id.*

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 Criminal Justice Impact Conference, which provides the final official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have an indeterminate prison bed impact.

The FDLE has indicated that the new language on weighing mixtures that are prescription drugs has a potential fiscal impact on the FDLE if quantitation (testing to determine weight of the controlled substance in tablets/pills) is required. FDLE does not perform quantitation but rather tests the tablets/pills to determine if they contain a controlled substance and identify what that substance is. The FDLE states:

The proposed wording to refer to the NDC for the weight of prescription drugs in a mixture will not impact Florida's crime laboratories. However, potential legal challenges may result in the state attorneys' requesting the crime laboratories to quantitate the exact amounts of the controlled substance. Unless there is enabling statutory language for prosecution by utilizing a reference sample, the only way to determine quantity of a controlled substance is through analytical quantitation. This will require the crime labs to first analyze the substance to determine if a controlled substance is present in the suspected pill, tablet or capsule. Upon determining the controlled substance presence in the pill, tablet or capsule, the chemist will need to perform a quantitation process to determine the exact amount of the substance present. This quantitation process will require a stringent quality monitoring program to maintain the laboratory's accreditation standards through the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB).²⁷

²⁷ FDLE Analysis.

The FDLE further states:

[T]he mandates to separate only the active ingredient within a controlled substance and determine the weight of only that portion of the substance could require forensic laboratories to perform quantitation analysis on drug exhibits. Between November 1, 2010 and October 31, 2010, FDLE received 12,681 exhibits containing tablets or pills for drug chemistry analysis. An estimated 50% of those exhibits contained tablets or pills potentially related to trafficking offenses (6,341).

Based on adjusted workload standards, 810 drug samples can be quantitated by per chemist per year, and initial analysis currently performed with existing staff will still be required for all case submissions. Therefore existing staff will need to be retained. Based on these estimates, the quantitation process will require 8 additional Crime Laboratory Analysts.²⁸

The FDLE has indicated the following specific costs²⁹ if quantitation is required:

	FY 2012-13	FY 2013-14	FY 2014-15	
8 Positions - 8 Crime Lab Analysts	\$502,893	\$502,893	\$502,893	Salary & Benefits
Standard Expense for 8 Positions	\$81,624	\$52,440	\$52,440	Expense
Standard HR Services for 8 Positions	\$2,848	\$2,848	\$2,848	Human Resources
Equipment for new Crime Lab Analysts (Gas Chromatographs, balances, and computer software)	\$337,200			Expense
Training for existing Crime Lab Analysts in quantitation process	\$20,000			Expense
Consumables (additional chemicals and supplies needed to run triplicate samples on every lab submission)	\$40,000	\$40,000	\$40,000	Expense
TOTAL	\$984,565	\$598,181	\$598,181	

In addition to the specified costs provided, the FDLE notes: “FDLE may be required to transition from gas chromatography to liquid chromatography to comply with accreditation standards if a quantitation process is required. This will result in an estimated additional \$780,000 in new equipment to outfit the 6 laboratories performing drug chemistry analysis. This would be in addition to the initial fiscal year impact of

²⁸ *Id.*

²⁹ *Id.*

\$984,565. Once implemented recurring consumable costs would be added to the recurring cost of \$598,181 each subsequent fiscal year.”³⁰

Finally, the FDLE notes local government impact if quantitation is required: “The five county operated crime labs would also experience a fiscal impact if legal challenges result in the need to quantitate the controlled substances. Previous estimates provided were approximately \$1.875 million for additional personnel, training, equipments and consumables.”³¹

There may be legal costs to state government if the bill becomes law and the veracity of the information contained within the national drug code is challenged and/or it is argued that, absent quantitation, evidence is insufficient to prove the weight of the controlled substance in tablets/pills possessed, sold, etc.

The Office of the State Courts Administrator provided the following estimate of the impact of the bill on the state court system:

The net effect will probably be an increase in court workload. By raising the quantity of drugs in order to qualify as trafficking, there will be fewer trafficking cases. But the trafficking cases are often resolved with plea agreements because of the mandatory minimum sentences. What had been charged as trafficking will now be charged as possession and possession with intent. When a person is caught with a large amount of drugs (although not a trafficking amount under the proposed bill), the state may push for a jail or prison sentence because the prosecutor will conclude the person is a drug dealer. That is uncertain, however. Prosecutors may end up treating the former trafficking cases like a low level felony case. It is also uncertain how judges will treat these new possession and possession with intent cases. Without the risk of a mandatory minimum sentence, the accused has more incentive to go to trial. Without the certainty of a mandatory minimum sentence, the state has less incentive to go to trial. In sum, the bill will probably lead to fewer pleas and more trials, which will increase judicial workload. The best estimate will be a modest increase in judicial workload, although that is highly speculative.³²

VI. Technical Deficiencies:

The bill requires that prosecutors prove “intent to distribute” for various trafficking offenses when the trafficking charge is based on knowing possession of a relevant controlled substance in a trafficking quantity. Staff performed a textual search of the Florida Statutes and could only find one statute that uses similar wording: s. 831.032(1), F.S. (“possesses with intent to distribute” the trademark or service mark). Typically, in the context of drug offenses, the language that is used to criminalize possession with intent is “possess with the intent to sell, manufacture or deliver”

³⁰ *Id.*

³¹ *Id.*

³² Analysis of SB 732, Office of the State Courts Administrator 2012 Judicial Impact Statement, dated November 18, 2011 (on file with the Committee on Criminal Justice).

or similar language.³³ That language is usually used because the possession with intent offense immediately follows “sell, manufacture, or deliver” and the Legislature is indicating that the possession with the intent to commit those acts (selling, etc.) is as serious as the actual commission of those acts.

There are two technical issues regarding new language in the bill on weighing mixtures that are prescription drugs:

First, while this new language specifically addresses a single mixture (tablet/pill), it does not specifically address how to weigh multiple mixtures (multiple tablets/pills). It must be inferred. Compounding the problems of inference is: 1) this new language appears in the middle of current law language that addresses how to weigh a mixture; and 2) the new language is immediately followed by current law language on how to weigh multiple mixtures that is different than the new language.

Second, the new language is in potential conflict with current law language pertaining to weight thresholds. The FDLE identifies this problem as follows: “[T]here appears to be conflicting language within the bill. On page 5, lines 125-126 is existing language that specifies ‘4 or more grams of any mixture containing any such substance’ is considered trafficking in morphine, opium, oxycodone, hydrocodone, or hydromorphone. The newly added language on page 20, lines 566-570, states that if the mixture is a prescription drug and the weight of the controlled substance can be identified using the NDC, then the weight of the controlled substance is the weight identified in the NDC. The controlled substances outlined on page 5 are all prescription drugs.”

Current legislative findings are that *Hayes v. State*, 750 So.2d 1 (Fla. 1999) does not correctly construe legislative intent, and that *State v. Hayes*, 720 So.2d 1095 (Fla. 4th DCA 1998) and *State v. Baxley*, 684 So.2d 831 (Fla. 5th DCA 1996) do correctly construe legislative intent. The bill amends the findings provisions to reflect the complete opposite, i.e., support for the construction in *Hayes v. State*, 750 So.2d 1 (Fla. 1999).

The changes made by the bill to s. 893.135, F.S., do not support the *Hayes* construction. *Hayes* (Florida Supreme Court) was superseded when the Legislature changed s. 893.03, F.S., in 2000, and changed ss. 890.03 and 893.135, F.S., in 2001. Changes to Schedule III scheduling language in 2001 allowed for dosage units that contain 15 milligrams or less of hydrocodone, and which are classified as Schedule III controlled substances, to be considered under s. 893.135, F.S. The effect of *Hayes* was that tablets/pills containing 15 milligrams or less of hydrocodone were outside the purview of s. 893.135, F.S. In the bill, such tablets/pills are within the purview of s. 893.135, F.S. The bill just changes the method of weighing those tablets/pills (considering only the weight of the controlled substance in the tablet/pills).

Hayes (4th DCA) and *Baxley* appear to provide some support for the aggregate weighing method currently used for weighing mixtures (total weight rather than weight of the controlled substances only), a method which is retained in the bill for mixtures (including tablets/pills) that are not prescription drugs. However, findings indicating support for these cases could be

³³ See, e.g., s. 893.13(1)(a), F.S.

confusing as it relates to the provision of the bill that requires a different weighing method for mixtures that are prescription drugs.

In light of these considerations and because post-*Hayes* changes to the law other than these findings appear to clearly indicate legislative intent, staff recommends that these findings be repealed if the sponsor retains in the bill the new language on weighing mixtures that are prescription drugs. If this language is removed from the bill, staff recommends not modifying these findings.

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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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
01/31/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 24 - 580

and insert:

Section 1. Section 893.135, Florida Statutes, is amended to read:

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

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



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13 (a) A ~~Any~~ person who knowingly sells, purchases,
14 manufactures, delivers, or brings into this state, or who ~~is~~
15 knowingly is in actual or constructive possession with intent to
16 sell, purchase, manufacture, deliver, or bring into this state
17 ~~of~~, in excess of 25 pounds of cannabis, or 300 or more cannabis
18 plants, commits a felony of the first degree, which felony shall
19 be known as "trafficking in cannabis," punishable as provided in
20 s. 775.082, s. 775.083, or s. 775.084. If the quantity of
21 cannabis involved:

22 1. Is in excess of 25 pounds, but less than 2,000 pounds,
23 or is 300 or more cannabis plants, but not more than 2,000
24 cannabis plants, such person shall be sentenced to a mandatory
25 minimum term of imprisonment of 3 years, and the defendant shall
26 be ordered to pay a fine of \$25,000.

27 2. Is 2,000 pounds or more, but less than 10,000 pounds, or
28 is 2,000 or more cannabis plants, but not more than 10,000
29 cannabis plants, such person shall be sentenced to a mandatory
30 minimum term of imprisonment of 7 years, and the defendant shall
31 be ordered to pay a fine of \$50,000.

32 3. Is 10,000 pounds or more, or is 10,000 or more cannabis
33 plants, such person shall be sentenced to a mandatory minimum
34 term of imprisonment of 15 calendar years, and the defendant
35 shall be ordered to pay a fine of \$200,000.

36
37 For the purpose of this paragraph, a plant, including, but not
38 limited to, a seedling or cutting, is a "cannabis plant" if it
39 has some readily observable evidence of root formation, such as
40 root hairs. To determine if a piece or part of a cannabis plant
41 severed from the cannabis plant is itself a cannabis plant, the



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42 severed piece or part must have some readily observable evidence
43 of root formation, such as root hairs. Callous tissue is not
44 readily observable evidence of root formation. The viability and
45 sex of a plant and the fact that the plant may or may not be a
46 dead harvested plant are not relevant in determining if the
47 plant is a "cannabis plant" or in the charging of an offense
48 under this paragraph. Upon conviction, the court shall impose
49 the longest term of imprisonment provided for in this paragraph.

50 (b)1. Any person who knowingly sells, purchases,
51 manufactures, delivers, or brings into this state, or who ~~is~~
52 knowingly is in actual or constructive possession with intent to
53 sell, purchase, manufacture, deliver, or bring into this state
54 ~~of~~, 28 grams or more of cocaine, as described in s.
55 893.03(2)(a)4., or of any mixture containing cocaine, but less
56 than 150 kilograms of cocaine or any such mixture, commits a
57 felony of the first degree, which felony shall be known as
58 "trafficking in cocaine," punishable as provided in s. 775.082,
59 s. 775.083, or s. 775.084. If the quantity involved:

60 a. Is 28 grams or more, but less than 200 grams, such
61 person shall be sentenced to a mandatory minimum term of
62 imprisonment of 3 years, and the defendant shall be ordered to
63 pay a fine of \$50,000.

64 b. Is 200 grams or more, but less than 400 grams, such
65 person shall be sentenced to a mandatory minimum term of
66 imprisonment of 7 years, and the defendant shall be ordered to
67 pay a fine of \$100,000.

68 c. Is 400 grams or more, but less than 150 kilograms, such
69 person shall be sentenced to a mandatory minimum term of
70 imprisonment of 15 calendar years, and the defendant shall be



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71 ordered to pay a fine of \$250,000.

72 2. Any person who knowingly sells, purchases, manufactures,
73 delivers, or brings into this state, or who ~~is~~ knowingly is in
74 actual or constructive possession with intent to sell, purchase,
75 manufacture, deliver, or bring into this state ~~of~~, 150 kilograms
76 or more of cocaine, as described in s. 893.03(2)(a)4., commits
77 the first degree felony of trafficking in cocaine. A person who
78 has been convicted of the first-degree ~~first-degree~~ felony of
79 trafficking in cocaine under this subparagraph shall be punished
80 by life imprisonment and is ineligible for any form of
81 discretionary early release except pardon or executive clemency
82 or conditional medical release under s. 947.149. However, if the
83 court determines that, in addition to committing any act
84 specified in this paragraph:

85 a. The person intentionally killed an individual or
86 counseled, commanded, induced, procured, or caused the
87 intentional killing of an individual and such killing was the
88 result; or

89 b. The person's conduct in committing that act led to a
90 natural, though not inevitable, lethal result,
91
92 such person commits the capital felony of trafficking in
93 cocaine, punishable as provided in ss. 775.082 and 921.142. Any
94 person sentenced for a capital felony under this paragraph shall
95 also be ordered ~~sentenced~~ to pay the maximum fine provided under
96 subparagraph 1.

97 3. Any person who knowingly brings into this state 300
98 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,
99 and who knows that the probable result of such importation would



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100 be the death of any person, commits capital importation of
101 cocaine, a capital felony punishable as provided in ss. 775.082
102 and 921.142. Any person sentenced for a capital felony under
103 this paragraph shall also be ordered ~~sentenced~~ to pay the
104 maximum fine provided under subparagraph 1.

105 (c)1. Any person who knowingly sells, purchases,
106 manufactures, delivers, or brings into this state, or who ~~is~~
107 knowingly is in actual or constructive possession with intent to
108 sell, purchase, manufacture, deliver, or bring into this state
109 ~~of~~, 28 ~~4~~ grams or more of any morphine, opium, oxycodone,
110 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
111 salt of an isomer thereof, including heroin, as described in s.
112 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more
113 of any mixture containing any such substance, but less than 30
114 kilograms of such substance or mixture, commits a felony of the
115 first degree, which felony shall be known as "trafficking in
116 illegal drugs," punishable as provided in s. 775.082, s.
117 775.083, or s. 775.084. If the quantity involved:

118 a. Is 28 ~~4~~ grams or more, but less than 50 ~~14~~ grams, such
119 person shall be sentenced to a mandatory minimum term of
120 imprisonment of 3 years, and the defendant shall be ordered to
121 pay a fine of \$50,000.

122 b. Is 50 ~~14~~ grams or more, but less than 200 ~~28~~ grams, such
123 person shall be sentenced to a mandatory minimum term of
124 imprisonment of 7 ~~15~~ years, and the defendant shall be ordered
125 to pay a fine of \$100,000.

126 c. Is 200 ~~28~~ grams or more, but less than 30 kilograms,
127 such person shall be sentenced to a mandatory minimum term of
128 imprisonment of 15 ~~25~~ calendar years, and the defendant shall be



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129 ordered to pay a fine of \$500,000.

130 2. Any person who knowingly sells, purchases, manufactures,
131 delivers, or brings into this state, or who ~~is~~ knowingly is in
132 actual or constructive possession with intent to sell, purchase,
133 manufacture, deliver, or bring into this state ~~of~~, 30 kilograms
134 or more of any morphine, opium, oxycodone, hydrocodone,
135 hydromorphone, or any salt, derivative, isomer, or salt of an
136 isomer thereof, including heroin, as described in s.
137 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
138 more of any mixture containing any such substance, commits the
139 first-degree ~~first-degree~~ felony of trafficking in illegal
140 drugs. A person who has been convicted of the first-degree ~~first~~
141 ~~degree~~ felony of trafficking in illegal drugs under this
142 subparagraph shall be punished by life imprisonment and is
143 ineligible for any form of discretionary early release except
144 pardon or executive clemency or conditional medical release
145 under s. 947.149. However, if the court determines that, in
146 addition to committing any act specified in this paragraph:

147 a. The person intentionally killed an individual or
148 counseled, commanded, induced, procured, or caused the
149 intentional killing of an individual and such killing was the
150 result; or

151 b. The person's conduct in committing that act led to a
152 natural, though not inevitable, lethal result,
153
154 such person commits the capital felony of trafficking in illegal
155 drugs, punishable as provided in ss. 775.082 and 921.142. Any
156 person sentenced for a capital felony under this paragraph shall
157 also be ordered ~~sentenced~~ to pay the maximum fine provided under



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158 subparagraph 1.

159 3. Any person who knowingly brings into this state 60
160 kilograms or more of any morphine, opium, oxycodone,
161 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
162 salt of an isomer thereof, including heroin, as described in s.
163 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or
164 more of any mixture containing any such substance, and who knows
165 that the probable result of such importation would be the death
166 of any person, commits capital importation of illegal drugs, a
167 capital felony punishable as provided in ss. 775.082 and
168 921.142. Any person sentenced for a capital felony under this
169 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
170 fine provided under subparagraph 1.

171 (d)1. Any person who knowingly sells, purchases,
172 manufactures, delivers, or brings into this state, or who ~~is~~
173 knowingly is in actual or constructive possession with intent to
174 sell, purchase, manufacture, deliver, or bring into this state
175 ~~of~~, 28 grams or more of phencyclidine or of any mixture
176 containing phencyclidine, as described in s. 893.03(2)(b),
177 commits a felony of the first degree, which felony shall be
178 known as "trafficking in phencyclidine," punishable as provided
179 in s. 775.082, s. 775.083, or s. 775.084. If the quantity
180 involved:

181 a. Is 28 grams or more, but less than 200 grams, such
182 person shall be sentenced to a mandatory minimum term of
183 imprisonment of 3 years, and the defendant shall be ordered to
184 pay a fine of \$50,000.

185 b. Is 200 grams or more, but less than 400 grams, such
186 person shall be sentenced to a mandatory minimum term of



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187 imprisonment of 7 years, and the defendant shall be ordered to
188 pay a fine of \$100,000.

189 c. Is 400 grams or more, such person shall be sentenced to
190 a mandatory minimum term of imprisonment of 15 calendar years,
191 and the defendant shall be ordered to pay a fine of \$250,000.

192 2. Any person who knowingly brings into this state 800
193 grams or more of phencyclidine or of any mixture containing
194 phencyclidine, as described in s. 893.03(2)(b), and who knows
195 that the probable result of such importation would be the death
196 of any person commits capital importation of phencyclidine, a
197 capital felony punishable as provided in ss. 775.082 and
198 921.142. Any person sentenced for a capital felony under this
199 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
200 fine provided under subparagraph 1.

201 (e)1. Any person who knowingly sells, purchases,
202 manufactures, delivers, or brings into this state, or who ~~is~~
203 knowingly is in actual or constructive possession with intent to
204 sell, purchase, manufacture, deliver, or bring into this state
205 ~~of~~, 200 grams or more of methaqualone or of any mixture
206 containing methaqualone, as described in s. 893.03(1)(d),
207 commits a felony of the first degree, which felony shall be
208 known as "trafficking in methaqualone," punishable as provided
209 in s. 775.082, s. 775.083, or s. 775.084. If the quantity
210 involved:

211 a. Is 200 grams or more, but less than 5 kilograms, such
212 person shall be sentenced to a mandatory minimum term of
213 imprisonment of 3 years, and the defendant shall be ordered to
214 pay a fine of \$50,000.

215 b. Is 5 kilograms or more, but less than 25 kilograms, such



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216 person shall be sentenced to a mandatory minimum term of
217 imprisonment of 7 years, and the defendant shall be ordered to
218 pay a fine of \$100,000.

219 c. Is 25 kilograms or more, such person shall be sentenced
220 to a mandatory minimum term of imprisonment of 15 calendar
221 years, and the defendant shall be ordered to pay a fine of
222 \$250,000.

223 2. Any person who knowingly brings into this state 50
224 kilograms or more of methaqualone or of any mixture containing
225 methaqualone, as described in s. 893.03(1)(d), and who knows
226 that the probable result of such importation would be the death
227 of any person commits capital importation of methaqualone, a
228 capital felony punishable as provided in ss. 775.082 and
229 921.142. Any person sentenced for a capital felony under this
230 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
231 fine provided under subparagraph 1.

232 (f)1. Any person who knowingly sells, purchases,
233 manufactures, delivers, or brings into this state, or who ~~is~~
234 knowingly is in actual or constructive possession with intent to
235 sell, purchase, manufacture, deliver, or bring into this state
236 ~~of~~, 14 grams or more of amphetamine, as described in s.
237 893.03(2)(c)2., or methamphetamine, as described in s.
238 893.03(2)(c)4., or of any mixture containing amphetamine or
239 methamphetamine, or phenylacetone, phenylacetic acid,
240 pseudoephedrine, or ephedrine in conjunction with other
241 chemicals and equipment utilized in the manufacture of
242 amphetamine or methamphetamine, commits a felony of the first
243 degree, which felony shall be known as "trafficking in
244 amphetamine," punishable as provided in s. 775.082, s. 775.083,



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245 or s. 775.084. If the quantity involved:

246 a. Is 14 grams or more, but less than 28 grams, such person
247 shall be sentenced to a mandatory minimum term of imprisonment
248 of 3 years, and the defendant shall be ordered to pay a fine of
249 \$50,000.

250 b. Is 28 grams or more, but less than 200 grams, such
251 person shall be sentenced to a mandatory minimum term of
252 imprisonment of 7 years, and the defendant shall be ordered to
253 pay a fine of \$100,000.

254 c. Is 200 grams or more, such person shall be sentenced to
255 a mandatory minimum term of imprisonment of 15 calendar years,
256 and the defendant shall be ordered to pay a fine of \$250,000.

257 2. Any person who knowingly manufactures or brings into
258 this state 400 grams or more of amphetamine, as described in s.
259 893.03(2)(c)2., or methamphetamine, as described in s.
260 893.03(2)(c)4., or of any mixture containing amphetamine or
261 methamphetamine, or phenylacetone, phenylacetic acid,
262 pseudoephedrine, or ephedrine in conjunction with other
263 chemicals and equipment used in the manufacture of amphetamine
264 or methamphetamine, and who knows that the probable result of
265 such manufacture or importation would be the death of any person
266 commits capital manufacture or importation of amphetamine, a
267 capital felony punishable as provided in ss. 775.082 and
268 921.142. Any person sentenced for a capital felony under this
269 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
270 fine provided under subparagraph 1.

271 (g)1. Any person who knowingly sells, purchases,
272 manufactures, delivers, or brings into this state, or who ~~is~~
273 knowingly is in actual or constructive possession with intent to



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274 sell, purchase, manufacture, deliver, or bring into this state
275 ~~of~~, 4 grams or more of flunitrazepam or any mixture containing
276 flunitrazepam as described in s. 893.03(1)(a) commits a felony
277 of the first degree, which felony shall be known as "trafficking
278 in flunitrazepam," punishable as provided in s. 775.082, s.
279 775.083, or s. 775.084. If the quantity involved:

280 a. Is 4 grams or more but less than 14 grams, such person
281 shall be sentenced to a mandatory minimum term of imprisonment
282 of 3 years, and the defendant shall be ordered to pay a fine of
283 \$50,000.

284 b. Is 14 grams or more but less than 28 grams, such person
285 shall be sentenced to a mandatory minimum term of imprisonment
286 of 7 years, and the defendant shall be ordered to pay a fine of
287 \$100,000.

288 c. Is 28 grams or more but less than 30 kilograms, such
289 person shall be sentenced to a mandatory minimum term of
290 imprisonment of 25 calendar years, and the defendant shall be
291 ordered to pay a fine of \$500,000.

292 2. Any person who knowingly sells, purchases, manufactures,
293 delivers, or brings into this state or who ~~is~~ knowingly is in
294 actual or constructive possession with intent to sell, purchase,
295 manufacture, deliver, or bring into this state ~~of~~ 30 kilograms
296 or more of flunitrazepam or any mixture containing flunitrazepam
297 as described in s. 893.03(1)(a) commits the first-degree ~~first~~
298 ~~degree~~ felony of trafficking in flunitrazepam. A person who has
299 been convicted of the first-degree ~~first-degree~~ felony of
300 trafficking in flunitrazepam under this subparagraph shall be
301 punished by life imprisonment and is ineligible for any form of
302 discretionary early release except pardon or executive clemency



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303 or conditional medical release under s. 947.149. However, if the
304 court determines that, in addition to committing any act
305 specified in this paragraph:

306 a. The person intentionally killed an individual or
307 counseled, commanded, induced, procured, or caused the
308 intentional killing of an individual and such killing was the
309 result; or

310 b. The person's conduct in committing that act led to a
311 natural, though not inevitable, lethal result,

312
313 such person commits the capital felony of trafficking in
314 flunitrazepam, punishable as provided in ss. 775.082 and
315 921.142. Any person sentenced for a capital felony under this
316 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
317 fine provided under subparagraph 1.

318 (h)1. Any person who knowingly sells, purchases,
319 manufactures, delivers, or brings into this state, or who ~~is~~
320 knowingly is in actual or constructive possession with intent to
321 sell, purchase, manufacture, deliver, or bring into this state
322 ~~of~~, 1 kilogram or more of gamma-hydroxybutyric acid (GHB), as
323 described in s. 893.03(1)(d), or any mixture containing gamma-
324 hydroxybutyric acid (GHB), commits a felony of the first degree,
325 which felony shall be known as "trafficking in gamma-
326 hydroxybutyric acid (GHB)," punishable as provided in s.
327 775.082, s. 775.083, or s. 775.084. If the quantity involved:

328 a. Is 1 kilogram or more but less than 5 kilograms, such
329 person shall be sentenced to a mandatory minimum term of
330 imprisonment of 3 years, and the defendant shall be ordered to
331 pay a fine of \$50,000.



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332 b. Is 5 kilograms or more but less than 10 kilograms, such
333 person shall be sentenced to a mandatory minimum term of
334 imprisonment of 7 years, and the defendant shall be ordered to
335 pay a fine of \$100,000.

336 c. Is 10 kilograms or more, such person shall be sentenced
337 to a mandatory minimum term of imprisonment of 15 calendar
338 years, and the defendant shall be ordered to pay a fine of
339 \$250,000.

340 2. Any person who knowingly manufactures or brings into
341 this state 150 kilograms or more of gamma-hydroxybutyric acid
342 (GHB), as described in s. 893.03(1)(d), or any mixture
343 containing gamma-hydroxybutyric acid (GHB), and who knows that
344 the probable result of such manufacture or importation would be
345 the death of any person commits capital manufacture or
346 importation of gamma-hydroxybutyric acid (GHB), a capital felony
347 punishable as provided in ss. 775.082 and 921.142. Any person
348 sentenced for a capital felony under this paragraph shall also
349 be ordered ~~sentenced~~ to pay the maximum fine provided under
350 subparagraph 1.

351 (i)1. Any person who knowingly sells, purchases,
352 manufactures, delivers, or brings into this state, or who ~~is~~
353 knowingly is in actual or constructive possession with intent to
354 sell, purchase, manufacture, deliver, or bring into this state
355 ~~of~~, 1 kilogram or more of gamma-butyrolactone (GBL), as
356 described in s. 893.03(1)(d), or any mixture containing gamma-
357 butyrolactone (GBL), commits a felony of the first degree, which
358 felony shall be known as "trafficking in gamma-butyrolactone
359 (GBL)," punishable as provided in s. 775.082, s. 775.083, or s.
360 775.084. If the quantity involved:



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361 a. Is 1 kilogram or more but less than 5 kilograms, such
362 person shall be sentenced to a mandatory minimum term of
363 imprisonment of 3 years, and the defendant shall be ordered to
364 pay a fine of \$50,000.

365 b. Is 5 kilograms or more but less than 10 kilograms, such
366 person shall be sentenced to a mandatory minimum term of
367 imprisonment of 7 years, and the defendant shall be ordered to
368 pay a fine of \$100,000.

369 c. Is 10 kilograms or more, such person shall be sentenced
370 to a mandatory minimum term of imprisonment of 15 calendar
371 years, and the defendant shall be ordered to pay a fine of
372 \$250,000.

373 2. Any person who knowingly manufactures or brings into the
374 state 150 kilograms or more of gamma-butyrolactone (GBL), as
375 described in s. 893.03(1)(d), or any mixture containing gamma-
376 butyrolactone (GBL), and who knows that the probable result of
377 such manufacture or importation would be the death of any person
378 commits capital manufacture or importation of gamma-
379 butyrolactone (GBL), a capital felony punishable as provided in
380 ss. 775.082 and 921.142. Any person sentenced for a capital
381 felony under this paragraph shall also be ordered ~~sentenced~~ to
382 pay the maximum fine provided under subparagraph 1.

383 (j)1. Any person who knowingly sells, purchases,
384 manufactures, delivers, or brings into this state, or who ~~is~~
385 knowingly is in actual or constructive possession with intent to
386 sell, purchase, manufacture, deliver, or bring into this state
387 ~~of~~, 1 kilogram or more of 1,4-Butanediol as described in s.
388 893.03(1)(d), or of any mixture containing 1,4-Butanediol,
389 commits a felony of the first degree, which felony shall be



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390 known as "trafficking in 1,4-Butanediol," punishable as provided
391 in s. 775.082, s. 775.083, or s. 775.084. If the quantity
392 involved:

393 a. Is 1 kilogram or more, but less than 5 kilograms, such
394 person shall be sentenced to a mandatory minimum term of
395 imprisonment of 3 years, and the defendant shall be ordered to
396 pay a fine of \$50,000.

397 b. Is 5 kilograms or more, but less than 10 kilograms, such
398 person shall be sentenced to a mandatory minimum term of
399 imprisonment of 7 years, and the defendant shall be ordered to
400 pay a fine of \$100,000.

401 c. Is 10 kilograms or more, such person shall be sentenced
402 to a mandatory minimum term of imprisonment of 15 calendar
403 years, and the defendant shall be ordered to pay a fine of
404 \$500,000.

405 2. Any person who knowingly manufactures or brings into
406 this state 150 kilograms or more of 1,4-Butanediol as described
407 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,
408 and who knows that the probable result of such manufacture or
409 importation would be the death of any person commits capital
410 manufacture or importation of 1,4-Butanediol, a capital felony
411 punishable as provided in ss. 775.082 and 921.142. Any person
412 sentenced for a capital felony under this paragraph shall also
413 be ordered ~~sentenced~~ to pay the maximum fine provided under
414 subparagraph 1.

415 (k)1. Any person who knowingly sells, purchases,
416 manufactures, delivers, or brings into this state, or who ~~is~~
417 knowingly is in actual or constructive possession with intent to
418 sell, purchase, manufacture, deliver, or bring into this state



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419 ~~e~~f, 10 grams or more of any of the following substances
420 described in s. 893.03(1) (a) or (c):

- 421 a. 3,4-Methylenedioxymethamphetamine (MDMA);
- 422 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 423 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 424 d. 2,5-Dimethoxyamphetamine;
- 425 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 426 f. N-ethylamphetamine;
- 427 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 428 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 429 i. 4-methoxyamphetamine;
- 430 j. 4-methoxymethamphetamine;
- 431 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 432 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 433 m. 3,4-Methylenedioxyamphetamine;
- 434 n. N,N-dimethylamphetamine; or
- 435 o. 3,4,5-Trimethoxyamphetamine,

436
437 individually or in any combination of or any mixture containing
438 any substance listed in sub-subparagraphs a.-o., commits a
439 felony of the first degree, which felony shall be known as
440 "trafficking in Phenethylamines," punishable as provided in s.
441 775.082, s. 775.083, or s. 775.084.

442 2. If the quantity involved:

443 a. Is 10 grams or more but less than 200 grams, such person
444 shall be sentenced to a mandatory minimum term of imprisonment
445 of 3 years, and the defendant shall be ordered to pay a fine of
446 \$50,000.

447 b. Is 200 grams or more, but less than 400 grams, such



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448 person shall be sentenced to a mandatory minimum term of
449 imprisonment of 7 years, and the defendant shall be ordered to
450 pay a fine of \$100,000.

451 c. Is 400 grams or more, such person shall be sentenced to
452 a mandatory minimum term of imprisonment of 15 calendar years,
453 and the defendant shall be ordered to pay a fine of \$250,000.

454 3. Any person who knowingly manufactures or brings into
455 this state 30 kilograms or more of any of the following
456 substances described in s. 893.03(1) (a) or (c):

- 457 a. 3,4-Methylenedioxymethamphetamine (MDMA);
- 458 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 459 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 460 d. 2,5-Dimethoxyamphetamine;
- 461 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 462 f. N-ethylamphetamine;
- 463 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 464 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 465 i. 4-methoxyamphetamine;
- 466 j. 4-methoxymethamphetamine;
- 467 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 468 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 469 m. 3,4-Methylenedioxyamphetamine;
- 470 n. N,N-dimethylamphetamine; or
- 471 o. 3,4,5-Trimethoxyamphetamine,

472
473 individually or in any combination of or any mixture containing
474 any substance listed in sub-subparagraphs a.-o., and who knows
475 that the probable result of such manufacture or importation
476 would be the death of any person commits capital manufacture or



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477 importation of Phenethylamines, a capital felony punishable as
478 provided in ss. 775.082 and 921.142. Any person sentenced for a
479 capital felony under this paragraph shall also be ordered
480 ~~sentenced~~ to pay the maximum fine provided under subparagraph 1.

481 (1)1. Any person who knowingly sells, purchases,
482 manufactures, delivers, or brings into this state, or who ~~is~~
483 knowingly is in actual or constructive possession with intent to
484 sell, purchase, manufacture, deliver, or bring into this state
485 ~~of~~, 1 gram or more of lysergic acid diethylamide (LSD) as
486 described in s. 893.03(1)(c), or of any mixture containing
487 lysergic acid diethylamide (LSD), commits a felony of the first
488 degree, which felony shall be known as "trafficking in lysergic
489 acid diethylamide (LSD)," punishable as provided in s. 775.082,
490 s. 775.083, or s. 775.084. If the quantity involved:

491 a. Is 1 gram or more, but less than 5 grams, such person
492 shall be sentenced to a mandatory minimum term of imprisonment
493 of 3 years, and the defendant shall be ordered to pay a fine of
494 \$50,000.

495 b. Is 5 grams or more, but less than 7 grams, such person
496 shall be sentenced to a mandatory minimum term of imprisonment
497 of 7 years, and the defendant shall be ordered to pay a fine of
498 \$100,000.

499 c. Is 7 grams or more, such person shall be sentenced to a
500 mandatory minimum term of imprisonment of 15 calendar years, and
501 the defendant shall be ordered to pay a fine of \$500,000.

502 2. Any person who knowingly manufactures or brings into
503 this state 7 grams or more of lysergic acid diethylamide (LSD)
504 as described in s. 893.03(1)(c), or any mixture containing
505 lysergic acid diethylamide (LSD), and who knows that the



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506 probable result of such manufacture or importation would be the
507 death of any person commits capital manufacture or importation
508 of lysergic acid diethylamide (LSD), a capital felony punishable
509 as provided in ss. 775.082 and 921.142. Any person sentenced for
510 a capital felony under this paragraph shall also be ordered
511 ~~sentenced~~ to pay the maximum fine provided under subparagraph 1.

512 (2) A person acts knowingly under subsection (1) if that
513 person intends to sell, purchase, manufacture, deliver, or bring
514 into this state, or to actually or constructively possess, any
515 of the controlled substances listed in subsection (1),
516 regardless of which controlled substance listed in subsection
517 (1) is in fact sold, purchased, manufactured, delivered, or
518 brought into this state, or actually or constructively
519 possessed.

520 (3) Notwithstanding the provisions of s. 948.01, with
521 respect to any person who is found to have violated this
522 section, adjudication of guilt or imposition of sentence may
523 ~~shall~~ not be suspended, deferred, or withheld, and ~~nor shall~~
524 such person is not ~~be~~ eligible for parole before ~~prior to~~
525 serving the mandatory minimum term of imprisonment prescribed by
526 this section. A person sentenced to a mandatory minimum term of
527 imprisonment under this section is not eligible for any form of
528 discretionary early release, except pardon or executive clemency
529 or conditional medical release under s. 947.149, before ~~prior to~~
530 serving the mandatory minimum term of imprisonment.

531 (4) The state attorney may move the sentencing court to
532 reduce or suspend the sentence of any person who is convicted of
533 a violation of this section and who provides substantial
534 assistance in the identification, arrest, or conviction of any



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535 of that person's accomplices, accessories, coconspirators, or
536 principals or of any other person engaged in trafficking in
537 controlled substances. The arresting agency shall be given an
538 opportunity to be heard in aggravation or mitigation in
539 reference to any such motion. Upon good cause shown, the motion
540 may be filed and heard in camera. The judge hearing the motion
541 may reduce or suspend, defer, or withhold the sentence or
542 adjudication of guilt if the judge finds that the defendant
543 rendered such substantial assistance.

544 (5) Any person who agrees, conspires, combines, or
545 confederates with another person to commit any act prohibited by
546 subsection (1) commits a felony of the first degree and is
547 punishable as if he or she had actually committed such
548 prohibited act. ~~Nothing in This subsection does not shall be~~
549 ~~construed to~~ prohibit separate convictions and sentences for a
550 violation of this subsection and any violation of subsection
551 (1).

552 (6) (a) A mixture, as defined in s. 893.02, containing any
553 controlled substance described in this section includes, but is
554 not limited to, a solution or a dosage unit, including, but not
555 limited to, a pill or tablet, containing a controlled substance.

556 (b) Except as provided in paragraph (c), ~~For the purpose of~~
557 ~~clarifying legislative intent regarding the weighing of a~~
558 ~~mixture containing a controlled substance described in this~~
559 ~~section,~~ the weight of the controlled substance is the total
560 weight of the mixture, including the controlled substance and
561 any other substance in the mixture. If there is more than one
562 mixture containing the same controlled substance, the weight of
563 the controlled substance is calculated by aggregating the total



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564 weight of each mixture.

565 (c) If the mixture is a prescription drug as defined in s.
566 499.003 and the weight of the controlled substance in the
567 mixture can be identified using the National Drug Code
568 Directory, as published by the United States Department of
569 Health and Human Services, the weight of the controlled
570 substance is the weight of the controlled substance identified
571 in the National Drug Code Directory, exclusive of other tablet
572 components. If there is more than one mixture that is a
573 prescription drug and all of the mixtures contain the same
574 controlled substance, and the weight of the controlled substance
575 in each mixture can be identified using the National Drug Code
576 Directory, the weight of the controlled substance is calculated
577 by aggregating the weight of the controlled substance in each
578 mixture.

579 ~~(7) For the purpose of further clarifying legislative~~
580 ~~intent, the Legislature finds that the opinion in Hayes v.~~
581 ~~State, 750 So. 2d 1 (Fla. 1999) does not correctly construe~~
582 ~~legislative intent. The Legislature finds that the opinions in~~
583 ~~State v. Hayes, 720 So. 2d 1095 (Fla. 4th DCA 1998) and State v.~~
584 ~~Baxley, 684 So. 2d 831 (Fla. 5th DCA 1996) correctly construe~~
585 ~~legislative intent.~~

586
587 ===== T I T L E A M E N D M E N T =====

588 And the title is amended as follows:

589 Delete line 11

590 and insert:

591 legislative intent; amending s. 921.0022, F.S.;



939132

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 972.

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

And the title is amended as follows:

Delete lines 17 - 20

and insert:

thereto; providing an effective date.

By Senator Bogdanoff

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1 A bill to be entitled
 2 An act relating to sentences of inmates; amending s.
 3 893.135, F.S.; revising the quantity of a controlled
 4 substance which a person must knowingly sell,
 5 purchase, manufacture, deliver, or bring into this
 6 state with the intent to distribute in order to be
 7 subject to the automatic imposition of a mandatory
 8 minimum term of imprisonment; providing the method for
 9 determining the weight of a controlled substance in a
 10 mixture that is a prescription drug; revising
 11 legislative intent; amending s. 921.0022, F.S.;
 12 revising provisions to conform to changes made by the
 13 act; reenacting ss. 775.087(2)(a) and 782.04(1)(a),
 14 (3), and (4), F.S., relating to the possession or use
 15 of a weapon and murder, respectively, to incorporate
 16 the amendments made to s. 893.135, F.S., in references
 17 thereto; repealing s. 893.101, F.S., relating to
 18 legislative findings and intent relative to knowledge
 19 of a person to the possession of a controlled
 20 substance; providing an effective date.

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

24 Section 1. Section 893.135, Florida Statutes, is amended to
 25 read:

26 893.135 Trafficking; mandatory sentences; suspension or
 27 reduction of sentences; conspiracy to engage in trafficking.-
 28 (1) Except as authorized in this chapter or in chapter 499
 29 and notwithstanding the provisions of s. 893.13:

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30 (a) A ~~Any~~ person who knowingly sells, purchases,
 31 manufactures, delivers, or brings into this state, or who ~~is~~
 32 knowingly is in actual or constructive possession with intent to
 33 distribute ~~of~~, in excess of 25 pounds of cannabis, or 300 or
 34 more cannabis plants, commits a felony of the first degree,
 35 which felony shall be known as "trafficking in cannabis,"
 36 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 37 If the quantity of cannabis involved:
 38 1. Is in excess of 25 pounds, but less than 2,000 pounds,
 39 or is 300 or more cannabis plants, but not more than 2,000
 40 cannabis plants, such person shall be sentenced to a mandatory
 41 minimum term of imprisonment of 3 years, and the defendant shall
 42 be ordered to pay a fine of \$25,000.
 43 2. Is 2,000 pounds or more, but less than 10,000 pounds, or
 44 is 2,000 or more cannabis plants, but not more than 10,000
 45 cannabis plants, such person shall be sentenced to a mandatory
 46 minimum term of imprisonment of 7 years, and the defendant shall
 47 be ordered to pay a fine of \$50,000.
 48 3. Is 10,000 pounds or more, or is 10,000 or more cannabis
 49 plants, such person shall be sentenced to a mandatory minimum
 50 term of imprisonment of 15 calendar years, and the defendant
 51 shall be ordered to pay a fine of \$200,000.
 52
 53 For the purpose of this paragraph, a plant, including, but not
 54 limited to, a seedling or cutting, is a "cannabis plant" if it
 55 has some readily observable evidence of root formation, such as
 56 root hairs. To determine if a piece or part of a cannabis plant
 57 severed from the cannabis plant is itself a cannabis plant, the
 58 severed piece or part must have some readily observable evidence

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59 of root formation, such as root hairs. Callous tissue is not
60 readily observable evidence of root formation. The viability and
61 sex of a plant and the fact that the plant may or may not be a
62 dead harvested plant are not relevant in determining if the
63 plant is a "cannabis plant" or in the charging of an offense
64 under this paragraph. Upon conviction, the court shall impose
65 the longest term of imprisonment provided for in this paragraph.

66 (b)1. Any person who knowingly sells, purchases,
67 manufactures, delivers, or brings into this state, or who ~~is~~
68 knowingly is in actual or constructive possession with intent to
69 distribute of, ~~50 28~~ grams or more of cocaine, as described in
70 s. 893.03(2)(a)4., or of any mixture containing cocaine, but
71 less than 150 kilograms of cocaine or any such mixture, commits
72 a felony of the first degree, which felony shall be known as
73 "trafficking in cocaine," punishable as provided in s. 775.082,
74 s. 775.083, or s. 775.084. If the quantity involved:

75 a. Is ~~50 28~~ grams or more, but less than ~~400 200~~ grams,
76 such person shall be sentenced to a mandatory minimum term of
77 imprisonment of 3 years, and the defendant shall be ordered to
78 pay a fine of \$50,000.

79 b. Is ~~400 200~~ grams or more, but less than 4 kilograms ~~400~~
80 ~~grams~~, such person shall be sentenced to a mandatory minimum
81 term of imprisonment of 7 years, and the defendant shall be
82 ordered to pay a fine of \$100,000.

83 c. Is 4 kilograms ~~400 grams~~ or more, but less than 150
84 kilograms, such person shall be sentenced to a mandatory minimum
85 term of imprisonment of 15 calendar years, and the defendant
86 shall be ordered to pay a fine of \$250,000.

87 2. Any person who knowingly sells, purchases, manufactures,

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88 delivers, or brings into this state, or who ~~is~~ knowingly is in
89 actual or constructive possession with intent to distribute of,
90 150 kilograms or more of cocaine, as described in s.

91 893.03(2)(a)4., commits the first degree felony of trafficking
92 in cocaine. A person who has been convicted of the first-degree
93 ~~first-degree~~ felony of trafficking in cocaine under this
94 subparagraph shall be punished by life imprisonment and is
95 ineligible for any form of discretionary early release except
96 pardon or executive clemency or conditional medical release
97 under s. 947.149. However, if the court determines that, in
98 addition to committing any act specified in this paragraph:

99 a. The person intentionally killed an individual or
100 counseled, commanded, induced, procured, or caused the
101 intentional killing of an individual and such killing was the
102 result; or

103 b. The person's conduct in committing that act led to a
104 natural, though not inevitable, lethal result,

105
106 such person commits the capital felony of trafficking in
107 cocaine, punishable as provided in ss. 775.082 and 921.142. Any
108 person sentenced for a capital felony under this paragraph shall
109 also be ordered sentenced to pay the maximum fine provided under
110 subparagraph 1.

111 3. Any person who knowingly brings into this state 300
112 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,
113 and who knows that the probable result of such importation would
114 be the death of any person, commits capital importation of
115 cocaine, a capital felony punishable as provided in ss. 775.082
116 and 921.142. Any person sentenced for a capital felony under

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117 this paragraph shall also be ordered ~~sentenced~~ to pay the
118 maximum fine provided under subparagraph 1.

119 (c)1. Any person who knowingly sells, purchases,
120 manufactures, delivers, or brings into this state, or who ~~is~~
121 knowingly is in actual or constructive possession with intent to
122 distribute ~~of~~, 4 grams or more of any morphine, opium,
123 oxycodone, hydrocodone, hydromorphone, or any salt, derivative,
124 isomer, or salt of an isomer thereof, including heroin, as
125 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
126 4 grams or more of any mixture containing any such substance,
127 but less than 30 kilograms of such substance or mixture, commits
128 a felony of the first degree, which felony shall be known as
129 "trafficking in illegal drugs," punishable as provided in s.
130 775.082, s. 775.083, or s. 775.084. If the quantity involved:

131 a. Is 4 grams or more, but less than 14 grams, such person
132 shall be sentenced to a mandatory minimum term of imprisonment
133 of 3 years, and the defendant shall be ordered to pay a fine of
134 \$50,000.

135 b. Is 14 grams or more, but less than 28 grams, such person
136 shall be sentenced to a mandatory minimum term of imprisonment
137 of 15 years, and the defendant shall be ordered to pay a fine of
138 \$100,000.

139 c. Is 28 grams or more, but less than 30 kilograms, such
140 person shall be sentenced to a mandatory minimum term of
141 imprisonment of 25 calendar years, and the defendant shall be
142 ordered to pay a fine of \$500,000.

143 2. Any person who knowingly sells, purchases, manufactures,
144 delivers, or brings into this state, or who ~~is~~ knowingly is in
145 actual or constructive possession with intent to distribute ~~of~~,

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146 30 kilograms or more of any morphine, opium, oxycodone,
147 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
148 salt of an isomer thereof, including heroin, as described in s.
149 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
150 more of any mixture containing any such substance, commits the
151 first-degree ~~first-degree~~ felony of trafficking in illegal
152 drugs. A person who has been convicted of the first-degree ~~first~~
153 ~~degree~~ felony of trafficking in illegal drugs under this
154 subparagraph shall be punished by life imprisonment and is
155 ineligible for any form of discretionary early release except
156 pardon or executive clemency or conditional medical release
157 under s. 947.149. However, if the court determines that, in
158 addition to committing any act specified in this paragraph:

159 a. The person intentionally killed an individual or
160 counseled, commanded, induced, procured, or caused the
161 intentional killing of an individual and such killing was the
162 result; or

163 b. The person's conduct in committing that act led to a
164 natural, though not inevitable, lethal result,

165 such person commits the capital felony of trafficking in illegal
166 drugs, punishable as provided in ss. 775.082 and 921.142. Any
167 person sentenced for a capital felony under this paragraph shall
168 also be ordered ~~sentenced~~ to pay the maximum fine provided under
169 subparagraph 1.

170 3. Any person who knowingly brings into this state 60
171 kilograms or more of any morphine, opium, oxycodone,
172 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
173 salt of an isomer thereof, including heroin, as described in s.
174

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175 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or
 176 more of any mixture containing any such substance, and who knows
 177 that the probable result of such importation would be the death
 178 of any person, commits capital importation of illegal drugs, a
 179 capital felony punishable as provided in ss. 775.082 and
 180 921.142. Any person sentenced for a capital felony under this
 181 paragraph shall also be ordered sentenced to pay the maximum
 182 fine provided under subparagraph 1.

183 (d)1. Any person who knowingly sells, purchases,
 184 manufactures, delivers, or brings into this state, or who ~~is~~
 185 knowingly is in actual or constructive possession with intent to
 186 distribute ~~of~~, 50 ~~28~~ grams or more of phencyclidine or of any
 187 mixture containing phencyclidine, as described in s.
 188 893.03(2)(b), commits a felony of the first degree, which felony
 189 shall be known as "trafficking in phencyclidine," punishable as
 190 provided in s. 775.082, s. 775.083, or s. 775.084. If the
 191 quantity involved:

192 a. Is 50 ~~28~~ grams or more, but less than 400 ~~200~~ grams,
 193 such person shall be sentenced to a mandatory minimum term of
 194 imprisonment of 3 years, and the defendant shall be ordered to
 195 pay a fine of \$50,000.

196 b. Is 400 ~~200~~ grams or more, but less than 4 kilograms ~~400~~
 197 ~~grams~~, such person shall be sentenced to a mandatory minimum
 198 term of imprisonment of 7 years, and the defendant shall be
 199 ordered to pay a fine of \$100,000.

200 c. Is 4 kilograms ~~400 grams~~ or more, such person shall be
 201 sentenced to a mandatory minimum term of imprisonment of 15
 202 calendar years, and the defendant shall be ordered to pay a fine
 203 of \$250,000.

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204 2. Any person who knowingly brings into this state 8
 205 kilograms ~~800 grams~~ or more of phencyclidine or of any mixture
 206 containing phencyclidine, as described in s. 893.03(2)(b), and
 207 who knows that the probable result of such importation would be
 208 the death of any person commits capital importation of
 209 phencyclidine, a capital felony punishable as provided in ss.
 210 775.082 and 921.142. Any person sentenced for a capital felony
 211 under this paragraph shall also be ordered sentenced to pay the
 212 maximum fine provided under subparagraph 1.

213 (e)1. Any person who knowingly sells, purchases,
 214 manufactures, delivers, or brings into this state, or who ~~is~~
 215 knowingly is in actual or constructive possession with intent to
 216 distribute ~~of~~, 200 grams or more of methaqualone or of any
 217 mixture containing methaqualone, as described in s.
 218 893.03(1)(d), commits a felony of the first degree, which felony
 219 shall be known as "trafficking in methaqualone," punishable as
 220 provided in s. 775.082, s. 775.083, or s. 775.084. If the
 221 quantity involved:

222 a. Is 200 grams or more, but less than 5 kilograms, such
 223 person shall be sentenced to a mandatory minimum term of
 224 imprisonment of 3 years, and the defendant shall be ordered to
 225 pay a fine of \$50,000.

226 b. Is 5 kilograms or more, but less than 25 kilograms, such
 227 person shall be sentenced to a mandatory minimum term of
 228 imprisonment of 7 years, and the defendant shall be ordered to
 229 pay a fine of \$100,000.

230 c. Is 25 kilograms or more, such person shall be sentenced
 231 to a mandatory minimum term of imprisonment of 15 calendar
 232 years, and the defendant shall be ordered to pay a fine of

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233 \$250,000.

234 2. Any person who knowingly brings into this state 50
 235 kilograms or more of methaqualone or of any mixture containing
 236 methaqualone, as described in s. 893.03(1)(d), and who knows
 237 that the probable result of such importation would be the death
 238 of any person commits capital importation of methaqualone, a
 239 capital felony punishable as provided in ss. 775.082 and
 240 921.142. Any person sentenced for a capital felony under this
 241 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
 242 fine provided under subparagraph 1.

243 (f)1. Any person who knowingly sells, purchases,
 244 manufactures, delivers, or brings into this state, or who ~~is~~
 245 knowingly is in actual or constructive possession with intent to
 246 distribute ~~of~~, 30 14 grams or more of amphetamine, as described
 247 in s. 893.03(2)(c)2., or methamphetamine, as described in s.
 248 893.03(2)(c)4., or of any mixture containing amphetamine or
 249 methamphetamine, or phenylacetone, phenylacetic acid,
 250 pseudoephedrine, or ephedrine in conjunction with other
 251 chemicals and equipment utilized in the manufacture of
 252 amphetamine or methamphetamine, commits a felony of the first
 253 degree, which felony shall be known as "trafficking in
 254 amphetamine," punishable as provided in s. 775.082, s. 775.083,
 255 or s. 775.084. If the quantity involved:

256 a. Is 30 14 grams or more, but less than 200 28 grams, such
 257 person shall be sentenced to a mandatory minimum term of
 258 imprisonment of 3 years, and the defendant shall be ordered to
 259 pay a fine of \$50,000.

260 b. Is 200 28 grams or more, but less than 400 200 grams,
 261 such person shall be sentenced to a mandatory minimum term of

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262 imprisonment of 7 years, and the defendant shall be ordered to
 263 pay a fine of \$100,000.

264 c. Is 400 200 grams or more, such person shall be sentenced
 265 to a mandatory minimum term of imprisonment of 15 calendar
 266 years, and the defendant shall be ordered to pay a fine of
 267 \$250,000.

268 2. Any person who knowingly manufactures or brings into
 269 this state 1.5 kilograms ~~400 grams~~ or more of amphetamine, as
 270 described in s. 893.03(2)(c)2., or methamphetamine, as described
 271 in s. 893.03(2)(c)4., or of any mixture containing amphetamine
 272 or methamphetamine, or phenylacetone, phenylacetic acid,
 273 pseudoephedrine, or ephedrine in conjunction with other
 274 chemicals and equipment used in the manufacture of amphetamine
 275 or methamphetamine, and who knows that the probable result of
 276 such manufacture or importation would be the death of any person
 277 commits capital manufacture or importation of amphetamine, a
 278 capital felony punishable as provided in ss. 775.082 and
 279 921.142. Any person sentenced for a capital felony under this
 280 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
 281 fine provided under subparagraph 1.

282 (g)1. Any person who knowingly sells, purchases,
 283 manufactures, delivers, or brings into this state, or who ~~is~~
 284 knowingly is in actual or constructive possession with intent to
 285 distribute ~~of~~, 4 grams or more of flunitrazepam or any mixture
 286 containing flunitrazepam as described in s. 893.03(1)(a) commits
 287 a felony of the first degree, which felony shall be known as
 288 "trafficking in flunitrazepam," punishable as provided in s.
 289 775.082, s. 775.083, or s. 775.084. If the quantity involved:

290 a. Is 4 grams or more but less than 14 grams, such person

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 291 shall be sentenced to a mandatory minimum term of imprisonment
 292 of 3 years, and the defendant shall be ordered to pay a fine of
 293 \$50,000.

294 b. Is 14 grams or more but less than 28 grams, such person
 295 shall be sentenced to a mandatory minimum term of imprisonment
 296 of 7 years, and the defendant shall be ordered to pay a fine of
 297 \$100,000.

298 c. Is 28 grams or more but less than 30 kilograms, such
 299 person shall be sentenced to a mandatory minimum term of
 300 imprisonment of 25 calendar years, and the defendant shall be
 301 ordered to pay a fine of \$500,000.

302 2. Any person who knowingly sells, purchases, manufactures,
 303 delivers, or brings into this state, or who ~~is~~ knowingly is in
 304 actual or constructive possession with intent to distribute of
 305 30 kilograms or more of flunitrazepam or any mixture containing
 306 flunitrazepam as described in s. 893.03(1)(a) commits the first-
 307 degree first-degree felony of trafficking in flunitrazepam. A
 308 person who has been convicted of the first-degree first-degree
 309 felony of trafficking in flunitrazepam under this subparagraph
 310 shall be punished by life imprisonment and is ineligible for any
 311 form of discretionary early release except pardon or executive
 312 clemency or conditional medical release under s. 947.149.
 313 However, if the court determines that, in addition to committing
 314 any act specified in this paragraph:

315 a. The person intentionally killed an individual or
 316 counseled, commanded, induced, procured, or caused the
 317 intentional killing of an individual and such killing was the
 318 result; or

319 b. The person's conduct in committing that act led to a

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 320 natural, though not inevitable, lethal result,
 321
 322 such person commits the capital felony of trafficking in
 323 flunitrazepam, punishable as provided in ss. 775.082 and
 324 921.142. Any person sentenced for a capital felony under this
 325 paragraph shall also be ordered sentenced to pay the maximum
 326 fine provided under subparagraph 1.

327 (h)1. Any person who knowingly sells, purchases,
 328 manufactures, delivers, or brings into this state, or who ~~is~~
 329 knowingly is in actual or constructive possession with intent to
 330 distribute of, 5 kilograms 1-kilogram or more of gamma-
 331 hydroxybutyric acid (GHB), as described in s. 893.03(1)(d), or
 332 any mixture containing gamma-hydroxybutyric acid (GHB), commits
 333 a felony of the first degree, which felony shall be known as
 334 "trafficking in gamma-hydroxybutyric acid (GHB)," punishable as
 335 provided in s. 775.082, s. 775.083, or s. 775.084. If the
 336 quantity involved:

337 a. Is 5 kilograms 1-kilogram or more but less than 15 5
 338 kilograms, such person shall be sentenced to a mandatory minimum
 339 term of imprisonment of 3 years, and the defendant shall be
 340 ordered to pay a fine of \$50,000.

341 b. Is 15 5 kilograms or more but less than 30 10 kilograms,
 342 such person shall be sentenced to a mandatory minimum term of
 343 imprisonment of 7 years, and the defendant shall be ordered to
 344 pay a fine of \$100,000.

345 c. Is 30 10 kilograms or more, such person shall be
 346 sentenced to a mandatory minimum term of imprisonment of 15
 347 calendar years, and the defendant shall be ordered to pay a fine
 348 of \$250,000.

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349 2. Any person who knowingly manufactures or brings into
 350 this state 150 kilograms or more of gamma-hydroxybutyric acid
 351 (GHB), as described in s. 893.03(1)(d), or any mixture
 352 containing gamma-hydroxybutyric acid (GHB), and who knows that
 353 the probable result of such manufacture or importation would be
 354 the death of any person commits capital manufacture or
 355 importation of gamma-hydroxybutyric acid (GHB), a capital felony
 356 punishable as provided in ss. 775.082 and 921.142. Any person
 357 sentenced for a capital felony under this paragraph shall also
 358 be ordered sentenced to pay the maximum fine provided under
 359 subparagraph 1.

360 (i)1. Any person who knowingly sells, purchases,
 361 manufactures, delivers, or brings into this state, or who ~~is~~
 362 knowingly is in actual or constructive possession with intent to
 363 distribute of, 5 kilograms ~~1 kilogram~~ or more of gamma-
 364 butyrolactone (GBL), as described in s. 893.03(1)(d), or any
 365 mixture containing gamma-butyrolactone (GBL), commits a felony
 366 of the first degree, which felony shall be known as "trafficking
 367 in gamma-butyrolactone (GBL)," punishable as provided in s.
 368 775.082, s. 775.083, or s. 775.084. If the quantity involved:

369 a. Is 5 kilograms ~~1 kilogram~~ or more but less than 15 ~~5~~
 370 kilograms, such person shall be sentenced to a mandatory minimum
 371 term of imprisonment of 3 years, and the defendant shall be
 372 ordered to pay a fine of \$50,000.

373 b. Is 15 ~~5~~ kilograms or more but less than 30 ~~10~~ kilograms,
 374 such person shall be sentenced to a mandatory minimum term of
 375 imprisonment of 7 years, and the defendant shall be ordered to
 376 pay a fine of \$100,000.

377 c. Is 30 ~~10~~ kilograms or more, such person shall be

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378 sentenced to a mandatory minimum term of imprisonment of 15
 379 calendar years, and the defendant shall be ordered to pay a fine
 380 of \$250,000.

381 2. Any person who knowingly manufactures or brings into the
 382 state 150 kilograms or more of gamma-butyrolactone (GBL), as
 383 described in s. 893.03(1)(d), or any mixture containing gamma-
 384 butyrolactone (GBL), and who knows that the probable result of
 385 such manufacture or importation would be the death of any person
 386 commits capital manufacture or importation of gamma-
 387 butyrolactone (GBL), a capital felony punishable as provided in
 388 ss. 775.082 and 921.142. Any person sentenced for a capital
 389 felony under this paragraph shall also be ordered sentenced to
 390 pay the maximum fine provided under subparagraph 1.

391 (j)1. Any person who knowingly sells, purchases,
 392 manufactures, delivers, or brings into this state, or who ~~is~~
 393 knowingly is in actual or constructive possession with intent to
 394 distribute of, 5 kilograms ~~1 kilogram~~ or more of 1,4-Butanediol
 395 as described in s. 893.03(1)(d), or of any mixture containing
 396 1,4-Butanediol, commits a felony of the first degree, which
 397 felony shall be known as "trafficking in 1,4-Butanediol,"
 398 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 399 If the quantity involved:

400 a. Is 5 kilograms ~~1 kilogram~~ or more, but less than 15 ~~5~~
 401 kilograms, such person shall be sentenced to a mandatory minimum
 402 term of imprisonment of 3 years, and the defendant shall be
 403 ordered to pay a fine of \$50,000.

404 b. Is 15 ~~5~~ kilograms or more, but less than 30 ~~10~~
 405 kilograms, such person shall be sentenced to a mandatory minimum
 406 term of imprisonment of 7 years, and the defendant shall be

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407 ordered to pay a fine of \$100,000.

408 c. Is 30 ~~10~~ kilograms or more, such person shall be
409 sentenced to a mandatory minimum term of imprisonment of 15
410 calendar years, and the defendant shall be ordered to pay a fine
411 of \$500,000.

412 2. Any person who knowingly manufactures or brings into
413 this state 150 kilograms or more of 1,4-Butanediol as described
414 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,
415 and who knows that the probable result of such manufacture or
416 importation would be the death of any person commits capital
417 manufacture or importation of 1,4-Butanediol, a capital felony
418 punishable as provided in ss. 775.082 and 921.142. Any person
419 sentenced for a capital felony under this paragraph shall also
420 be ordered ~~sentenced~~ to pay the maximum fine provided under
421 subparagraph 1.

422 (k)1. Any person who knowingly sells, purchases,
423 manufactures, delivers, or brings into this state, or who ~~is~~
424 knowingly is in actual or constructive possession with intent to
425 distribute ~~of~~, 30 ~~10~~ grams or more of any of the following
426 substances described in s. 893.03(1)(a) or (c):

- 427 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 428 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 429 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 430 d. 2,5-Dimethoxyamphetamine;
- 431 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 432 f. N-ethylamphetamine;
- 433 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 434 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 435 i. 4-methoxyamphetamine;

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436 j. 4-methoxymethamphetamine;

437 k. 4-Methyl-2,5-dimethoxyamphetamine;

438 l. 3,4-Methylenedioxy-N-ethylamphetamine;

439 m. 3,4-Methylenedioxyamphetamine;

440 n. N,N-dimethylamphetamine; or

441 o. 3,4,5-Trimethoxyamphetamine,

442
443 individually or in any combination of or any mixture containing
444 any substance listed in sub-subparagraphs a.-o., commits a
445 felony of the first degree, which felony shall be known as
446 "trafficking in Phenethylamines," punishable as provided in s.
447 775.082, s. 775.083, or s. 775.084.

448 2. If the quantity involved:

449 a. Is 30 ~~10~~ grams or more but less than 200 grams, such
450 person shall be sentenced to a mandatory minimum term of
451 imprisonment of 3 years, and the defendant shall be ordered to
452 pay a fine of \$50,000.

453 b. Is 200 grams or more, but less than 400 grams, such
454 person shall be sentenced to a mandatory minimum term of
455 imprisonment of 7 years, and the defendant shall be ordered to
456 pay a fine of \$100,000.

457 c. Is 400 grams or more, such person shall be sentenced to
458 a mandatory minimum term of imprisonment of 15 calendar years,
459 and the defendant shall be ordered to pay a fine of \$250,000.

460 3. Any person who knowingly manufactures or brings into
461 this state 30 kilograms or more of any of the following
462 substances described in s. 893.03(1)(a) or (c):

463 a. 3,4-Methylenedioxyamphetamine (MDMA);

464 b. 4-Bromo-2,5-dimethoxyamphetamine;

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465 c. 4-Bromo-2,5-dimethoxyphenethylamine;
 466 d. 2,5-Dimethoxyamphetamine;
 467 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
 468 f. N-ethylamphetamine;
 469 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
 470 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
 471 i. 4-methoxyamphetamine;
 472 j. 4-methoxymethamphetamine;
 473 k. 4-Methyl-2,5-dimethoxyamphetamine;
 474 l. 3,4-Methylenedioxy-N-ethylamphetamine;
 475 m. 3,4-Methylenedioxyamphetamine;
 476 n. N,N-dimethylamphetamine; or
 477 o. 3,4,5-Trimethoxyamphetamine,
 478
 479 individually or in any combination of or any mixture containing
 480 any substance listed in sub-subparagraphs a.-o., and who knows
 481 that the probable result of such manufacture or importation
 482 would be the death of any person commits capital manufacture or
 483 importation of Phenethylamines, a capital felony punishable as
 484 provided in ss. 775.082 and 921.142. Any person sentenced for a
 485 capital felony under this paragraph shall also be ordered
 486 ~~sentenced~~ to pay the maximum fine provided under subparagraph 1.
 487 (1)1. Any person who knowingly sells, purchases,
 488 manufactures, delivers, or brings into this state, or who ~~is~~
 489 knowingly is in actual or constructive possession with intent to
 490 distribute ~~of~~, 1 gram or more of lysergic acid diethylamide
 491 (LSD) as described in s. 893.03(1)(c), or of any mixture
 492 containing lysergic acid diethylamide (LSD), commits a felony of
 493 the first degree, which felony shall be known as "trafficking in

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494 lysergic acid diethylamide (LSD)," punishable as provided in s.
 495 775.082, s. 775.083, or s. 775.084. If the quantity involved:
 496 a. Is 1 gram or more, but less than 5 grams, such person
 497 shall be sentenced to a mandatory minimum term of imprisonment
 498 of 3 years, and the defendant shall be ordered to pay a fine of
 499 \$50,000.
 500 b. Is 5 grams or more, but less than 7 grams, such person
 501 shall be sentenced to a mandatory minimum term of imprisonment
 502 of 7 years, and the defendant shall be ordered to pay a fine of
 503 \$100,000.
 504 c. Is 7 grams or more, such person shall be sentenced to a
 505 mandatory minimum term of imprisonment of 15 calendar years, and
 506 the defendant shall be ordered to pay a fine of \$500,000.
 507 2. Any person who knowingly manufactures or brings into
 508 this state 7 grams or more of lysergic acid diethylamide (LSD)
 509 as described in s. 893.03(1)(c), or any mixture containing
 510 lysergic acid diethylamide (LSD), and who knows that the
 511 probable result of such manufacture or importation would be the
 512 death of any person commits capital manufacture or importation
 513 of lysergic acid diethylamide (LSD), a capital felony punishable
 514 as provided in ss. 775.082 and 921.142. Any person sentenced for
 515 a capital felony under this paragraph shall also be ordered
 516 ~~sentenced~~ to pay the maximum fine provided under subparagraph 1.
 517 (2) A person acts knowingly under subsection (1) if that
 518 person intends to sell, purchase, manufacture, deliver, or bring
 519 into this state, or to actually or constructively possess, any
 520 of the controlled substances listed in subsection (1),
 521 regardless of which controlled substance listed in subsection
 522 (1) is in fact sold, purchased, manufactured, delivered, or

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523 brought into this state, or actually or constructively
524 possessed.

525 (3) Notwithstanding the provisions of s. 948.01, with
526 respect to any person who is found to have violated this
527 section, adjudication of guilt or imposition of sentence may
528 ~~shall~~ not be suspended, deferred, or withheld, ~~and nor shall~~
529 ~~such person is not be~~ eligible for parole ~~before prior to~~
530 serving the mandatory minimum term of imprisonment prescribed by
531 this section. A person sentenced to a mandatory minimum term of
532 imprisonment under this section is not eligible for any form of
533 discretionary early release, except pardon or executive clemency
534 or conditional medical release under s. 947.149, before ~~prior to~~
535 serving the mandatory minimum term of imprisonment.

536 (4) The state attorney may move the sentencing court to
537 reduce or suspend the sentence of any person who is convicted of
538 a violation of this section and who provides substantial
539 assistance in the identification, arrest, or conviction of any
540 of that person's accomplices, accessories, coconspirators, or
541 principals or of any other person engaged in trafficking in
542 controlled substances. The arresting agency shall be given an
543 opportunity to be heard in aggravation or mitigation in
544 reference to any such motion. Upon good cause shown, the motion
545 may be filed and heard in camera. The judge hearing the motion
546 may reduce or suspend, defer, or withhold the sentence or
547 adjudication of guilt if the judge finds that the defendant
548 rendered such substantial assistance.

549 (5) Any person who agrees, conspires, combines, or
550 confederates with another person to commit any act prohibited by
551 subsection (1) commits a felony of the first degree and is

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552 punishable as if he or she had actually committed such
553 prohibited act. ~~Nothing in~~ This subsection does not shall be
554 ~~construed to~~ prohibit separate convictions and sentences for a
555 violation of this subsection and any violation of subsection
556 (1).

557 (6) A mixture, as defined in s. 893.02, containing any
558 controlled substance described in this section includes, but is
559 not limited to, a solution or a dosage unit, including, but not
560 limited to, a pill or tablet, containing a controlled substance.
561 For the purpose of clarifying legislative intent regarding the
562 weighing of a mixture containing a controlled substance
563 described in this section, the weight of the controlled
564 substance is the total weight of the mixture, including the
565 controlled substance and any other substance in the mixture.
566 However, if the mixture is a prescription drug as defined in s.
567 499.003 and the weight of the controlled substance in the
568 mixture can be identified using the national drug code, the
569 weight of the controlled substance is the weight identified in
570 the national drug code. If there is more than one mixture
571 containing the same controlled substance, the weight of the
572 controlled substance is calculated by aggregating the total
573 weight of each mixture.

574 (7) For the purpose of further clarifying legislative
575 intent, the Legislature finds that the opinion in *Hayes v.*
576 *State*, 750 So. 2d 1 (Fla. 1999) ~~does not~~ correctly construes
577 ~~construe~~ legislative intent. The Legislature finds that the
578 opinions in *State v. Hayes*, 720 So. 2d 1095 (Fla. 4th DCA 1998)
579 and *State v. Baxley*, 684 So. 2d 831 (Fla. 5th DCA 1996) do not
580 correctly construe legislative intent.

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581 Section 2. Paragraphs (g), (h), and (i) of subsection (3)
 582 of section 921.0022, Florida Statutes, are amended to read:
 583 921.0022 Criminal Punishment Code; offense severity ranking
 584 chart.—
 585 (3) OFFENSE SEVERITY RANKING CHART
 586 (g) LEVEL 7
 587

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration,

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593 permanent disability, or death.
 409.920 3rd Medicaid provider fraud; \$10,000 or
 (2)(b)1.a. less.
 594 409.920 2nd Medicaid provider fraud; more than
 (2)(b)1.b. \$10,000, but less than \$50,000.
 595 456.065(2) 3rd Practicing a health care profession
 without a license.
 596 456.065(2) 2nd Practicing a health care profession
 without a license which results in
 serious bodily injury.
 597 458.327(1) 3rd Practicing medicine without a license.
 598 459.013(1) 3rd Practicing osteopathic medicine without
 a license.
 599 460.411(1) 3rd Practicing chiropractic medicine
 without a license.
 600 461.012(1) 3rd Practicing podiatric medicine without a
 license.
 601 462.17 3rd Practicing naturopathy without a
 license.
 602

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603	463.015(1)	3rd	Practicing optometry without a license.
604	464.016(1)	3rd	Practicing nursing without a license.
605	465.015(2)	3rd	Practicing pharmacy without a license.
606	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
607	467.201	3rd	Practicing midwifery without a license.
608	468.366	3rd	Delivering respiratory care services without a license.
609	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
610	483.901(9)	3rd	Practicing medical physics without a license.
611	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
612	484.053	3rd	Dispensing hearing aids without a license.
	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained

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613			exceeded \$50,000 and there were five or more victims.
614	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.
615	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
616	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
617	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
618	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
619	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
	782.051(3)	2nd	Attempted felony murder of a person by

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620 a person other than the perpetrator or
the perpetrator of an attempted felony.

621 782.07(1) 2nd Killing of a human being by the act,
procurement, or culpable negligence of
another (manslaughter).

622 782.071 2nd Killing of a human being or viable
fetus by the operation of a motor
vehicle in a reckless manner (vehicular
homicide).

623 782.072 2nd Killing of a human being by the
operation of a vessel in a reckless
manner (vessel homicide).

624 784.045(1)(a)1. 2nd Aggravated battery; intentionally
causing great bodily harm or
disfigurement.

625 784.045(1)(a)2. 2nd Aggravated battery; using deadly
weapon.

626 784.045(1)(b) 2nd Aggravated battery; perpetrator aware
victim pregnant.

627 784.048(4) 3rd Aggravated stalking; violation of
injunction or court order.

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628 784.048(7) 3rd Aggravated stalking; violation of court
order.

629 784.07(2)(d) 1st Aggravated battery on law enforcement
officer.

630 784.074(1)(a) 1st Aggravated battery on sexually violent
predators facility staff.

631 784.08(2)(a) 1st Aggravated battery on a person 65 years
of age or older.

632 784.081(1) 1st Aggravated battery on specified
official or employee.

633 784.082(1) 1st Aggravated battery by detained person
on visitor or other detainee.

634 784.083(1) 1st Aggravated battery on code inspector.

635 790.07(4) 1st Specified weapons violation subsequent
to previous conviction of s. 790.07(1)
or (2).

636 790.16(1) 1st Discharge of a machine gun under
specified circumstances.

790.165(2) 2nd Manufacture, sell, possess, or deliver
hoax bomb.

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637 790.165(3) 2nd Possessing, displaying, or threatening
to use any hoax bomb while committing
or attempting to commit a felony.

638 790.166(3) 2nd Possessing, selling, using, or
attempting to use a hoax weapon of mass
destruction.

639 790.166(4) 2nd Possessing, displaying, or threatening
to use a hoax weapon of mass
destruction while committing or
attempting to commit a felony.

640 790.23 1st,PBL Possession of a firearm by a person who
qualifies for the penalty enhancements
provided for in s. 874.04.

641 794.08(4) 3rd Female genital mutilation; consent by a
parent, guardian, or a person in
custodial authority to a victim younger
than 18 years of age.

642 796.03 2nd Procuring any person under 16 years for
prostitution.

643 800.04(5)(c)1. 2nd Lewd or lascivious molestation; victim
less than 12 years of age; offender
less than 18 years.

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644 800.04(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.

645 806.01(2) 2nd Maliciously damage structure by fire or
explosive.

646 810.02(3)(a) 2nd Burglary of occupied dwelling; unarmed;
no assault or battery.

647 810.02(3)(b) 2nd Burglary of unoccupied dwelling;
unarmed; no assault or battery.

648 810.02(3)(d) 2nd Burglary of occupied conveyance;
unarmed; no assault or battery.

649 810.02(3)(e) 2nd Burglary of authorized emergency
vehicle.

650 812.014(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.

651 812.014(2)(b)2. 2nd Property stolen, cargo valued at less
than \$50,000, grand theft in 2nd
degree.

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652

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

653

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

654

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

655

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

656

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

657

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

658

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

659

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

660

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

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661

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

662

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

663

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.

664

827.03(3)(b) 2nd Neglect of a child causing great bodily
harm, disability, or disfigurement.

665

827.04(3) 3rd Impregnation of a child under 16 years
of age by person 21 years of age or
older.

666

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

667

838.015 2nd Bribery.

668

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838.016 2nd Unlawful compensation or reward for
official behavior.

669 838.021(3)(a) 2nd Unlawful harm to a public servant.

670 838.22 2nd Bid tampering.

671 847.0135(3) 3rd Solicitation of a child, via a computer
service, to commit an unlawful sex act.

672 847.0135(4) 2nd Traveling to meet a minor to commit an
unlawful sex act.

673 872.06 2nd Abuse of a dead human body.

674 874.10 1st,PBL Knowingly initiates, organizes, plans,
finances, directs, manages, or
supervises criminal gang-related
activity.

675 893.13(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.

676

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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.

677 893.13(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).

678 893.135(1)(a)1. 1st Trafficking in cannabis, more than 25
lbs., less than 2,000 lbs.

679 893.135 1st Trafficking in cocaine, more than 50 ~~20~~
(1)(b)1.a. grams, less than 400 ~~200~~ grams.

680 893.135 1st Trafficking in illegal drugs, more than
(1)(c)1.a. 4 grams, less than 14 grams.

681 893.135(1)(d)1. 1st Trafficking in phencyclidine, more than
50 ~~20~~ grams, less than 400 ~~200~~ grams.

682 893.135(1)(e)1. 1st Trafficking in methaqualone, more than
200 grams, less than 5 kilograms.

683 893.135(1)(f)1. 1st Trafficking in amphetamine, more than
30 ~~14~~ grams, less than 200 ~~20~~ grams.

684

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

685 893.135 1st Trafficking in gamma-hydroxybutyric
(1)(h)1.a. acid (GHB), 5 kilograms ~~4 kilogram~~ or
more, less than 15 ~~5~~ kilograms.

686 893.135 1st Trafficking in 1,4-Butanediol, 5
(1)(j)1.a. kilograms ~~4 kilogram~~ or more, less than
15 ~~5~~ kilograms.

687 893.135 1st Trafficking in Phenethylamines, 30 ~~40~~
(1)(k)2.a. grams or more, less than 200 grams.

688 893.1351(2) 2nd Possession of place for trafficking in
or manufacturing of controlled
substance.

689 896.101(5)(a) 3rd Money laundering, financial
transactions exceeding \$300 but less
than \$20,000.

690 896.104(4)(a)1. 3rd Structuring transactions to evade
reporting or registration requirements,
financial transactions exceeding \$300
but less than \$20,000.

691 943.0435(4)(c) 2nd Sexual offender vacating permanent
residence; failure to comply with

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692 reporting requirements.

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

693 943.0435(9)(a) 3rd Sexual offender; failure to comply with
reporting requirements.

694 943.0435(13) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

695 943.0435(14) 3rd Sexual offender; failure to report and
reregister; failure to respond to
address verification.

696 944.607(9) 3rd Sexual offender; failure to comply with
reporting requirements.

697 944.607(10)(a) 3rd Sexual offender; failure to submit to
the taking of a digitized photograph.

698 944.607(12) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

699 944.607(13) 3rd Sexual offender; failure to report and
reregister; failure to respond to

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700	25-00224C-12		2012732__	address verification.
701	985.4815(10)	3rd		Sexual offender; failure to submit to the taking of a digitized photograph.
702	985.4815(12)	3rd		Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
703	985.4815(13)	3rd		Sexual offender; failure to report and reregister; failure to respond to address verification.
704	(h) LEVEL 8			
705	Florida Statute	Felony Degree		Description
706	316.193 (3) (c) 3.a.	2nd		DUI manslaughter.
707	316.1935(4) (b)	1st		Aggravated fleeing or attempted eluding with serious bodily injury or death.
708	327.35(3) (c) 3.	2nd		Vessel BUI manslaughter.
709	499.0051(7)	1st		Knowing trafficking in contraband prescription drugs.
710				

711	25-00224C-12		2012732__	
712	499.0051(8)	1st		Knowing forgery of prescription labels or prescription drug labels.
713	560.123(8) (b) 2.	2nd		Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
714	560.125(5) (b)	2nd		Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
715	655.50(10) (b) 2.	2nd		Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
716	777.03(2) (a)	1st		Accessory after the fact, capital felony.
	782.04(4)	2nd		Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.
	782.051(2)	1st		Attempted felony murder while

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perpetrating or attempting to
perpetrate a felony not enumerated in
s. 782.04(3).

717 782.071(1)(b) 1st Committing vehicular homicide and
failing to render aid or give
information.

718 782.072(2) 1st Committing vessel homicide and failing to
render aid or give information.

719 790.161(3) 1st Discharging a destructive device which
results in bodily harm or property
damage.

720 794.011(5) 2nd Sexual battery, victim 12 years or
over, offender does not use physical
force likely to cause serious injury.

721 794.08(3) 2nd Female genital mutilation, removal of a
victim younger than 18 years of age
from this state.

722 800.04(4) 2nd Lewd or lascivious battery.

723 806.01(1) 1st Maliciously damage dwelling or
structure by fire or explosive,
believing person in structure.

724

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810.02(2)(a) 1st,PBL Burglary with assault or battery.

725 810.02(2)(b) 1st,PBL Burglary; armed with explosives or
dangerous weapon.

726 810.02(2)(c) 1st Burglary of a dwelling or structure
causing structural damage or \$1,000 or
more property damage.

727 812.014(2)(a)2. 1st Property stolen; cargo valued at
\$50,000 or more, grand theft in 1st
degree.

728 812.13(2)(b) 1st Robbery with a weapon.

729 812.135(2)(c) 1st Home-invasion robbery, no firearm,
deadly weapon, or other weapon.

730 817.568(6) 2nd Fraudulent use of personal
identification information of an
individual under the age of 18.

731 825.102(2) 1st Aggravated abuse of an elderly person
or disabled adult.

732 825.1025(2) 2nd Lewd or lascivious battery upon an
elderly person or disabled adult.

733 825.103(2)(a) 1st Exploiting an elderly person or

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734 disabled adult and property is valued
at \$100,000 or more.

837.02 (2) 2nd Perjury in official proceedings
relating to prosecution of a capital
felony.

735 837.021 (2) 2nd Making contradictory statements in
official proceedings relating to
prosecution of a capital felony.

736 860.121 (2) (c) 1st Shooting at or throwing any object in
path of railroad vehicle resulting in
great bodily harm.

737 860.16 1st Aircraft piracy.

738 893.13 (1) (b) 1st Sell or deliver in excess of 10 grams
of any substance specified in s.
893.03(1) (a) or (b) .

739 893.13 (2) (b) 1st Purchase in excess of 10 grams of any
substance specified in s. 893.03(1) (a)
or (b) .

740 893.13 (6) (c) 1st Possess in excess of 10 grams of any
substance specified in s. 893.03(1) (a)
or (b) .

741

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742 893.135 (1) (a) 2. 1st Trafficking in cannabis, more than
2,000 lbs., less than 10,000 lbs.

893.135 1st Trafficking in cocaine, more than 400
(1) (b) 1.b. ~~200~~ grams, less than 4 kilograms ~~400~~
~~grams~~.

743 893.135 1st Trafficking in illegal drugs, more than
(1) (c) 1.b. 14 grams, less than 28 grams.

744 893.135 1st Trafficking in phencyclidine, more than
(1) (d) 1.b. 400 ~~200~~ grams, less than 4 kilograms
~~400 grams~~.

745 893.135 1st Trafficking in methaqualone, more than
(1) (e) 1.b. 5 kilograms, less than 25 kilograms.

746 893.135 1st Trafficking in amphetamine, more than
(1) (f) 1.b. 200 ~~20~~ grams, less than 400 ~~200~~ grams.

747 893.135 1st Trafficking in flunitrazepam, 14 grams
(1) (g) 1.b. or more, less than 28 grams.

748 893.135 1st Trafficking in gamma-hydroxybutyric
(1) (h) 1.b. acid (GHB), 15 ~~5~~ kilograms or more,
less than 30 ~~10~~ kilograms.

749 893.135 1st Trafficking in 1,4-Butanediol, 15 ~~5~~
(1) (j) 1.b. kilograms or more, less than 30 ~~10~~

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750 kilograms.

893.135 1st Trafficking in Phenethylamines, 200
 (1)(k)2.b. grams or more, less than 400 grams.

751 893.1351(3) 1st Possession of a place used to
 manufacture controlled substance when
 minor is present or resides there.

752 895.03(1) 1st Use or invest proceeds derived from
 pattern of racketeering activity.

753 895.03(2) 1st Acquire or maintain through
 racketeering activity any interest in
 or control of any enterprise or real
 property.

754 895.03(3) 1st Conduct or participate in any
 enterprise through pattern of
 racketeering activity.

755 896.101(5)(b) 2nd Money laundering, financial
 transactions totaling or exceeding
 \$20,000, but less than \$100,000.

756 896.104(4)(a)2. 2nd Structuring transactions to evade
 reporting or registration requirements,
 financial transactions totaling or
 exceeding \$20,000 but less than

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757 \$100,000.

758 (i) LEVEL 9

759

Florida Statute	Felony Degree	Description
760 316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
761 327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
762 409.920 (2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
763 499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
764 560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
765 560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
766		

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655.50(10)(b)3. 1st Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.

767

775.0844 1st Aggravated white collar crime.

768

782.04(1) 1st Attempt, conspire, or solicit to commit premeditated murder.

769

782.04(3) 1st,PBL Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.

770

782.051(1) 1st Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

771

782.07(2) 1st Aggravated manslaughter of an elderly person or disabled adult.

772

787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or reward or as a shield or hostage.

773

787.01(1)(a)2. 1st,PBL Kidnapping with intent to commit or facilitate commission of any felony.

774

787.01(1)(a)4. 1st,PBL Kidnapping with intent to interfere

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with performance of any governmental or political function.

775

787.02(3)(a) 1st False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

776

790.161 1st Attempted capital destructive device offense.

777

790.166(2) 1st,PBL Possessing, selling, using, or attempting to use a weapon of mass destruction.

778

794.011(2) 1st Attempted sexual battery; victim less than 12 years of age.

779

794.011(2) Life Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.

780

794.011(4) 1st Sexual battery; victim 12 years or older, certain circumstances.

781

794.011(8)(b) 1st Sexual battery; engage in sexual conduct with minor 12 to 18 years by

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782 person in familial or custodial
authority.

783 794.08 (2) 1st Female genital mutilation; victim
younger than 18 years of age.

784 800.04 (5) (b) Life Lewd or lascivious molestation; victim
less than 12 years; offender 18 years
or older.

785 812.13 (2) (a) 1st,PBL Robbery with firearm or other deadly
weapon.

786 812.133 (2) (a) 1st,PBL Carjacking; firearm or other deadly
weapon.

787 812.135 (2) (b) 1st Home-invasion robbery with weapon.

817.568 (7) 2nd, Fraudulent use of personal
PBL identification information of an
individual under the age of 18 by his
or her parent, legal guardian, or
person exercising custodial authority.

788 827.03 (2) 1st Aggravated child abuse.

789 847.0145 (1) 1st Selling, or otherwise transferring
custody or control, of a minor.

790

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791 847.0145 (2) 1st Purchasing, or otherwise obtaining
custody or control, of a minor.

859.01 1st Poisoning or introducing bacteria,
radioactive materials, viruses, or
chemical compounds into food, drink,
medicine, or water with intent to kill
or injure another person.

792 893.135 1st Attempted capital trafficking offense.

793 893.135 (1) (a) 3. 1st Trafficking in cannabis, more than
10,000 lbs.

794 893.135 1st Trafficking in cocaine, more than 4
(1) (b) 1.c. kilograms ~~400 grams~~, less than 150
kilograms.

795 893.135 1st Trafficking in illegal drugs, more
(1) (c) 1.c. than 28 grams, less than 30 kilograms.

796 893.135 1st Trafficking in phencyclidine, more
(1) (d) 1.c. than 4 kilograms ~~400 grams~~.

797 893.135 1st Trafficking in methaqualone, more than
(1) (e) 1.c. 25 kilograms.

798 893.135 1st Trafficking in amphetamine, more than
(1) (f) 1.c. 400 ~~200~~ grams.

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799 893.135 1st Trafficking in gamma-hydroxybutyric
 (1) (h) 1.c. acid (GHB), 30 ~~40~~ kilograms or more.

800 893.135 1st Trafficking in 1,4-Butanediol, 30 ~~40~~
 (1) (j) 1.c. kilograms or more.

801 893.135 1st Trafficking in Phenethylamines, 400
 (1) (k) 2.c. grams or more.

802 896.101(5) (c) 1st Money laundering, financial
 instruments totaling or exceeding
 \$100,000.

803 896.104(4) (a) 3. 1st Structuring transactions to evade
 reporting or registration
 requirements, financial transactions
 totaling or exceeding \$100,000.

804
 805 Section 3. For the purpose of incorporating the amendments
 806 made by this act to section 893.135, Florida Statutes, in a
 807 reference thereto, paragraph (a) of subsection (2) of section
 808 775.087, Florida Statutes, is reenacted to read:

809 775.087 Possession or use of weapon; aggravated battery;
 810 felony reclassification; minimum sentence.—

811 (2) (a) 1. Any person who is convicted of a felony or an
 812 attempt to commit a felony, regardless of whether the use of a
 813 weapon is an element of the felony, and the conviction was for:

814 a. Murder;

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815 b. Sexual battery;

816 c. Robbery;

817 d. Burglary;

818 e. Arson;

819 f. Aggravated assault;

820 g. Aggravated battery;

821 h. Kidnapping;

822 i. Escape;

823 j. Aircraft piracy;

824 k. Aggravated child abuse;

825 l. Aggravated abuse of an elderly person or disabled adult;

826 m. Unlawful throwing, placing, or discharging of a
 827 destructive device or bomb;

828 n. Carjacking;

829 o. Home-invasion robbery;

830 p. Aggravated stalking;

831 q. Trafficking in cannabis, trafficking in cocaine, capital
 832 importation of cocaine, trafficking in illegal drugs, capital
 833 importation of illegal drugs, trafficking in phencyclidine,
 834 capital importation of phencyclidine, trafficking in
 835 methaqualone, capital importation of methaqualone, trafficking
 836 in amphetamine, capital importation of amphetamine, trafficking
 837 in flunitrazepam, trafficking in gamma-hydroxybutyric acid
 838 (GHB), trafficking in 1,4-Butanediol, trafficking in
 839 Phenethylamines, or other violation of s. 893.135(1); or
 840 r. Possession of a firearm by a felon

841
 842 and during the commission of the offense, such person actually
 843 possessed a "firearm" or "destructive device" as those terms are

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844 defined in s. 790.001, shall be sentenced to a minimum term of
 845 imprisonment of 10 years, except that a person who is convicted
 846 for aggravated assault, possession of a firearm by a felon, or
 847 burglary of a conveyance shall be sentenced to a minimum term of
 848 imprisonment of 3 years if such person possessed a "firearm" or
 849 "destructive device" during the commission of the offense.

850 2. Any person who is convicted of a felony or an attempt to
 851 commit a felony listed in sub-subparagraphs (a)1.a.-q.,
 852 regardless of whether the use of a weapon is an element of the
 853 felony, and during the course of the commission of the felony
 854 such person discharged a "firearm" or "destructive device" as
 855 defined in s. 790.001 shall be sentenced to a minimum term of
 856 imprisonment of 20 years.

857 3. Any person who is convicted of a felony or an attempt to
 858 commit a felony listed in sub-subparagraphs (a)1.a.-q.,
 859 regardless of whether the use of a weapon is an element of the
 860 felony, and during the course of the commission of the felony
 861 such person discharged a "firearm" or "destructive device" as
 862 defined in s. 790.001 and, as the result of the discharge, death
 863 or great bodily harm was inflicted upon any person, the
 864 convicted person shall be sentenced to a minimum term of
 865 imprisonment of not less than 25 years and not more than a term
 866 of imprisonment of life in prison.

867 Section 4. For the purpose of incorporating the amendments
 868 made by this act to section 893.135, Florida Statutes, in
 869 references thereto, paragraph (a) of subsection (1) and
 870 subsections (3) and (4) of section 782.04, Florida Statutes, are
 871 reenacted to read:

872 782.04 Murder.—

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

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

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

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

879 b. Arson,

880 c. Sexual battery,

881 d. Robbery,

882 e. Burglary,

883 f. Kidnapping,

884 g. Escape,

885 h. Aggravated child abuse,

886 i. Aggravated abuse of an elderly person or disabled adult,

887 j. Aircraft piracy,

888 k. Unlawful throwing, placing, or discharging of a

889 destructive device or bomb,

890 l. Carjacking,

891 m. Home-invasion robbery,

892 n. Aggravated stalking,

893 o. Murder of another human being,

894 p. Resisting an officer with violence to his or her person,

895 q. Felony that is an act of terrorism or is in furtherance

896 of an act of terrorism; or

897 3. Which resulted from the unlawful distribution of any
 898 substance controlled under s. 893.03(1), cocaine as described in
 899 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
 900 compound, derivative, or preparation of opium, or methadone by a
 901 person 18 years of age or older, when such drug is proven to be

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902 the proximate cause of the death of the user,
 903
 904 is murder in the first degree and constitutes a capital felony,
 905 punishable as provided in s. 775.082.
 906 (3) When a person is killed in the perpetration of, or in
 907 the attempt to perpetrate, any:
 908 (a) Trafficking offense prohibited by s. 893.135(1),
 909 (b) Arson,
 910 (c) Sexual battery,
 911 (d) Robbery,
 912 (e) Burglary,
 913 (f) Kidnapping,
 914 (g) Escape,
 915 (h) Aggravated child abuse,
 916 (i) Aggravated abuse of an elderly person or disabled
 917 adult,
 918 (j) Aircraft piracy,
 919 (k) Unlawful throwing, placing, or discharging of a
 920 destructive device or bomb,
 921 (l) Carjacking,
 922 (m) Home-invasion robbery,
 923 (n) Aggravated stalking,
 924 (o) Murder of another human being,
 925 (p) Resisting an officer with violence to his or her
 926 person, or
 927 (q) Felony that is an act of terrorism or is in furtherance
 928 of an act of terrorism,
 929
 930 by a person other than the person engaged in the perpetration of

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931 or in the attempt to perpetrate such felony, the person
 932 perpetrating or attempting to perpetrate such felony is guilty
 933 of murder in the second degree, which constitutes a felony of
 934 the first degree, punishable by imprisonment for a term of years
 935 not exceeding life or as provided in s. 775.082, s. 775.083, or
 936 s. 775.084.
 937 (4) The unlawful killing of a human being, when perpetrated
 938 without any design to effect death, by a person engaged in the
 939 perpetration of, or in the attempt to perpetrate, any felony
 940 other than any:
 941 (a) Trafficking offense prohibited by s. 893.135(1),
 942 (b) Arson,
 943 (c) Sexual battery,
 944 (d) Robbery,
 945 (e) Burglary,
 946 (f) Kidnapping,
 947 (g) Escape,
 948 (h) Aggravated child abuse,
 949 (i) Aggravated abuse of an elderly person or disabled
 950 adult,
 951 (j) Aircraft piracy,
 952 (k) Unlawful throwing, placing, or discharging of a
 953 destructive device or bomb,
 954 (l) Unlawful distribution of any substance controlled under
 955 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or
 956 opium or any synthetic or natural salt, compound, derivative, or
 957 preparation of opium by a person 18 years of age or older, when
 958 such drug is proven to be the proximate cause of the death of
 959 the user,

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960 (m) Carjacking,
961 (n) Home-invasion robbery,
962 (o) Aggravated stalking,
963 (p) Murder of another human being,
964 (q) Resisting an officer with violence to his or her
965 person, or
966 (r) Felony that is an act of terrorism or is in furtherance
967 of an act of terrorism,
968
969 is murder in the third degree and constitutes a felony of the
970 second degree, punishable as provided in s. 775.082, s. 775.083,
971 or s. 775.084.
972 Section 5. Section 893.101, Florida Statutes, is repealed.
973 Section 6. This act shall take effect July 1, 2012.

WORKSHOP ON SB 732

FOUR PROPOSALS TO ADDRESS DRUG TRAFFICKING PROSECUTIONS INVOLVING PRESCRIPTION OPIOID MEDICATIONS

PROPOSAL A (Departure From Mandatory Minimum Term Triggered by Motion)

A new subsection (8) is added to section 893.135, Florida Statutes, to read:

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

(8)(a) Notwithstanding any other provision of law, if a defendant has been convicted of a violation of paragraph (1)(c) that involves possession of a mixture that is a prescription drug, as defined in s. 499.003, the state attorney, defendant, or counsel representing the defendant may move the sentencing court to depart from the mandatory minimum term of imprisonment applicable to that violation.

(b) The sentencing court may grant the motion if the court finds that all of the following criteria are met:

1. The defendant's violation of paragraph (1)(c) did not involve the use, attempted use, or threatened use of physical force against another person.

2. The defendant's violation of paragraph (1)(c) did not result in serious bodily injury to another person or the disfigurement or death of another person.

3. In the commission of the offense in violation of paragraph (1)(c), the defendant was not armed with, did not threaten to use or display, and did not represent by word or conduct that he or she possessed any firearm, deadly weapon, or dangerous instrument.

4. The provisions of this subsection have not been previously been invoked.

(c) If the sentencing court grants the motion, the court shall state in open court at time of sentencing the specific reasons for imposing the sentence and for not imposing the mandatory minimum term of imprisonment.

FOUR PROPOSALS (Page 2)

PROPOSAL B (Departure From Mandatory Minimum Term –Does Not Require A Motion)

A new subsection (8) is added to section 893.135, Florida Statutes, to read:

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

(8)(a) Notwithstanding any other provision of law, if a defendant has been convicted of a violation of paragraph (1)(c) that involves possession of a mixture that is a prescription drug, as defined in s. 499.003, the court may sentence the defendant without regard to the mandatory minimum term of imprisonment applicable to that violation.

(b) The sentencing court may sentence the defendant without regard to any otherwise applicable mandatory minimum sentence if the court finds that all of the following criteria are met:

1. The defendant's violation of paragraph (1)(c) did not involve the use, attempted use, or threatened use of physical force against another person.

2. The defendant's violation of paragraph (1)(c) did not result in serious bodily injury to another person or the disfigurement or death of another person.

3. In the commission of the offense in violation of paragraph (1)(c), the defendant was not armed with, did not threaten to use or display, and did not represent by word or conduct that he or she possessed any firearm, deadly weapon, or dangerous instrument.

4. The provisions of this subsection have not been previously been invoked.

(c) If the sentencing court sentences the defendant without regard to any otherwise applicable mandatory minimum sentence, the court shall state in open court at time of sentencing that it has found that the requirements of paragraph (b) for not imposing the mandatory minimum term of imprisonment have been met.

FOUR PROPOSALS (Page 3)

PROPOSAL C (Requiring Prosecutors To Prove Intent For An Opioid Trafficking Violation Involving Possession Of A Mixture That Is A Prescription Drug).

Paragraph (c) of subsection (1) of Section 893.135, Florida Statutes, is amended to read:
893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(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 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 pay a fine of \$500,000.

2. 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., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a...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; or

b...The person’s conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

FOUR PROPOSALS (Page 4)
PROPOSAL C (continued)

3.... 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., 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 capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

4. If a person is charged with a violation of subparagraph 1. that involves knowing possession of a mixture that is a prescription drug, as defined in s. 499.003, the prosecutor must prove that the person possessed the mixture with the intent to sell the mixture or possessed the mixture with the intent to manufacture a substance or mixture described in subparagraph 1.

FOUR PROPOSALS (Page 5)

PROPOSAL D (Per Legislative Direction, Requires State Attorneys To Develop Guidelines Relevant To Drug Trafficking Prosecutions Involving Prescription Opioids)

Relevant Information: On occasion, the Legislature has required state attorneys to develop or use guidelines, protocols, or policies relevant to prosecution and other matters. Examples include:

- Section 382.356, F.S.: Requires the Florida Prosecuting Attorneys Association to develop a protocol for sharing birth certificate information for all children born to unmarried mothers who are less than 17 years of age at the time of the child's birth.
- Section 775.0843, F.S.: Requires state attorneys to establish a career criminal prosecution unit and adopt and implement policies based on statutorily-specified guidelines relevant to the prosecution of career criminals.
- Section 787.06, F.S.: Requires state attorneys to develop standards of instruction for prosecutors to receive training on the investigation and prosecution of human trafficking crimes.
- Section 932.704, F.S.: Requires state attorneys to use guidelines developed by the Florida Department of Law Enforcement, in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, in implementing the Florida Contraband Forfeiture Act.
- Section 960.01, F.S.: Requires the state attorneys to develop guidelines on a number of matters relating to the fair treatment of victims and witnesses in the criminal justice and juvenile justice system.

Concept: Develop language that provides direction to state attorneys on what types of cases involving prescription opioid medications the Legislature wants or does not want prosecuted as drug trafficking and that requires the state attorneys to develop guidelines for prosecution consistent with this legislative direction.



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.¹ 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*

¹Opioids 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.² 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.³ 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 ¹

¹ In Fiscal Year 2010-11, there were no offenders imprisoned for life for trafficking in opioids.

Source: Section [893.135\(1\)\(c\)](#), *F.S.*

² Section 775.082, *F.S.*

³ 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.

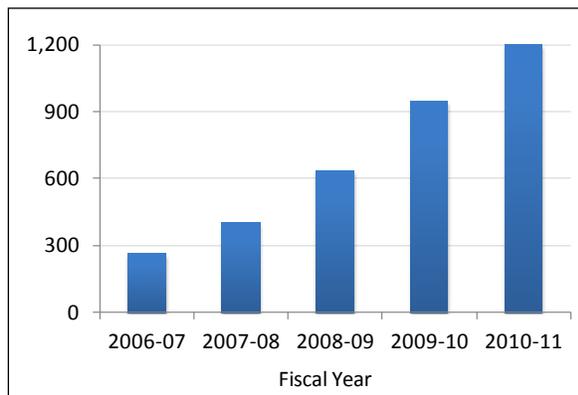
Findings

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.⁴

⁴ 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.^{5, 6} 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.

⁵ 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.

⁶ 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 ¹
Oxycodone	73%
Hydrocodone	28%
Heroin	6%

¹ 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.⁷

The majority of offenders had minimal prior criminal involvement and substance abuse problems

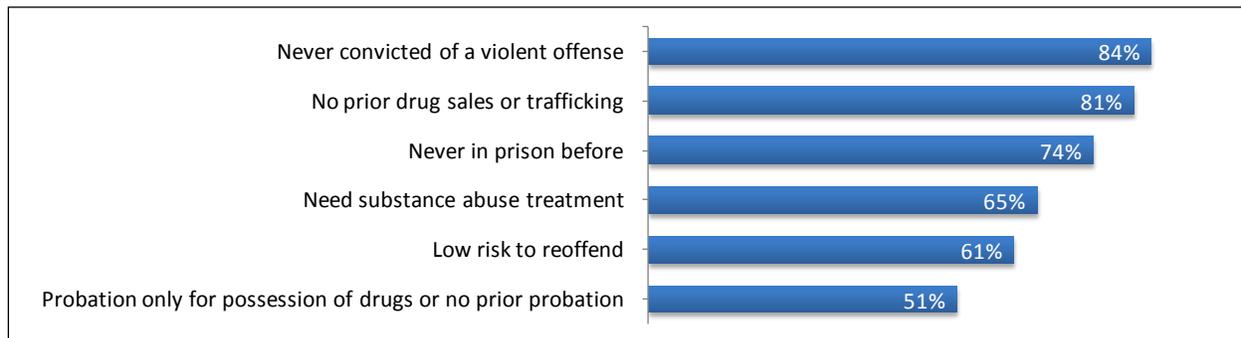
Our analysis of Department of Corrections data on the 1,200 offenders admitted to prison for opioid trafficking in Fiscal Year 2010-11 found that 74% had not previously been admitted to prison. (See Exhibit 5.) Half had either never been on probation or had been on probation solely for drug possession, 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.⁸

⁷ 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.

⁸ 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 st Threshold	2 nd Threshold	3 rd Threshold
Prescription Painkillers	3 years (4 to 14 grams)	15 years (14 to 28 grams)	25 years (28 grams to 30 kg)
Cocaine	3 years (28 to 200 grams)	7 years (200 to 400 grams)	15 years (400 grams to 150 kg)
Methamphetamine	3 years (14 to 28 grams)	7 years (28 to 200 grams)	15 years (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.⁹ 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.

⁹ 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.¹⁰

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.

¹⁰ 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).¹¹ 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.¹² 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.

¹¹ 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.

¹² 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



OPPAGA provides performance and accountability information about Florida government in several ways.

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OPPAGA Research on Prescription Drug Trafficking

Senate Committee on Criminal Justice

LucyAnn Walker-Fraser, Senior Legislative Analyst

December 7, 2011

Overview

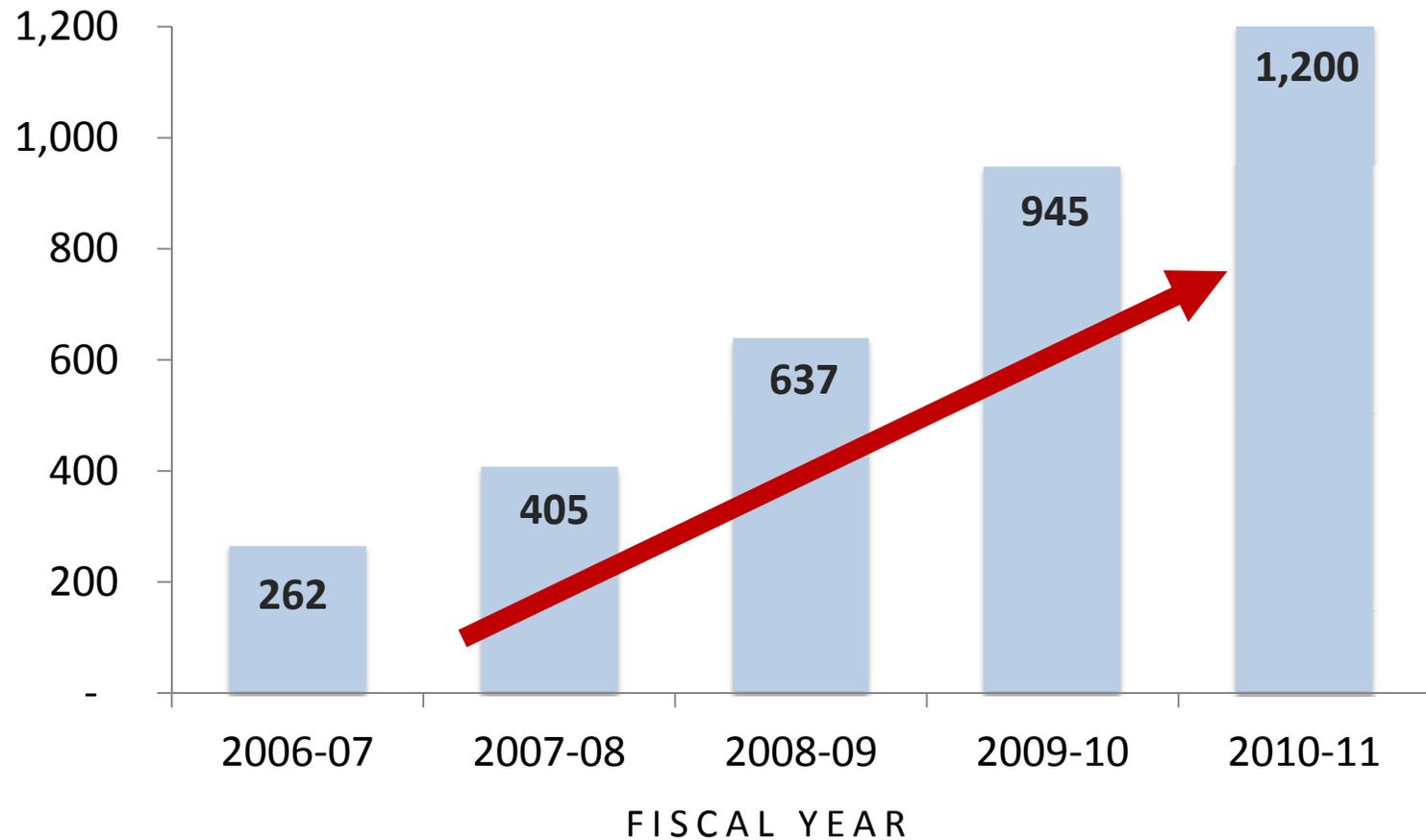
- Substantial increase in prison admissions for trafficking in painkillers
- Stakeholder concerns about quantities that trigger mandatory sentences
- Options

Drug Offenses

Punishment determined by quantity possessed or sold

- Possession or sale
 - ▶ Primarily 2nd or 3rd degree felony
 - ▶ Sentenced under Criminal Punishment Code
- Trafficking
 - ▶ 1st degree felony
 - ▶ Minimum mandatory sentences

Substantial Increase in Prison Admissions for Opioid Trafficking



Prison Admissions are for Two Types of Prescription Painkillers

- Most admissions for opioid trafficking involved prescription painkillers
 - 7% heroin
 - 28% hydrocodone (e.g., Lortab or Vicodin)
 - 73% oxycodone (e.g., Oxycontin)
- More than half of those sentenced for hydrocodone offenses were arrested with fewer than 30 pills

Minimum Mandatory Sentences for Opioid Trafficking

Weight Threshold	Minimum Mandatory Sentence
4 to less than 14 grams	3 years
14 to less than 28 grams	15 years
28 grams to 30 kilograms	25 years

Penalties for Rx Painkillers Often Exceed Penalties for Illegal Drugs

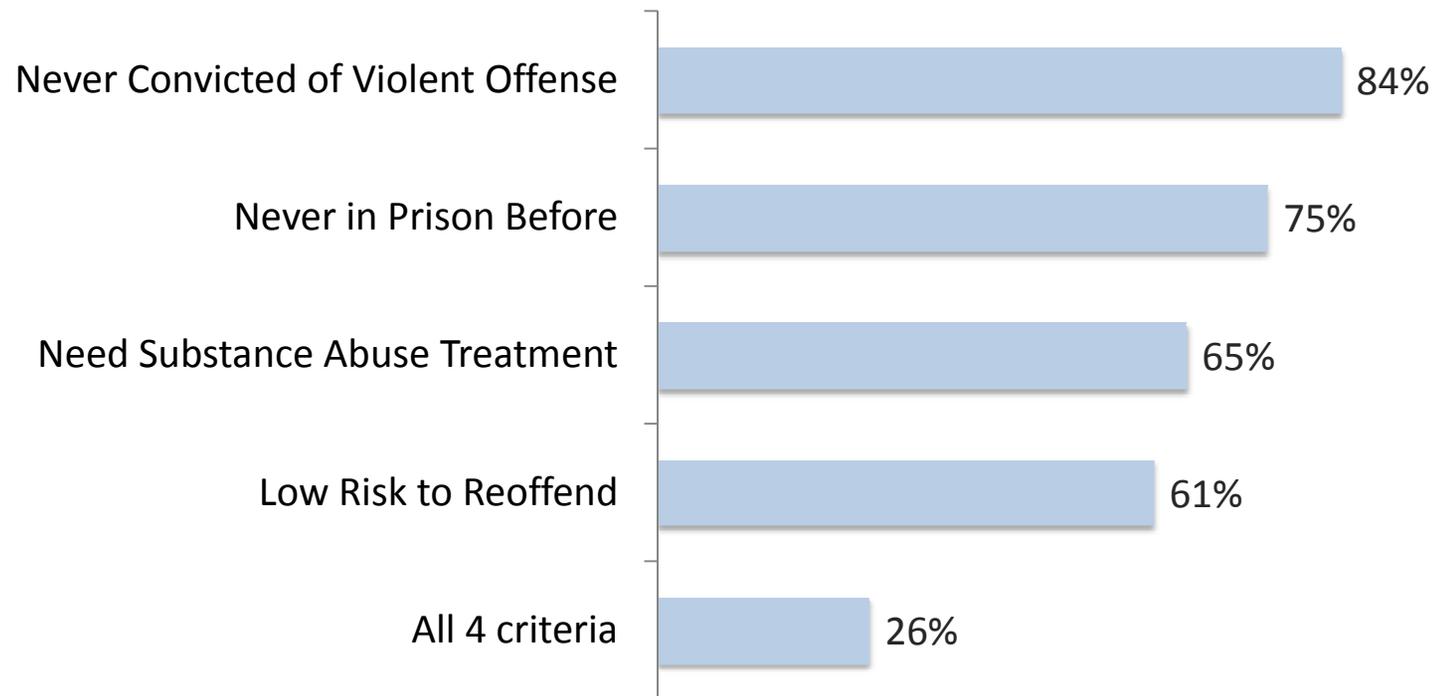
Weight Threshold	Opioids	Illegal Drugs (ex. cocaine and methamphetamine)
Lowest	3 years	3 years
Medium	15 years	7 years
Highest	25 years	15 years

A Small Number of Hydrocodone Pills Requires a Minimum Mandatory Sentence

Rx Opioid	Number of Pills to Meet Threshold		
	3 Year Minimum (4-14 g)	15 Year Minimum (14-28 g)	25 Year Minimum (28 g – 30 kg)
Hydrocodone 10 mg	7	22	44
Oxycodone 30 mg	31	108	215

Option 1: Allow Treatment as an Alternative Sanction

Percentage of 1,200 Prison Admissions for Opioid Trafficking



Option 2: Modify Weight Thresholds

Minimum Mandatory	Hypothetical Higher Thresholds	Number of Pills 10 mg Hydrocodone	Number of Pills 30 mg Oxycodone
3 years	28 g	44	215
15 years	50 g	78	386
25 years	200 g	309	1,539

Option 3: Reclassify Hydrocodone

Make hydrocodone offenses 2nd or 3rd degree felonies under current drug statutes (s. 893.13, *F.S.*)

- Sale or possession of 7 to 44 hydrocodone pills
 - ▶ Would no longer require mandatory 3, 15, or 25 year sentences under the trafficking statute
 - ▶ Would be subject to normal sanctions under the sentencing guidelines of the Florida Criminal Punishment Code
- Could leave hydrocodone in controlled substance Schedule II or move to Schedule III

Other Proposals

- Remove possession of amounts under 28 grams from the drug trafficking statute, so they would fall under current statutes for drug possession (s. 893.13, *F.S.*)
- Use only the weight of the controlled substance rather than the weight of the pill (i.e. exclude the Tylenol weight)

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vickers.becky@oppaga.fl.gov

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/12

Meeting Date

Topic SB 732 Sentences of inmates

Bill Number SB 732 (if applicable)

Name Lucy Ann Walker-Fraser

Amendment Barcode (if applicable)

Job Title Legislative Analyst

Address 111 Madison St, Ste 312

Phone 487-9168

Street

TAL

E-mail walker-fraser.lucy@oppaga.fl.gov

City

State

Zip

Speaking: For Against Information

Representing OPPAGA

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)

1-25-12

Meeting Date

Topic Minimum Mandatory

Bill Number 732
(if applicable)

Name Frank Menendez

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2901 S Bradford
Street

Phone 576-5858

Tall FL
City State Zip

E-mail _____

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.

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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)

1/25/2012

Meeting Date

Topic DRUG BILL

Bill Number 732
(if applicable)

Name HONORABLE NANCY DANIELS

Amendment Barcode _____
(if applicable)

Job Title PUBLIC DEFENDER

Address 101 S. MONROE ST

Phone 850.606.1000

TALLAHASSEE FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA PUBLIC DEFENDER ASSOC., 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

1-25-1

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

Meeting Date

Topic Drug bill

Bill Number 732
(if applicable)

Name Bob Dillinger

Amendment Barcode _____
(if applicable)

Job Title Public Defender - 6th Circuit - Pinellas / Pasco

Address 12250 49th St N

Phone 727-464-6865

Clwtr
City State Zip

E-mail pdle@pinellascounty.org

Speaking: For Against Information

Representing 6th Circuit

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)

1/25/12

Meeting Date

Topic DRUG BILL

Bill Number SB 732
(if applicable)

Name CARLOS MARTINEZ

Amendment Barcode _____
(if applicable)

Job Title PUBLIC DEFENDER

Address 1320 NW 14 STREET

Phone 305-545-1900

Street

MIAMI

State

FL

Zip

33125

E-mail cmartinez@pdmiami.com

Speaking: For Against Information

Representing 11th JUDICIAL CIRCUIT PUBLIC DEFENDER'S OFFICE

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)

1-25-12

Meeting Date

Topic Drug Bill

Bill Number SB 732
(if applicable)

Name Julianne Holt

Amendment Barcode _____
(if applicable)

Job Title Public Defender 13th Judicial Circuit

Address POB 172910

Phone 8133074000

Street

Tampa

City

FL

State

33672

Zip

E-mail Jholt@PD13.STATE.FL.US

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.

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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)

1/25/12

Meeting Date

Topic Sentencing Reform

Bill Number SB 732
(if applicable)

Name Greg Newburn

Amendment Barcode _____
(if applicable)

Job Title Florida Project Director

Address PO Box 142933

Phone 352-682-2542

Street

Gainesville

FL

State

32614

Zip

E-mail gnewburn@fam.og

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.

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)

1/25/2012

Meeting Date

Topic Minimum Mandatory Sentencing

Bill Number 732
(if applicable)

Name Jeff Sigmeister

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 379 West Dual Street

Phone (886) 755-9776

Street
Lake City, FL
City State Zip

E-mail jeff@lakecitylawoffice.com

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.

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)

1/25/2012

Meeting Date

Topic Minimum mandatory sentences

Bill Number 732
(if applicable)

Name Lisa Anderson

Amendment Barcode -
(if applicable)

Job Title Attorney

Address 460 Harrison Ave

Phone (850) 215-2529

^{Street}
Panama city, FL 32401
_{City State Zip}

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.

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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)

1/25/12

Meeting Date

Topic CHANGES TO CH 893, FS relating to

Bill Number SB 732
(if applicable)

Name SIM GABBARD
Controlled Substances

Amendment Barcode _____
(if applicable)

Job Title _____

Address 924 North GADSDEN ST.

Phone 850-219-3631

Street

TALLAHASSEE FL 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

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)

1/24/12
Meeting Date

Topic Prescription Drugs

Bill Number 732 / PROPOSAL
(if applicable)

Name NICHOLAS COX

Amendment Barcode _____
(if applicable)

Job Title STATUTE PROSECUTOR

Address PL-01 THE CAPITOL

Phone 850-245-0155

Street
TALLAHASSEE, FL 32399
City State Zip

E-mail NICK.COX@MYFLORIDAFLA.COM

Speaking: For Against Information

Representing OFFICE OF STATUTE PROSECUTOR

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

25 JAN 2012

Meeting Date

Topic Controlled Substances

Bill Number 732 - PROPOSALS
(if applicable)

Name Shannon Mac Gillis

Amendment Barcode _____
(if applicable)

Job Title ASSISTANT STATEWIDE PROSECUTOR, PROSECUTORIAL INITIATIVE COMMANDER

Address 1300 RIVERPLACE BLVD
Street

Phone 904 994 0325

JACKSONVILLE, FL
City State Zip

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.

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)

01-25-12
Meeting Date

Topic Controlled Substance

Bill Number 732/PROPOSALS
(if applicable)

Name Det. Lorri Hell

Amendment Barcode _____
(if applicable)

Job Title Detective JAX Sheriff's Office

Address 501 E. Bay St.
Street

Phone 630-2163

JAX FL 32202
City State Zip

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.

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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)

1/25/12
Meeting Date

Topic _____

Bill Number SB 732/PROPOSALS
(if applicable)

Name BRAD KING

Amendment Barcode _____
(if applicable)

Job Title STATE ATTORNEY, FIFTH CIRCUIT

Address 110 NW 1ST AVE, SUITE 5000
Street

Phone 352-671-5914

OCALA FL 34475
City State Zip

E-mail _____

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
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 Criminal Justice Committee

BILL: CS/SB 346

INTRODUCER: Criminal Justice Committee and Senator Ring

SUBJECT: Flag Etiquette

DATE: January 25, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			GO	
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:

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

The bill also provides that the Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

This bill creates the following section of the Florida Statutes: 256.015.

II. Present Situation:

The Governor's Office has a written protocol on when and for whom flags may be flown at half-staff.¹

¹ *Flag Protocol, National and State Flags*, Office of the Governor (undated document) (on file with the Committee on Criminal Justice).

National Flag Protocol

According to the Governor's protocol, by order of the President of the United States or the Governor, the National flag shall be flown at half-staff upon the death of principal figures of the United States or State Government as a mark of respect to their memory, pursuant to 4 U.S.C. Section (7)(m) and United States General Service Administration Flag Policy. The National flag is flown at half-staff at all federal buildings, all state-owned buildings and, in most cases, all courthouses and city halls² throughout Florida for specified periods for the following persons and occasions:

- President or former President of the United States.
- Vice President or former Vice President of the United States.
- Chief Justice, former Chief Justice, or an Associate Justice of the U.S. Supreme Court.
- Speaker of the U.S. House of Representatives.
- Secretary of an executive or military department.
- President Pro Tempore of the U.S. Senate.
- Majority Leader or Minority Leader of the U.S. House of Representatives.
- Governor or former Governor of Florida.
- Member or former members of the Florida Cabinet.
- Justice or former Justice of the Florida Supreme Court.
- Member or former member of Congress from Florida.
- Member or former member of the Florida Legislature.
- State, county, district, or city official.
- Prominent citizens.
- National occasions proclaimed by the President of the United States.

The Governor's protocol further states that, in 2007, Congress passed the "Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007" (now codified in 4 U.S.C. Section (7)(m)). This law provides that the Governor may proclaim that the National flag shall be flown at half-staff in the event of the death of a member of the Armed Forces who dies while serving on active duty. The Governor, by proclamation, may have the flag flown at half-staff at the State Capitol and the county courthouse and city hall where the deceased Armed Forces member resided.

State Flag Protocol

The Governor's protocol further states that the Governor may order or proclaim that the State flag shall be at half-staff upon the death of principal figures of the United States or State Government as a mark of respect to their memory, consistent with 4 U.S.C. Section (7)(m) and United States General Service Administration Flag Policy and following a Presidential proclamation or order or upon the Governor's initiative. The State flag is flown at half-staff at all

² If the decedent is a member or former member of Congress from Florida, the flag is flown at half-staff at all courthouses and city halls in the decedent's district. If the decedent is a member or former member of the Florida Legislature, or a state, county, district, or city official, the flag is flown at half-staff at all courthouses and city halls in the decedent's jurisdiction. If the decedent is an Armed Forces member, the flag is flown at half-staff at the county courthouse and city hall where the decedent resided.

state-owned buildings and, in most cases, all courthouses and city halls³ throughout Florida for specified periods for all of the persons previously described in regard to flying the National flag at half-staff.

The Governor's protocol further states that, consistent with the "Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007," the Governor may proclaim that the State flag shall be flown at half-staff in the event of the death of a member of the Armed Forces who dies while serving on active duty. The Governor, by proclamation, may have the flag flown at half-staff at the State Capitol and the county courthouse and city hall where the deceased Armed Forces member resided.

Of particular relevance to the bill, the Governor's protocol further states that, if timely requested, the Governor may approve flying the State flag at half-staff for a police officer or firefighter who dies in the line of duty and for a state employee. The flag is flown at half-staff at the city hall and courthouse where the deceased lived. The Governor may use his discretion as to whether he/she will grant any request for state buildings or facilities or other local buildings or facilities (i.e., police department, fire station, etc.) on a case-by-case basis. The Executive Assistant of the Governor's Legal Office notifies the requestor by e-mail if the request is granted and the requestor notifies the appropriate local officials. The flag is flown one day only, from sunrise to sunset, giving deference to the family's day of preference.

The Governor's protocol further indicates that the Executive Office of the Governor (EOG) is notified of the death of a prominent citizen, Armed Forces member, police officer, firefighter or public official. The notification will usually come from a federal, state, district, county, or city official, department head, or family member or friend of the family.

Accompanying the Governor's protocol is a document entitled "Frequently Asked Questions." Information provided in response to one of the questions indicates that a constituent may request flags be flown at-half-staff for any reason not addressed in the protocol. The Governor has the discretion whether to grant or deny the request.

Statutes/Flag Display

While there are currently a number of statutes requiring display of the National flag, the State flag, and the POW-MIA flag,⁴ there do not appear to be any statutes requiring that a flag be flown at half-staff for particular persons or in particular circumstances.

There does not appear to be any statute specific to flag display involving a law enforcement officer who dies in the line of duty. However, s. 256.15, F.S., provides that the official state Firefighter Memorial Flag to honor firefighters who have died in the line of duty may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.

³ *Id.*

⁴ *See* ss. 256.01, 256.02, 256.011, 256.032, 256.11, 256.12, 256.13, 256.14, 256.15, and 1000.06, F.S.

III. Effect of Proposed Changes:

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

The bill also provides that the Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

The effective date of the act is July 1, 2012.

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 should not have any impact on the Governor's office since the Governor currently has a protocol on the display of the state flag.

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 January 25, 2012:

- Requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions for high-ranking officials, uniformed law enforcement and fire service personnel, and prominent citizens.
- Provides that the Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

- B. **Amendments:**

None.



167066

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 256.015, Florida Statutes, is created to read:

256.015 Display of flag.—

(1) The Governor shall adopt a protocol on flag display.

The protocol must provide guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement



167066

13 and fire service personnel, and prominent citizens.

14 (2) The Governor may adopt, repeal, or modify any rule or
15 custom as the Governor deems appropriate which pertains to the
16 display of the state flag.

17 Section 2. This act shall take effect July 1, 2012.

18

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

20 And the title is amended as follows:

21 Delete everything before the enacting clause
22 and insert:

23 A bill to be entitled

24 An act relating to flag etiquette; creating s.
25 256.015, F.S.; requiring that the Governor adopt a
26 protocol on flag display; requiring the protocol to
27 have guidelines for proper flag display and for
28 lowering the state flag to half-staff on certain
29 occasions; authorizing the Governor to adopt, repeal,
30 or modify any rule or custom as the Governor deems
31 appropriate which pertains to the display of the state
32 flag; providing an effective date.

By Senator Ring

32-00110-12

2012346__

1 A bill to be entitled
2 An act relating to flag etiquette; creating s.
3 256.015, F.S.; requiring the Governor to order flags
4 to be flown at half-staff to honor fallen law
5 enforcement officers and firefighters; providing an
6 effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 256.015, Florida Statutes, is created to
11 read:

12 256.015 Display of flag to honor fallen law enforcement
13 officers and firefighters.—The Governor shall order the flags at
14 all state buildings, facilities, and property to be flown at
15 half-staff from sunrise to sunset on the day of the funeral of
16 any law enforcement officer or firefighter who dies in the line
17 of duty.

18 Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/25/12

Meeting Date

Topic FLA's Etiquette

Bill Number 346
(if applicable)

Name DOUGLAS WATLER

Amendment Barcode _____
(if applicable)

Job Title Broward County Council of Firefighters

Address 304 NE 1st

Phone _____

Street

Pompano Bch, FL 33060

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing Firefighters

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)

01/25/12

Meeting Date

Topic

Flag Etiquette

Bill Number

346

(if applicable)

Name

Dean Parkerson

Amendment Barcode

(if applicable)

Job Title

District Vice President

Address

345 Madison

Phone

305-525-6250

Street

Tallahassee FL

E-mail

deanpark@bellsouth.net

City

State

Zip

Speaking:

For

Against

Information

Representing

Florida Professional Fire Fighters

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)

1/25/12

Meeting Date

Topic FLAG ETIQUETTE

Bill Number 346 (if applicable)

Name ROBERT SUAREZ

Amendment Barcode (if applicable)

Job Title VICE PRESIDENT, FLORIDA FIREFIGHTERS

Address 345 W. MADISON STREET

Phone

Street

TALLAHASSEE

E-mail

City

State

Zip

Speaking: [X] For [] Against [] Information

Representing FLORIDA PROFESSIONAL FIREFIGHTERS

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] 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)

1.25.12

Meeting Date

Topic Flag Etiquette

Bill Number 346
(if applicable)

Name Ken Kopczykanski

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 300 East Brevard St

Phone 222-3329

Tallah FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing Flag PBA

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

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Community Affairs
Higher Education

SENATOR JEREMY RING

32nd District

October 20, 2011

Honorable Senator Greg Evers
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers,

I am writing to respectfully request your cooperation in placing Senate Bill 346, relating to Flag Etiquette on the Criminal Justice Committee 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".

A simple handwritten checkmark.

Jeremy Ring
Senator District 32

cc: Amanda Cannon

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392
- 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5094

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
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 Criminal Justice Committee

BILL: CS/SB 872

INTRODUCER: Criminal Justice Committee and Senator Fasano

SUBJECT: Murder

DATE: January 25, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			BC	
3.				
4.				
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:

The bill expands what constitutes first, second, and third degree murder to include the unlawful killing of a human being when the defendant commits aggravated fleeing or eluding and that act causes serious bodily injury or death to another. It also makes certain conforming changes to the Offense Severity Ranking Chart.

This bill substantially amends sections 782.04 and 921.0022 of the Florida Statutes. It also reenacts the following statutes to incorporate changes made to section 782.04, Florida Statutes: section 775.0823 (violent offenses committed against law enforcement and correctional officers, state attorneys, assistant state attorneys, justices, or judges); section 782.051, (attempted felony murder); section 782.065, (murder; law enforcement officer); and section 947.146, (Control Release Authority), Florida Statutes.

II. Present Situation:

Section 316.1935(4), F.S., sets forth the crimes of aggravated fleeing or eluding and aggravated fleeing or eluding with serious bodily injury or death.

Aggravated fleeing or eluding is a second degree felony and occurs when the act causes injury to another person or causes damage to any property belonging to another person.

Aggravated fleeing or eluding with serious bodily injury or death is a first degree felony and occurs when the act causes serious bodily injury or death to another person.

Section 782.04(1)(a)2., F.S., defines first degree murder as the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, a variety of specified offenses (e.g., arson, sexual battery, robbery, burglary, etc.). First degree murder is a capital felony.

Section 782.04(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any of a variety of specified offenses (e.g., arson, sexual battery, robbery, burglary, etc.), by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such offense, the person perpetrating or attempting to perpetrate such felony is guilty of second degree murder. Second degree murder is a first degree felony punishable by life imprisonment or by up to 30 years imprisonment.

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than a variety of specifically listed offenses (e.g., arson, sexual battery, robbery, burglary, etc.). Third degree murder is a second degree felony punishable by up to 15 years imprisonment.

First Degree Murder

Section 782.04(1)(a)2., F.S., defines first degree murder as the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

First degree murder is a capital offense, punishable by death or life in prison.

Second Degree Murder

Section 782.04(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any of the following offenses by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony is guilty of second degree murder:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Second degree murder is a first degree felony punishable by imprisonment for a term of years not exceeding life or by up to 30 years imprisonment and a \$10,000 fine.

Third Degree Murder

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,

- Unlawful distribution of any substance controlled under s. 893.03(1), F.S., cocaine as described in s. 893.03(2)(a)4., F.S., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Third degree murder is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine.

Aggravated Fleeing and Eluding

Section 316.1935, F.S., proscribes the act of fleeing or eluding a law enforcement officer. Subsection (4) of the statute, provided below, establishes the crimes of aggravated fleeing or eluding and aggravated fleeing or eluding with serious bodily injury or death.

(4) Any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash in violation of s. 316.027, F.S. (crash involving death or personal injury), or s. 316.061, F.S. (crashes involving damage to vehicle or personal property), having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order, or having stopped in knowing compliance with such order, willfully flees in an attempt to elude such officer and, as a result of such fleeing or eluding:

- (a) Causes injury to another person or causes damage to any property belonging to another person, commits aggravated fleeing or eluding, a second degree felony.¹
- (b) Causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle, commits aggravated fleeing or eluding with serious bodily injury or death, a first degree felony.²

The court is required to sentence any person convicted of committing aggravated fleeing or eluding with serious bodily injury or death to a mandatory minimum sentence of 3 years imprisonment.

¹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

² A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

III. Effect of Proposed Changes:

The bill adds aggravated fleeing or eluding when that act causes serious bodily injury or death to another to the above-described lists of murder offenses contained in s. 782.04(1)(a)2., (3), and (4), F.S.

The bill also makes conforming changes to s. 921.0022, F.S., the Criminal Punishment Code, offense severity ranking chart.

The effective date of the bill is October 1, 2012.

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:

On December 14, 2011, the Criminal Justice Impact Conference met and determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

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 January 25, 2012:

The bill as amended limits the expansion of what constitutes first, second, and third degree murder to aggravated fleeing or eluding when a person is unlawfully leaving or attempting to leave the scene of a crash and that act causes serious bodily injury or death. Before the amendment, the bill included all acts of aggravated fleeing or eluding.

- B. **Amendments:**

None.

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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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Deputy John C. Mecklenburg Act."

Section 2. Section 782.04, Florida Statutes, is amended to read:

782.04 Murder.—

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

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



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- 13 2. When committed by a person engaged in the perpetration
14 of, or in the attempt to perpetrate, any:
- 15 a. Trafficking offense prohibited by s. 893.135(1),
 - 16 b. Arson,
 - 17 c. Sexual battery,
 - 18 d. Robbery,
 - 19 e. Burglary,
 - 20 f. Kidnapping,
 - 21 g. Escape,
 - 22 h. Aggravated child abuse,
 - 23 i. Aggravated abuse of an elderly person or disabled adult,
 - 24 j. Aircraft piracy,
 - 25 k. Unlawful throwing, placing, or discharging of a
26 destructive device or bomb,
 - 27 l. Carjacking,
 - 28 m. Home-invasion robbery,
 - 29 n. Aggravated stalking,
 - 30 o. Murder of another human being,
 - 31 p. Resisting an officer with violence to his or her person,
 - 32 q. Aggravated fleeing or eluding with serious bodily injury
33 or death,
 - 34 ~~r. q.~~ Felony that is an act of terrorism or is in
35 furtherance of an act of terrorism; or
- 36 3. Which resulted from the unlawful distribution of any
37 substance controlled under s. 893.03(1), cocaine as described in
38 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
39 compound, derivative, or preparation of opium, or methadone by a
40 person 18 years of age or older, when such drug is proven to be
41 the proximate cause of the death of the user,



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42
43 is murder in the first degree and constitutes a capital felony,
44 punishable as provided in s. 775.082.

45 (b) In all cases under this section, the procedure set
46 forth in s. 921.141 shall be followed in order to determine
47 sentence of death or life imprisonment.

48 (2) The unlawful killing of a human being, when perpetrated
49 by any act imminently dangerous to another and evincing a
50 depraved mind regardless of human life, although without any
51 premeditated design to effect the death of any particular
52 individual, is murder in the second degree and constitutes a
53 felony of the first degree, punishable by imprisonment for a
54 term of years not exceeding life or as provided in s. 775.082,
55 s. 775.083, or s. 775.084.

56 (3) When a human being ~~person~~ is killed during ~~in~~ the
57 perpetration of, or during ~~in~~ the attempt to perpetrate, any:

- 58 (a) Trafficking offense prohibited by s. 893.135(1),
59 (b) Arson,
60 (c) Sexual battery,
61 (d) Robbery,
62 (e) Burglary,
63 (f) Kidnapping,
64 (g) Escape,
65 (h) Aggravated child abuse,
66 (i) Aggravated abuse of an elderly person or disabled
67 adult,
68 (j) Aircraft piracy,
69 (k) Unlawful throwing, placing, or discharging of a
70 destructive device or bomb,



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- 71 (l) Carjacking,
72 (m) Home-invasion robbery,
73 (n) Aggravated stalking,
74 (o) Murder of another human being,
75 (p) Aggravated fleeing or eluding with serious bodily
76 injury or death,
77 (q) ~~(p)~~ Resisting an officer with violence to his or her
78 person, or
79 (r) ~~(q)~~ Felony that is an act of terrorism or is in
80 furtherance of an act of terrorism,
81
82 by a person other than the person engaged in the perpetration of
83 or in the attempt to perpetrate such felony, the person
84 perpetrating or attempting to perpetrate such felony is guilty
85 of murder in the second degree, which constitutes a felony of
86 the first degree, punishable by imprisonment for a term of years
87 not exceeding life or as provided in s. 775.082, s. 775.083, or
88 s. 775.084.
89 (4) The unlawful killing of a human being, when perpetrated
90 without any design to effect death, by a person engaged in the
91 perpetration of, or in the attempt to perpetrate, any felony
92 other than any:
93 (a) Trafficking offense prohibited by s. 893.135(1),
94 (b) Arson,
95 (c) Sexual battery,
96 (d) Robbery,
97 (e) Burglary,
98 (f) Kidnapping,
99 (g) Escape,



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- 100 (h) Aggravated child abuse,
101 (i) Aggravated abuse of an elderly person or disabled
102 adult,
103 (j) Aircraft piracy,
104 (k) Unlawful throwing, placing, or discharging of a
105 destructive device or bomb,
106 (l) Unlawful distribution of any substance controlled under
107 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or
108 opium or any synthetic or natural salt, compound, derivative, or
109 preparation of opium by a person 18 years of age or older, when
110 such drug is proven to be the proximate cause of the death of
111 the user,
112 (m) Carjacking,
113 (n) Home-invasion robbery,
114 (o) Aggravated stalking,
115 (p) Murder of another human being,
116 (q) Aggravated fleeing or eluding with serious bodily
117 injury or death,
118 (r) ~~(q)~~ Resisting an officer with violence to his or her
119 person, or
120 (s) ~~(r)~~ Felony that is an act of terrorism or is in
121 furtherance of an act of terrorism,
122
123 is murder in the third degree and constitutes a felony of the
124 second degree, punishable as provided in s. 775.082, s. 775.083,
125 or s. 775.084.
126 (5) As used in this section, the term "terrorism" means an
127 activity that:
128 (a)1. Involves a violent act or an act dangerous to human



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129 life which is a violation of the criminal laws of this state or
130 of the United States; or

131 2. Involves a violation of s. 815.06; and

132 (b) Is intended to:

133 1. Intimidate, injure, or coerce a civilian population;

134 2. Influence the policy of a government by intimidation or
135 coercion; or

136 3. Affect the conduct of government through destruction of
137 property, assassination, murder, kidnapping, or aircraft piracy.

138 Section 3. Paragraphs (h) and (i) of subsection (3) of
139 section 921.0022, Florida Statutes, are amended to read:

140 921.0022 Criminal Punishment Code; offense severity ranking
141 chart.—

142 (3) OFFENSE SEVERITY RANKING CHART

143 (h) LEVEL 8

144

145

Florida Statute	Felony Degree	Description
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146

316.193	2nd	DUI manslaughter.
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(3) (c) 3.a.

147

316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
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148

327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
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149

499.0051(7)	1st	Knowing trafficking in contraband
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prescription drugs.

150

499.0051(8) 1st Knowing forgery of prescription labels
or prescription drug labels.

151

560.123(8)(b)2. 2nd Failure to report currency or payment
instruments totaling or exceeding
\$20,000, but less than \$100,000 by
money transmitter.

152

560.125(5)(b) 2nd Money transmitter business by
unauthorized person, currency or
payment instruments totaling or
exceeding \$20,000, but less than
\$100,000.

153

655.50(10)(b)2. 2nd Failure to report financial
transactions totaling or exceeding
\$20,000, but less than \$100,000 by
financial institutions.

154

777.03(2)(a) 1st Accessory after the fact, capital
felony.

155

782.04(4) 2nd Killing of human without design when
engaged in act or attempt of any felony
other than arson, sexual battery,
robbery, burglary, kidnapping,
aggravated fleeing or eluding with



serious bodily injury or death,
aircraft piracy, or unlawfully
discharging bomb.

156

782.051(2) 1st Attempted felony murder while
perpetrating or attempting to
perpetrate a felony not enumerated in
s. 782.04(3).

157

782.071(1)(b) 1st Committing vehicular homicide and
failing to render aid or give
information.

158

782.072(2) 1st Committing vessel homicide and failing
to render aid or give information.

159

790.161(3) 1st Discharging a destructive device which
results in bodily harm or property
damage.

160

794.011(5) 2nd Sexual battery, victim 12 years or
over, offender does not use physical
force likely to cause serious injury.

161

794.08(3) 2nd Female genital mutilation, removal of a
victim younger than 18 years of age
from this state.

162

800.04(4) 2nd Lewd or lascivious battery.



163 806.01(1) 1st Maliciously damage dwelling or
structure by fire or explosive,
believing person in structure.

164 810.02(2)(a) 1st,PBL Burglary with assault or battery.

165 810.02(2)(b) 1st,PBL Burglary; armed with explosives or
dangerous weapon.

166 810.02(2)(c) 1st Burglary of a dwelling or structure
causing structural damage or \$1,000 or
more property damage.

167 812.014(2)(a)2. 1st Property stolen; cargo valued at
\$50,000 or more, grand theft in 1st
degree.

168 812.13(2)(b) 1st Robbery with a weapon.

169 812.135(2)(c) 1st Home-invasion robbery, no firearm,
deadly weapon, or other weapon.

170 817.568(6) 2nd Fraudulent use of personal
identification information of an
individual under the age of 18.

171 825.102(2) 1st Aggravated abuse of an elderly person
or disabled adult.



172	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
173	825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
174	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
175	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
176	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
177	860.16	1st	Aircraft piracy.
178	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
179	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).



180 893.13(6)(c) 1st Possess in excess of 10 grams of any
substance specified in s. 893.03(1)(a)
or (b).

181 893.135(1)(a)2. 1st Trafficking in cannabis, more than
2,000 lbs., less than 10,000 lbs.

182 893.135 1st Trafficking in cocaine, more than 200
(1)(b)1.b. grams, less than 400 grams.

183 893.135 1st Trafficking in illegal drugs, more than
(1)(c)1.b. 14 grams, less than 28 grams.

184 893.135 1st Trafficking in phencyclidine, more than
(1)(d)1.b. 200 grams, less than 400 grams.

185 893.135 1st Trafficking in methaqualone, more than
(1)(e)1.b. 5 kilograms, less than 25 kilograms.

186 893.135 1st Trafficking in amphetamine, more than
(1)(f)1.b. 28 grams, less than 200 grams.

187 893.135 1st Trafficking in flunitrazepam, 14 grams
(1)(g)1.b. or more, less than 28 grams.

188 893.135 1st Trafficking in gamma-hydroxybutyric
(1)(h)1.b. acid (GHB), 5 kilograms or more, less
than 10 kilograms.



189	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
190	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
191	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
192	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
193	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
194	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
195	896.101(5) (b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
196	896.104(4) (a) 2.	2nd	Structuring transactions to evade



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reporting or registration requirements,
financial transactions totaling or
exceeding \$20,000 but less than
\$100,000.

197
198
199

(i) LEVEL 9

200
201
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203
204
205

Florida Statute	Felony Degree	Description
316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
499.0051 (9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or



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payment instruments totaling or
exceeding \$100,000.

206

655.50(10)(b)3. 1st Failure to report financial
transactions totaling or exceeding
\$100,000 by financial institution.

207

775.0844 1st Aggravated white collar crime.

208

782.04(1) 1st Attempt, conspire, or solicit to
commit premeditated murder.

209

782.04(3) 1st,PBL Accomplice to murder in connection
with arson, sexual battery, robbery,
burglary, aggravated fleeing or
eluding with serious bodily injury or
death, and other specified felonies.

210

782.051(1) 1st Attempted felony murder while
perpetrating or attempting to
perpetrate a felony enumerated in s.
782.04(3).

211

782.07(2) 1st Aggravated manslaughter of an elderly
person or disabled adult.

212

787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or reward
or as a shield or hostage.

213



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214

787.01(1)(a)2. 1st,PBL Kidnapping with intent to commit or facilitate commission of any felony.

215

787.01(1)(a)4. 1st,PBL Kidnapping with intent to interfere with performance of any governmental or political function.

216

787.02(3)(a) 1st False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

217

790.161 1st Attempted capital destructive device offense.

218

790.166(2) 1st,PBL Possessing, selling, using, or attempting to use a weapon of mass destruction.

219

794.011(2) 1st Attempted sexual battery; victim less than 12 years of age.

220

794.011(2) Life Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.

794.011(4) 1st Sexual battery; victim 12 years or



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older, certain circumstances.

221

794.011(8)(b) 1st Sexual battery; engage in sexual
conduct with minor 12 to 18 years by
person in familial or custodial
authority.

222

794.08(2) 1st Female genital mutilation; victim
younger than 18 years of age.

223

800.04(5)(b) Life Lewd or lascivious molestation; victim
less than 12 years; offender 18 years
or older.

224

812.13(2)(a) 1st,PBL Robbery with firearm or other deadly
weapon.

225

812.133(2)(a) 1st,PBL Carjacking; firearm or other deadly
weapon.

226

812.135(2)(b) 1st Home-invasion robbery with weapon.

227

817.568(7) 2nd,
PBL Fraudulent use of personal
identification information of an
individual under the age of 18 by his
or her parent, legal guardian, or
person exercising custodial authority.

228

827.03(2) 1st Aggravated child abuse.



229	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
230	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
231	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
232	893.135	1st	Attempted capital trafficking offense.
233	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
234	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
235	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
236	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
237	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.



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238 893.135 1st Trafficking in amphetamine, more than
(1) (f) 1.c. 200 grams.

239 893.135 1st Trafficking in gamma-hydroxybutyric
(1) (h) 1.c. acid (GHB), 10 kilograms or more.

240 893.135 1st Trafficking in 1,4-Butanediol, 10
(1) (j) 1.c. kilograms or more.

241 893.135 1st Trafficking in Phenethylamines, 400
(1) (k) 2.c. grams or more.

242 896.101 (5) (c) 1st Money laundering, financial
instruments totaling or exceeding
\$100,000.

243 896.104 (4) (a) 3. 1st Structuring transactions to evade
reporting or registration
requirements, financial transactions
totaling or exceeding \$100,000.

244
245 Section 4. For the purpose of incorporating the amendment
246 made by this act to section 782.04, Florida Statutes, in a
247 reference thereto, section 775.0823, Florida Statutes, is
248 reenacted to read:

249 775.0823 Violent offenses committed against law enforcement
250 officers, correctional officers, state attorneys, assistant
251 state attorneys, justices, or judges.—The Legislature does



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252 hereby provide for an increase and certainty of penalty for any
253 person convicted of a violent offense against any law
254 enforcement or correctional officer, as defined in s. 943.10(1),
255 (2), (3), (6), (7), (8), or (9); against any state attorney
256 elected pursuant to s. 27.01 or assistant state attorney
257 appointed under s. 27.181; or against any justice or judge of a
258 court described in Art. V of the State Constitution, which
259 offense arises out of or in the scope of the officer's duty as a
260 law enforcement or correctional officer, the state attorney's or
261 assistant state attorney's duty as a prosecutor or investigator,
262 or the justice's or judge's duty as a judicial officer, as
263 follows:

264 (1) For murder in the first degree as described in s.
265 782.04(1), if the death sentence is not imposed, a sentence of
266 imprisonment for life without eligibility for release.

267 (2) For attempted murder in the first degree as described
268 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,
269 or s. 775.084.

270 (3) For attempted felony murder as described in s. 782.051,
271 a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

272 (4) For murder in the second degree as described in s.
273 782.04(2) and (3), a sentence pursuant to s. 775.082, s.
274 775.083, or s. 775.084.

275 (5) For attempted murder in the second degree as described
276 in s. 782.04(2) and (3), a sentence pursuant to s. 775.082, s.
277 775.083, or s. 775.084.

278 (6) For murder in the third degree as described in s.
279 782.04(4), a sentence pursuant to s. 775.082, s. 775.083, or s.
280 775.084.



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281 (7) For attempted murder in the third degree as described
282 in s. 782.04(4), a sentence pursuant to s. 775.082, s. 775.083,
283 or s. 775.084.

284 (8) For manslaughter as described in s. 782.07 during the
285 commission of a crime, a sentence pursuant to s. 775.082, s.
286 775.083, or s. 775.084.

287 (9) For kidnapping as described in s. 787.01, a sentence
288 pursuant to s. 775.082, s. 775.083, or s. 775.084.

289 (10) For aggravated battery as described in s. 784.045, a
290 sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

291 (11) For aggravated assault as described in s. 784.021, a
292 sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

293
294 Notwithstanding the provisions of s. 948.01, with respect to any
295 person who is found to have violated this section, adjudication
296 of guilt or imposition of sentence shall not be suspended,
297 deferred, or withheld.

298 Section 5. For the purpose of incorporating the amendment
299 made by this act to section 782.04, Florida Statutes, in a
300 reference thereto, section 782.051, Florida Statutes, is
301 reenacted to read:

302 782.051 Attempted felony murder.—

303 (1) Any person who perpetrates or attempts to perpetrate
304 any felony enumerated in s. 782.04(3) and who commits, aids, or
305 abets an intentional act that is not an essential element of the
306 felony and that could, but does not, cause the death of another
307 commits a felony of the first degree, punishable by imprisonment
308 for a term of years not exceeding life, or as provided in s.
309 775.082, s. 775.083, or s. 775.084, which is an offense ranked



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310 in level 9 of the Criminal Punishment Code. Victim injury points
311 shall be scored under this subsection.

312 (2) Any person who perpetrates or attempts to perpetrate
313 any felony other than a felony enumerated in s. 782.04(3) and
314 who commits, aids, or abets an intentional act that is not an
315 essential element of the felony and that could, but does not,
316 cause the death of another commits a felony of the first degree,
317 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
318 which is an offense ranked in level 8 of the Criminal Punishment
319 Code. Victim injury points shall be scored under this
320 subsection.

321 (3) When a person is injured during the perpetration of or
322 the attempt to perpetrate any felony enumerated in s. 782.04(3)
323 by a person other than the person engaged in the perpetration of
324 or the attempt to perpetrate such felony, the person
325 perpetrating or attempting to perpetrate such felony commits a
326 felony of the second degree, punishable as provided in s.
327 775.082, s. 775.083, or s. 775.084, which is an offense ranked
328 in level 7 of the Criminal Punishment Code. Victim injury points
329 shall be scored under this subsection.

330 Section 6. For the purpose of incorporating the amendment
331 made by this act to section 782.04, Florida Statutes, in a
332 reference thereto, section 782.065, Florida Statutes, is
333 reenacted to read:

334 782.065 Murder; law enforcement officer.—Notwithstanding
335 ss. 775.082, 775.0823, 782.04, 782.051, and chapter 921, a
336 defendant shall be sentenced to life imprisonment without
337 eligibility for release upon findings by the trier of fact that,
338 beyond a reasonable doubt:



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339 (1) The defendant committed murder in the first degree in
340 violation of s. 782.04(1) and a death sentence was not imposed;
341 murder in the second or third degree in violation of s.
342 782.04(2), (3), or (4); attempted murder in the first or second
343 degree in violation of s. 782.04(1)(a)1. or (2); or attempted
344 felony murder in violation of s. 782.051; and

345 (2) The victim of any offense described in subsection (1)
346 was a law enforcement officer, part-time law enforcement
347 officer, or auxiliary law enforcement officer, as those terms
348 are defined in s. 943.10, engaged in the lawful performance of a
349 legal duty.

350 Section 7. For the purpose of incorporating the amendment
351 made by this act to section 782.04, Florida Statutes, in a
352 reference thereto, subsection (3) of section 947.146, Florida
353 Statutes, is reenacted to read:

354 947.146 Control Release Authority.—

355 (3) Within 120 days prior to the date the state
356 correctional system is projected pursuant to s. 216.136 to
357 exceed 99 percent of total capacity, the authority shall
358 determine eligibility for and establish a control release date
359 for an appropriate number of parole ineligible inmates committed
360 to the department and incarcerated within the state who have
361 been determined by the authority to be eligible for
362 discretionary early release pursuant to this section. In
363 establishing control release dates, it is the intent of the
364 Legislature that the authority prioritize consideration of
365 eligible inmates closest to their tentative release date. The
366 authority shall rely upon commitment data on the offender
367 information system maintained by the department to initially



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368 identify inmates who are to be reviewed for control release
369 consideration. The authority may use a method of objective risk
370 assessment in determining if an eligible inmate should be
371 released. Such assessment shall be a part of the department's
372 management information system. However, the authority shall have
373 sole responsibility for determining control release eligibility,
374 establishing a control release date, and effectuating the
375 release of a sufficient number of inmates to maintain the inmate
376 population between 99 percent and 100 percent of total capacity.
377 Inmates who are ineligible for control release are inmates who
378 are parole eligible or inmates who:

379 (a) Are serving a sentence that includes a mandatory
380 minimum provision for a capital offense or drug trafficking
381 offense and have not served the number of days equal to the
382 mandatory minimum term less any jail-time credit awarded by the
383 court;

384 (b) Are serving the mandatory minimum portion of a sentence
385 enhanced under s. 775.087(2) or (3), or s. 784.07(3);

386 (c) Are convicted, or have been previously convicted, of
387 committing or attempting to commit sexual battery, incest, or
388 any of the following lewd or indecent assaults or acts:
389 masturbating in public; exposing the sexual organs in a
390 perverted manner; or nonconsensual handling or fondling of the
391 sexual organs of another person;

392 (d) Are convicted, or have been previously convicted, of
393 committing or attempting to commit assault, aggravated assault,
394 battery, or aggravated battery, and a sex act was attempted or
395 completed during commission of such offense;

396 (e) Are convicted, or have been previously convicted, of



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397 committing or attempting to commit kidnapping, burglary, or
398 murder, and the offense was committed with the intent to commit
399 sexual battery or a sex act was attempted or completed during
400 commission of the offense;

401 (f) Are convicted, or have been previously convicted, of
402 committing or attempting to commit false imprisonment upon a
403 child under the age of 13 and, in the course of committing the
404 offense, the inmate committed aggravated child abuse, sexual
405 battery against the child, or a lewd or lascivious offense
406 committed upon or in the presence of a person less than 16 years
407 of age;

408 (g) Are sentenced, have previously been sentenced, or have
409 been sentenced at any time under s. 775.084, or have been
410 sentenced at any time in another jurisdiction as a habitual
411 offender;

412 (h) Are convicted, or have been previously convicted, of
413 committing or attempting to commit assault, aggravated assault,
414 battery, aggravated battery, kidnapping, manslaughter, or murder
415 against an officer as defined in s. 943.10(1), (2), (3), (6),
416 (7), (8), or (9); against a state attorney or assistant state
417 attorney; or against a justice or judge of a court described in
418 Art. V of the State Constitution; or against an officer, judge,
419 or state attorney employed in a comparable position by any other
420 jurisdiction; or

421 (i) Are convicted, or have been previously convicted, of
422 committing or attempting to commit murder in the first, second,
423 or third degree under s. 782.04(1), (2), (3), or (4), or have
424 ever been convicted of any degree of murder or attempted murder
425 in another jurisdiction;



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426 (j) Are convicted, or have been previously convicted, of
427 DUI manslaughter under s. 316.193(3)(c)3., and are sentenced, or
428 have been sentenced at any time, as a habitual offender for such
429 offense, or have been sentenced at any time in another
430 jurisdiction as a habitual offender for such offense;

431 (k)1. Are serving a sentence for an offense committed on or
432 after January 1, 1994, for a violation of the Law Enforcement
433 Protection Act under s. 775.0823(2), (3), (4), (5), or (6), and
434 the subtotal of the offender's sentence points is multiplied
435 pursuant to former s. 921.0014 or s. 921.0024;

436 2. Are serving a sentence for an offense committed on or
437 after October 1, 1995, for a violation of the Law Enforcement
438 Protection Act under s. 775.0823(2), (3), (4), (5), (6), (7),
439 (8), or (9), and the subtotal of the offender's sentence points
440 is multiplied pursuant to former s. 921.0014 or s. 921.0024;

441 (l) Are serving a sentence for an offense committed on or
442 after January 1, 1994, for possession of a firearm,
443 semiautomatic firearm, or machine gun in which additional points
444 are added to the subtotal of the offender's sentence points
445 pursuant to former s. 921.0014 or s. 921.0024; or

446 (m) Are convicted, or have been previously convicted, of
447 committing or attempting to commit manslaughter, kidnapping,
448 robbery, carjacking, home-invasion robbery, or a burglary under
449 s. 810.02(2).

450
451 In making control release eligibility determinations under this
452 subsection, the authority may rely on any document leading to or
453 generated during the course of the criminal proceedings,
454 including, but not limited to, any presentence or postsentence



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455 investigation or any information contained in arrest reports
456 relating to circumstances of the offense.

457 Section 8. This act shall take effect October 1, 2012.

458

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

460 And the title is amended as follows:

461 Delete everything before the enacting clause
462 and insert:

463 A bill to be entitled

464 An act relating to murder; amending s. 782.04, F.S.;
465 providing that the unlawful killing of a human being
466 when committed by a person engaged in the perpetration
467 of, or in the attempt to perpetrate, the offense of
468 aggravated fleeing or eluding with serious bodily
469 injury or death, is murder of a specified degree,
470 dependent upon certain circumstances; amending s.
471 921.0022, F.S.; revising provisions of the offense
472 severity ranking chart of the Criminal Punishment Code
473 to conform to changes made by the act; reenacting ss.
474 775.0823, 782.051, 782.065, and 947.146(3), F.S.,
475 relating to violent offenses committed against law
476 enforcement officers and others, attempted felony
477 murder, murder of a law enforcement officer, and the
478 Control Release Authority, respectively, to
479 incorporate the amendments made to s. 782.04, F.S., in
480 references thereto; providing an effective date.

By Senator Fasano

11-00671-12

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1 A bill to be entitled
 2 An act relating to murder; amending s. 782.04, F.S.;
 3 providing that the unlawful killing of a human being
 4 when committed by a person engaged in the perpetration
 5 of, or in the attempt to perpetrate, the offense of
 6 aggravated fleeing or eluding, is murder of a
 7 specified degree, dependent upon certain
 8 circumstances; amending s. 921.0022, F.S.; revising
 9 provisions of the offense severity ranking chart of
 10 the Criminal Punishment Code to conform to changes
 11 made by the act; reenacting ss. 775.0823, 782.051,
 12 782.065, and 947.146(3), F.S., relating to violent
 13 offenses committed against law enforcement officers
 14 and others, attempted felony murder, murder of a law
 15 enforcement officer, and the Control Release
 16 Authority, respectively, to incorporate the amendments
 17 made to s. 782.04, F.S., in references thereto;
 18 providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Section 782.04, Florida Statutes, is amended to
 23 read:

24 782.04 Murder.—

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

- 26 1. When perpetrated from a premeditated design to effect
 27 the death of the person killed or any human being;
 28 2. When committed by a person engaged in the perpetration
 29 of, or in the attempt to perpetrate, any:

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- 30 a. Trafficking offense prohibited by s. 893.135(1),
 31 b. Arson,
 32 c. Sexual battery,
 33 d. Robbery,
 34 e. Burglary,
 35 f. Kidnapping,
 36 g. Escape,
 37 h. Aggravated child abuse,
 38 i. Aggravated abuse of an elderly person or disabled adult,
 39 j. Aircraft piracy,
 40 k. Unlawful throwing, placing, or discharging of a
 41 destructive device or bomb,
 42 l. Carjacking,
 43 m. Home-invasion robbery,
 44 n. Aggravated stalking,
 45 o. Murder of another human being,
 46 p. Resisting an officer with violence to his or her person,
 47 q. Aggravated fleeing or eluding,
 48 ~~r.~~ Felony that is an act of terrorism or is in
 49 furtherance of an act of terrorism; or
 50 3. Which resulted from the unlawful distribution of any
 51 substance controlled under s. 893.03(1), cocaine as described in
 52 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
 53 compound, derivative, or preparation of opium, or methadone by a
 54 person 18 years of age or older, when such drug is proven to be
 55 the proximate cause of the death of the user,
 56
 57 is murder in the first degree and constitutes a capital felony,
 58 punishable as provided in s. 775.082.

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59 (b) In all cases under this section, the procedure set
60 forth in s. 921.141 shall be followed in order to determine
61 sentence of death or life imprisonment.

62 (2) The unlawful killing of a human being, when perpetrated
63 by any act imminently dangerous to another and evincing a
64 depraved mind regardless of human life, although without any
65 premeditated design to effect the death of any particular
66 individual, is murder in the second degree and constitutes a
67 felony of the first degree, punishable by imprisonment for a
68 term of years not exceeding life or as provided in s. 775.082,
69 s. 775.083, or s. 775.084.

70 (3) When a human being ~~person~~ is killed during ~~in~~ the
71 perpetration of, or during ~~in~~ the attempt to perpetrate, any:

- 72 (a) Trafficking offense prohibited by s. 893.135(1),
- 73 (b) Arson,
- 74 (c) Sexual battery,
- 75 (d) Robbery,
- 76 (e) Burglary,
- 77 (f) Kidnapping,
- 78 (g) Escape,
- 79 (h) Aggravated child abuse,
- 80 (i) Aggravated abuse of an elderly person or disabled
81 adult,
- 82 (j) Aircraft piracy,
- 83 (k) Unlawful throwing, placing, or discharging of a
84 destructive device or bomb,
- 85 (l) Carjacking,
- 86 (m) Home-invasion robbery,
- 87 (n) Aggravated stalking,

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88 (c) Murder of another human being,
89 (p) Aggravated fleeing or eluding,

90 (q) ~~(p)~~ Resisting an officer with violence to his or her
91 person, or

92 (r) ~~(q)~~ Felony that is an act of terrorism or is in
93 furtherance of an act of terrorism,

94
95 by a person other than the person engaged in the perpetration of
96 or in the attempt to perpetrate such felony, the person
97 perpetrating or attempting to perpetrate such felony is guilty
98 of murder in the second degree, which constitutes a felony of
99 the first degree, punishable by imprisonment for a term of years
100 not exceeding life or as provided in s. 775.082, s. 775.083, or
101 s. 775.084.

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

- 106 (a) Trafficking offense prohibited by s. 893.135(1),
- 107 (b) Arson,
- 108 (c) Sexual battery,
- 109 (d) Robbery,
- 110 (e) Burglary,
- 111 (f) Kidnapping,
- 112 (g) Escape,
- 113 (h) Aggravated child abuse,
- 114 (i) Aggravated abuse of an elderly person or disabled
115 adult,
- 116 (j) Aircraft piracy,

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117 (k) Unlawful throwing, placing, or discharging of a
 118 destructive device or bomb,
 119 (l) Unlawful distribution of any substance controlled under
 120 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or
 121 opium or any synthetic or natural salt, compound, derivative, or
 122 preparation of opium by a person 18 years of age or older, when
 123 such drug is proven to be the proximate cause of the death of
 124 the user,
 125 (m) Carjacking,
 126 (n) Home-invasion robbery,
 127 (o) Aggravated stalking,
 128 (p) Murder of another human being,
 129 (q) Aggravated fleeing or eluding,
 130 (r)~~(q)~~ Resisting an officer with violence to his or her
 131 person, or
 132 (s)~~(r)~~ Felony that is an act of terrorism or is in
 133 furtherance of an act of terrorism,
 134
 135 is murder in the third degree and constitutes a felony of the
 136 second degree, punishable as provided in s. 775.082, s. 775.083,
 137 or s. 775.084.
 138 (5) As used in this section, the term "terrorism" means an
 139 activity that:
 140 (a)1. Involves a violent act or an act dangerous to human
 141 life which is a violation of the criminal laws of this state or
 142 of the United States; or
 143 2. Involves a violation of s. 815.06; and
 144 (b) Is intended to:
 145 1. Intimidate, injure, or coerce a civilian population;

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146 2. Influence the policy of a government by intimidation or
 147 coercion; or
 148 3. Affect the conduct of government through destruction of
 149 property, assassination, murder, kidnapping, or aircraft piracy.
 150 Section 2. Paragraphs (h) and (i) of subsection (3) of
 151 section 921.0022, Florida Statutes, are amended to read:
 152 921.0022 Criminal Punishment Code; offense severity ranking
 153 chart.-
 154 (3) OFFENSE SEVERITY RANKING CHART
 155 (h) LEVEL 8
 156

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
560.123(8)(b)2.	2nd	Failure to report currency or payment

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 instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
 163 560.125(5)(b) 2nd Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
 164 655.50(10)(b)2. 2nd Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
 165 777.03(2)(a) 1st Accessory after the fact, capital felony.
 166 782.04(4) 2nd Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding, aircraft piracy, or unlawfully discharging bomb.
 167 782.051(2) 1st Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).

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 168 782.071(1)(b) 1st Committing vehicular homicide and failing to render aid or give information.
 169 782.072(2) 1st Committing vessel homicide and failing to render aid or give information.
 170 790.161(3) 1st Discharging a destructive device which results in bodily harm or property damage.
 171 794.011(5) 2nd Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
 172 794.08(3) 2nd Female genital mutilation, removal of a victim younger than 18 years of age from this state.
 173 800.04(4) 2nd Lewd or lascivious battery.
 174 806.01(1) 1st Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
 175 810.02(2)(a) 1st,PBL Burglary with assault or battery.
 176 810.02(2)(b) 1st,PBL Burglary; armed with explosives or

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 177 dangerous weapon.
 810.02(2)(c) 1st Burglary of a dwelling or structure
 causing structural damage or \$1,000 or
 178 more property damage.
 812.014(2)(a)2. 1st Property stolen; cargo valued at
 \$50,000 or more, grand theft in 1st
 179 degree.
 812.13(2)(b) 1st Robbery with a weapon.
 180 812.135(2)(c) 1st Home-invasion robbery, no firearm,
 deadly weapon, or other weapon.
 181 817.568(6) 2nd Fraudulent use of personal
 identification information of an
 individual under the age of 18.
 182 825.102(2) 1st Aggravated abuse of an elderly person
 or disabled adult.
 183 825.1025(2) 2nd Lewd or lascivious battery upon an
 elderly person or disabled adult.
 184 825.103(2)(a) 1st Exploiting an elderly person or
 disabled adult and property is valued
 185 at \$100,000 or more.

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 837.02(2) 2nd Perjury in official proceedings
 relating to prosecution of a capital
 186 felony.
 837.021(2) 2nd Making contradictory statements in
 official proceedings relating to
 187 prosecution of a capital felony.
 860.121(2)(c) 1st Shooting at or throwing any object in
 path of railroad vehicle resulting in
 188 great bodily harm.
 860.16 1st Aircraft piracy.
 189 893.13(1)(b) 1st Sell or deliver in excess of 10 grams
 of any substance specified in s.
 893.03(1)(a) or (b).
 190 893.13(2)(b) 1st Purchase in excess of 10 grams of any
 substance specified in s. 893.03(1)(a)
 or (b).
 191 893.13(6)(c) 1st Possess in excess of 10 grams of any
 substance specified in s. 893.03(1)(a)
 or (b).
 192 893.135(1)(a)2. 1st Trafficking in cannabis, more than
 193 2,000 lbs., less than 10,000 lbs.

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194	893.135	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
	(1) (b) 1.b.		
195	893.135	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
	(1) (c) 1.b.		
196	893.135	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
	(1) (d) 1.b.		
197	893.135	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
	(1) (e) 1.b.		
198	893.135	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
	(1) (f) 1.b.		
199	893.135	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
	(1) (g) 1.b.		
200	893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
	(1) (h) 1.b.		
201	893.135	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
	(1) (j) 1.b.		
202	893.135	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
	(1) (k) 2.b.		

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203	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
204	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
205	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
206	896.101(5) (b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
207	896.104(4) (a) 2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
208			
209	(i) LEVEL 9		
210			

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	Florida Statute	Felony Degree	Description
211	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
212	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
213	409.920 (2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
214	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
215	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
216	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
217	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
218			

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219	775.0844	1st	Aggravated white collar crime.
220	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
221	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, <u>aggravated fleeing or eluding</u> , and other specified felonies.
222	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
223	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
224	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
225	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
226	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
	787.02(3)(a)	1st	False imprisonment; child under age

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13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

227 790.161 1st Attempted capital destructive device offense.

228 790.166(2) 1st,PBL Possessing, selling, using, or attempting to use a weapon of mass destruction.

229 794.011(2) 1st Attempted sexual battery; victim less than 12 years of age.

230 794.011(2) Life Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.

231 794.011(4) 1st Sexual battery; victim 12 years or older, certain circumstances.

232 794.011(8)(b) 1st Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.

233 794.08(2) 1st Female genital mutilation; victim

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younger than 18 years of age.

234 800.04(5)(b) Life Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.

235 812.13(2)(a) 1st,PBL Robbery with firearm or other deadly weapon.

236 812.133(2)(a) 1st,PBL Carjacking; firearm or other deadly weapon.

237 812.135(2)(b) 1st Home-invasion robbery with weapon.

238 817.568(7) 2nd, PBL Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.

239 827.03(2) 1st Aggravated child abuse.

240 847.0145(1) 1st Selling, or otherwise transferring custody or control, of a minor.

241 847.0145(2) 1st Purchasing, or otherwise obtaining custody or control, of a minor.

242 859.01 1st Poisoning or introducing bacteria,

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radioactive materials, viruses, or
chemical compounds into food, drink,
medicine, or water with intent to kill
or injure another person.

243 893.135 1st Attempted capital trafficking offense.

244 893.135(1)(a)3. 1st Trafficking in cannabis, more than
10,000 lbs.

245 893.135 1st Trafficking in cocaine, more than 400
(1)(b)1.c. grams, less than 150 kilograms.

246 893.135 1st Trafficking in illegal drugs, more
(1)(c)1.c. than 28 grams, less than 30 kilograms.

247 893.135 1st Trafficking in phencyclidine, more
(1)(d)1.c. than 400 grams.

248 893.135 1st Trafficking in methaqualone, more than
(1)(e)1.c. 25 kilograms.

249 893.135 1st Trafficking in amphetamine, more than
(1)(f)1.c. 200 grams.

250 893.135 1st Trafficking in gamma-hydroxybutyric
(1)(h)1.c. acid (GHB), 10 kilograms or more.

251 893.135 1st Trafficking in 1,4-Butanediol, 10

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(1)(j)1.c. kilograms or more.

252 893.135 1st Trafficking in Phenethylamines, 400
(1)(k)2.c. grams or more.

253 896.101(5)(c) 1st Money laundering, financial
instruments totaling or exceeding
\$100,000.

254 896.104(4)(a)3. 1st Structuring transactions to evade
reporting or registration
requirements, financial transactions
totaling or exceeding \$100,000.

255

256 Section 3. For the purpose of incorporating the amendment
257 made by this act to section 782.04, Florida Statutes, in a
258 reference thereto, section 775.0823, Florida Statutes, is
259 reenacted to read:

260 775.0823 Violent offenses committed against law enforcement
261 officers, correctional officers, state attorneys, assistant
262 state attorneys, justices, or judges.—The Legislature does
263 hereby provide for an increase and certainty of penalty for any
264 person convicted of a violent offense against any law
265 enforcement or correctional officer, as defined in s. 943.10(1),
266 (2), (3), (6), (7), (8), or (9); against any state attorney
267 elected pursuant to s. 27.01 or assistant state attorney
268 appointed under s. 27.181; or against any justice or judge of a
269 court described in Art. V of the State Constitution, which
270 offense arises out of or in the scope of the officer's duty as a

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271 law enforcement or correctional officer, the state attorney's or
272 assistant state attorney's duty as a prosecutor or investigator,
273 or the justice's or judge's duty as a judicial officer, as
274 follows:

275 (1) For murder in the first degree as described in s.
276 782.04(1), if the death sentence is not imposed, a sentence of
277 imprisonment for life without eligibility for release.

278 (2) For attempted murder in the first degree as described
279 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,
280 or s. 775.084.

281 (3) For attempted felony murder as described in s. 782.051,
282 a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

283 (4) For murder in the second degree as described in s.
284 782.04(2) and (3), a sentence pursuant to s. 775.082, s.
285 775.083, or s. 775.084.

286 (5) For attempted murder in the second degree as described
287 in s. 782.04(2) and (3), a sentence pursuant to s. 775.082, s.
288 775.083, or s. 775.084.

289 (6) For murder in the third degree as described in s.
290 782.04(4), a sentence pursuant to s. 775.082, s. 775.083, or s.
291 775.084.

292 (7) For attempted murder in the third degree as described
293 in s. 782.04(4), a sentence pursuant to s. 775.082, s. 775.083,
294 or s. 775.084.

295 (8) For manslaughter as described in s. 782.07 during the
296 commission of a crime, a sentence pursuant to s. 775.082, s.
297 775.083, or s. 775.084.

298 (9) For kidnapping as described in s. 787.01, a sentence
299 pursuant to s. 775.082, s. 775.083, or s. 775.084.

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300 (10) For aggravated battery as described in s. 784.045, a
301 sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

302 (11) For aggravated assault as described in s. 784.021, a
303 sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

304
305 Notwithstanding the provisions of s. 948.01, with respect to any
306 person who is found to have violated this section, adjudication
307 of guilt or imposition of sentence shall not be suspended,
308 deferred, or withheld.

309 Section 4. For the purpose of incorporating the amendment
310 made by this act to section 782.04, Florida Statutes, in a
311 reference thereto, section 782.051, Florida Statutes, is
312 reenacted to read:

313 782.051 Attempted felony murder.—

314 (1) Any person who perpetrates or attempts to perpetrate
315 any felony enumerated in s. 782.04(3) and who commits, aids, or
316 abets an intentional act that is not an essential element of the
317 felony and that could, but does not, cause the death of another
318 commits a felony of the first degree, punishable by imprisonment
319 for a term of years not exceeding life, or as provided in s.
320 775.082, s. 775.083, or s. 775.084, which is an offense ranked
321 in level 9 of the Criminal Punishment Code. Victim injury points
322 shall be scored under this subsection.

323 (2) Any person who perpetrates or attempts to perpetrate
324 any felony other than a felony enumerated in s. 782.04(3) and
325 who commits, aids, or abets an intentional act that is not an
326 essential element of the felony and that could, but does not,
327 cause the death of another commits a felony of the first degree,
328 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,

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 329 which is an offense ranked in level 8 of the Criminal Punishment
 330 Code. Victim injury points shall be scored under this
 331 subsection.

332 (3) When a person is injured during the perpetration of or
 333 the attempt to perpetrate any felony enumerated in s. 782.04(3)
 334 by a person other than the person engaged in the perpetration of
 335 or the attempt to perpetrate such felony, the person
 336 perpetrating or attempting to perpetrate such felony commits a
 337 felony of the second degree, punishable as provided in s.
 338 775.082, s. 775.083, or s. 775.084, which is an offense ranked
 339 in level 7 of the Criminal Punishment Code. Victim injury points
 340 shall be scored under this subsection.

341 Section 5. For the purpose of incorporating the amendment
 342 made by this act to section 782.04, Florida Statutes, in a
 343 reference thereto, section 782.065, Florida Statutes, is
 344 reenacted to read:

345 782.065 Murder; law enforcement officer.—Notwithstanding
 346 ss. 775.082, 775.0823, 782.04, 782.051, and chapter 921, a
 347 defendant shall be sentenced to life imprisonment without
 348 eligibility for release upon findings by the trier of fact that,
 349 beyond a reasonable doubt:

350 (1) The defendant committed murder in the first degree in
 351 violation of s. 782.04(1) and a death sentence was not imposed;
 352 murder in the second or third degree in violation of s.
 353 782.04(2), (3), or (4); attempted murder in the first or second
 354 degree in violation of s. 782.04(1)(a)1. or (2); or attempted
 355 felony murder in violation of s. 782.051; and

356 (2) The victim of any offense described in subsection (1)
 357 was a law enforcement officer, part-time law enforcement

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 358 officer, or auxiliary law enforcement officer, as those terms
 359 are defined in s. 943.10, engaged in the lawful performance of a
 360 legal duty.

361 Section 6. For the purpose of incorporating the amendment
 362 made by this act to section 782.04, Florida Statutes, in a
 363 reference thereto, subsection (3) of section 947.146, Florida
 364 Statutes, is reenacted to read:

365 947.146 Control Release Authority.—

366 (3) Within 120 days prior to the date the state
 367 correctional system is projected pursuant to s. 216.136 to
 368 exceed 99 percent of total capacity, the authority shall
 369 determine eligibility for and establish a control release date
 370 for an appropriate number of parole ineligible inmates committed
 371 to the department and incarcerated within the state who have
 372 been determined by the authority to be eligible for
 373 discretionary early release pursuant to this section. In
 374 establishing control release dates, it is the intent of the
 375 Legislature that the authority prioritize consideration of
 376 eligible inmates closest to their tentative release date. The
 377 authority shall rely upon commitment data on the offender
 378 information system maintained by the department to initially
 379 identify inmates who are to be reviewed for control release
 380 consideration. The authority may use a method of objective risk
 381 assessment in determining if an eligible inmate should be
 382 released. Such assessment shall be a part of the department's
 383 management information system. However, the authority shall have
 384 sole responsibility for determining control release eligibility,
 385 establishing a control release date, and effectuating the
 386 release of a sufficient number of inmates to maintain the inmate

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387 population between 99 percent and 100 percent of total capacity.
 388 Inmates who are ineligible for control release are inmates who
 389 are parole eligible or inmates who:

390 (a) Are serving a sentence that includes a mandatory
 391 minimum provision for a capital offense or drug trafficking
 392 offense and have not served the number of days equal to the
 393 mandatory minimum term less any jail-time credit awarded by the
 394 court;

395 (b) Are serving the mandatory minimum portion of a sentence
 396 enhanced under s. 775.087(2) or (3), or s. 784.07(3);

397 (c) Are convicted, or have been previously convicted, of
 398 committing or attempting to commit sexual battery, incest, or
 399 any of the following lewd or indecent assaults or acts:
 400 masturbating in public; exposing the sexual organs in a
 401 perverted manner; or nonconsensual handling or fondling of the
 402 sexual organs of another person;

403 (d) Are convicted, or have been previously convicted, of
 404 committing or attempting to commit assault, aggravated assault,
 405 battery, or aggravated battery, and a sex act was attempted or
 406 completed during commission of such offense;

407 (e) Are convicted, or have been previously convicted, of
 408 committing or attempting to commit kidnapping, burglary, or
 409 murder, and the offense was committed with the intent to commit
 410 sexual battery or a sex act was attempted or completed during
 411 commission of the offense;

412 (f) Are convicted, or have been previously convicted, of
 413 committing or attempting to commit false imprisonment upon a
 414 child under the age of 13 and, in the course of committing the
 415 offense, the inmate committed aggravated child abuse, sexual

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416 battery against the child, or a lewd or lascivious offense
 417 committed upon or in the presence of a person less than 16 years
 418 of age;

419 (g) Are sentenced, have previously been sentenced, or have
 420 been sentenced at any time under s. 775.084, or have been
 421 sentenced at any time in another jurisdiction as a habitual
 422 offender;

423 (h) Are convicted, or have been previously convicted, of
 424 committing or attempting to commit assault, aggravated assault,
 425 battery, aggravated battery, kidnapping, manslaughter, or murder
 426 against an officer as defined in s. 943.10(1), (2), (3), (6),
 427 (7), (8), or (9); against a state attorney or assistant state
 428 attorney; or against a justice or judge of a court described in
 429 Art. V of the State Constitution; or against an officer, judge,
 430 or state attorney employed in a comparable position by any other
 431 jurisdiction; or

432 (i) Are convicted, or have been previously convicted, of
 433 committing or attempting to commit murder in the first, second,
 434 or third degree under s. 782.04(1), (2), (3), or (4), or have
 435 ever been convicted of any degree of murder or attempted murder
 436 in another jurisdiction;

437 (j) Are convicted, or have been previously convicted, of
 438 DUI manslaughter under s. 316.193(3)(c)3., and are sentenced, or
 439 have been sentenced at any time, as a habitual offender for such
 440 offense, or have been sentenced at any time in another
 441 jurisdiction as a habitual offender for such offense;

442 (k)1. Are serving a sentence for an offense committed on or
 443 after January 1, 1994, for a violation of the Law Enforcement
 444 Protection Act under s. 775.0823(2), (3), (4), (5), or (6), and

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445 the subtotal of the offender's sentence points is multiplied
446 pursuant to former s. 921.0014 or s. 921.0024;

447 2. Are serving a sentence for an offense committed on or
448 after October 1, 1995, for a violation of the Law Enforcement
449 Protection Act under s. 775.0823(2), (3), (4), (5), (6), (7),
450 (8), or (9), and the subtotal of the offender's sentence points
451 is multiplied pursuant to former s. 921.0014 or s. 921.0024;

452 (1) Are serving a sentence for an offense committed on or
453 after January 1, 1994, for possession of a firearm,
454 semiautomatic firearm, or machine gun in which additional points
455 are added to the subtotal of the offender's sentence points
456 pursuant to former s. 921.0014 or s. 921.0024; or

457 (m) Are convicted, or have been previously convicted, of
458 committing or attempting to commit manslaughter, kidnapping,
459 robbery, carjacking, home-invasion robbery, or a burglary under
460 s. 810.02(2).

461
462 In making control release eligibility determinations under this
463 subsection, the authority may rely on any document leading to or
464 generated during the course of the criminal proceedings,
465 including, but not limited to, any presentence or postsentence
466 investigation or any information contained in arrest reports
467 relating to circumstances of the offense.

468 Section 7. This act shall take effect October 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/25/12

Meeting Date

Topic Murder

Bill Number SB 872
(if applicable)

Name Penny Mecklenburg

Amendment Barcode _____
(if applicable)

Job Title _____

Address 4199 Newton Rd

Phone 352 688 1252

Spring Hill FL 34606
Street City State Zip

E-mail pjmeck@hotmail.com

Speaking: For Against Information

Representing _____

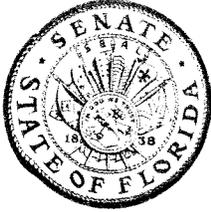
Appearing at request of Chair: Yes No

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.

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Budget - Subcommittee on Criminal and Civil Justice
Appropriations, *Chair*
Banking and Insurance
Budget
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Communications, Energy, and Public Utilities
Health Regulation
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:

Administrative Procedures

SENATOR MIKE FASANO

11th District

January 10, 2012

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

Dear Chairman Evers:

My SB 872 pertaining to Murder is now in your committee for consideration. I would greatly appreciate it if you would place this bill on the first available agenda for review by the committee.

Thank you in advance for your consideration of this request. As always, if there is ever anything I can do for you please do not hesitate to call on me.

Yours truly,

A handwritten signature in black ink, appearing to read "Mike Fasano".

Mike Fasano
State Senator, District 11

MF/gc

Cc: Amanda Cannon, Staff Director

REPLY TO:

- 8217 Massachusetts Avenue, New Port Richey, Florida 34653-3111 (727) 848-5885
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5062

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
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 Criminal Justice Committee

BILL: CS/SB 964

INTRODUCER: Criminal Justice Committee and Senator Benacquisto

SUBJECT: Protection of Minors

DATE: January 26, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.	_____	_____	CF	_____
3.	_____	_____	BC	_____
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:

This bill creates the “Protect Our Children Act” relating to laws that prohibit video voyeurism and possession of child pornography.

With respect to video voyeurism, the bill:

- Specifies that the interior of a residential dwelling is a place where a person has a reasonable expectation of privacy.
- Increases the penalty for several video voyeurism offenses and adds these offenses to the qualifying offense list that requires an offender to be designated as a sexual predator or to register as a sexual offender.

The bill also amends the child pornography statute to provide that if a prohibited item includes sexual conduct by a child, a separate offense may be charged for each child in the prohibited item.

This bill substantially amends sections 775.21, 810.145, 827.071, 921.0022, and 943.0435 of the Florida Statutes.

II. Present Situation:

Sexual Predators and Sexual Offenders

The distinction between a sexual predator and a sexual offender is based on the offense of conviction, the date the offense occurred or when sanctions were completed, and whether the person has previously been convicted of a sexual offense. Sexual predator status can only be conferred for offenses committed on or after October 1, 1993. Sexual offender status applies only if the person was released from the sanction for the designated offense on or after October 1, 1997. The list of designated offenses is not identical for sexual offenders and sexual predators, but commission of any of the following offenses would require registration as either a sexual offender or a sexual predator:

- Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent (ss. 787.01, 787.02, and 787.025(2)(c), F.S.).
- Sexual battery under ch. 794.011, F.S. (except false accusation of another under s. 794.011(10), F.S.).
- Sexual activity by a person who is 24 years old or older with a minor who is 16 or 17 years old (s. 794.05, F.S.).
- Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.).
- Selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.).
- Lewd or lascivious offenses upon or in the presence of a person under 16 (s. 800.04, F.S.).
- Lewd or lascivious offenses upon an elderly or disabled person (s. 825.1025, F.S.).
- Enticing, promoting, or possessing images of sexual performance by a child (s. 827.071, F.S.).
- Distribution of obscene materials to a minor (s. 847.0133, F.S.).
- Computer pornography (s. 847.0135, F.S.) (except traveling to meet a minor under s. 847.0135(4), F.S.).
- Transmission of child pornography by electronic device (s. 847.0137, F.S.).
- Transmission of material harmful to minors to a minor by electronic device (s. 847.0138, F.S.).
- Selling or buying of minors for child pornography (s. 847.0145, F.S.).
- Sexual misconduct by a DJJ employee with a juvenile offender (s. 985.701(1), F.S.).
- Violating a similar law of another jurisdiction.

A sexual predator or sexual offender is required to comply with a number of statutory requirements.¹ During initial registration, a sexual predator or sexual offender who is not in the custody of the Florida Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), or a local jail is required to provide certain information including the "address of legal residence and address of any temporary residence, within the state or out of the state, including a rural route address and a post office box..." to the sheriff's department within 48 hours of sentencing or of establishing a residence. The sheriff's office provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database. The

¹ The specific offender reporting requirements and law enforcement reporting and notification requirements are found in ss. 775.21, 943.0435, 944.606, 944.607, 985.48, and 985.4815, F.S.

offender or predator must also register at a driver's license office within 48 hours of the initial registration at the sheriff's department.

Video Surveillance and Voyeurism

Video voyeurism is the unlawful use of an imaging device to surreptitiously observe another person. The practice is most often associated with a sexual motive, such as using a cell phone camera to take pictures beneath women's skirts in a shopping area or installing hidden cameras in a changing area.

In 2004, the federal government passed the Video Voyeurism Prevention Act of 2004² in order to "protect the privacy of individuals from the surreptitious use of hidden surveillance equipment that captures an individual's image."³ The Act makes it a misdemeanor for a person to intentionally capture an image of a private area of another person without his or her consent under circumstances in which the other person has a reasonable expectation of privacy. All states have criminal statutes that address video voyeurism in some form.

Florida's Video Voyeurism Statute

Florida law forbids video voyeurism if a person uses or installs an imaging device to secretly view, broadcast or record another person for "amusement, entertainment, sexual arousal, gratification, or profit," or to degrade or abuse that person. The original s. 810.145, F.S., was enacted in 1984 and created misdemeanor video voyeurism offenses. The statute was amended in 2008 to elevate certain video voyeurism offenses committed against children to felonies.

An offender commits the misdemeanor offense of video voyeurism by:

- Intentionally using or installing an imaging device to secretly view, broadcast, or record a person who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy, for the offender's own amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.⁴
- Intentionally permitting the use or installation of an imaging device to secretly view, broadcast, or record a person as stated above, but for the amusement, entertainment, sexual arousal, gratification, or profit of another person.⁵
- Intentionally using an imaging device to secretly view, broadcast, or record under or through another person's clothing in order to view that person's body or undergarments, for the amusement, entertainment, sexual arousal, gratification, or profit of either the offender or another person.⁶

² 18 U.S.C. s. 1801. The Act applies only within the special maritime and territorial jurisdiction of the United States, so does not conflict with state law.

³ Kristin M. Beasley, *Up-Skirt and Other Dirt: Why Cell Phone Cameras and Other Technologies Require a New Approach to Protecting Personal Privacy in Public Places*, 31 S. ILL. U. L.J. 69, 88 (2006) (quoting H.R. Rep. No. 08-504, at 5, as reprinted in 2004 U.S.C.C.A.N. 3292, 3294-95).

⁴ Section 810.145(2)(a), F.S.

⁵ Section 810.145(2)(b), F.S.

⁶ Section 810.145(2)(c), F.S.

- Committing the offense of “video voyeurism dissemination”⁷ and “commercial video voyeurism dissemination”⁸ for distributing a video or image with knowledge or reason to believe that it was created as a result of video voyeurism.

A first-time violation of any of these provisions is a first-degree misdemeanor, punishable by a term of imprisonment not exceeding one year and a fine of not more than \$1,000. If the offender has previously been convicted of or adjudicated delinquent for any violation of the section, the penalty is enhanced to a third-degree felony, punishable by imprisonment for up to five years and a fine of not more than \$5,000.

There are three felony video voyeurism offenses in addition to those that result from enhancement of the penalty for repeat misdemeanor video voyeurism. Conviction of these offenses requires additional elements of proof:

- Section 810.145(8)(a)1., F.S., applies when the offender was 18 years of age or older, the victim was under the age of 16, and the offender was responsible for the welfare of the victim. Persons who are responsible for a child’s welfare would include coaches, teachers, scout leaders, parents, guardians, babysitters, and those with similar relationships to the child.⁹
- Section 810.145(8)(a)2., F.S., applies when the offender was 18 years old or older, was employed at a public or private K-12 school or a voluntary pre-K program, and the victim was a student at the school or program.
- Section 810.145(8)(a)3., F.S., applies when the offender was 24 years of age or older and the victim was under the age of 16.

These offenses are third-degree felonies, which are punishable by imprisonment for up to five years and a fine of not more than \$5,000. If the offender has previously been convicted of or adjudicated delinquent for any form of video voyeurism, these offenses are second-degree felonies, punishable by imprisonment for up to 15 years and a fine of not more than \$10,000.

The statute includes exceptions to ensure that it does not criminalize legitimate law enforcement surveillance, or security surveillance devices if a notice is posted or if the device is clearly and immediately obvious. There is also an exception for Internet service providers who do not exercise control over user content.¹⁰

During Fiscal Year 2010-2011, six persons were convicted of misdemeanor video voyeurism¹¹ and three persons were placed on community supervision as the result of being convicted of felony video voyeurism.¹²

⁷ Section 810.145(3), F.S.

⁸ Section 810.145(4), F.S.

⁹ See ss. 39.01(46) and 827.01, F.S.; *P.N. v. Dep’t of Health & Rehabilitative Servs.*, 562 So. 2d 810, 811 (Fla. 2d DCA 1990).

¹⁰ Section 810.145(5), F.S.

¹¹ Information from the Florida Department of Law Enforcement provided to committee staff by the Office of Economic & Demographic Research, e-mail dated November 30, 2011.

¹² Department of Corrections Analysis of Senate Bill 436.

Possession or Intentional Viewing of Child Pornography

Section 827.071(5), F.S., prohibits a person from knowingly possessing, controlling, or intentionally viewing a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that he or she knows to include any sexual conduct by a child in whole or in part. A separate offense may be charged for each prohibited item that is possessed. Violation of the statute is a third degree felony ranked at Level 5 of the Criminal Punishment Code, punishable by up to five years in prison.

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as the “Protect Our Children Act.”

Section 2 amends s. 775.21(4), F.S., to include violation of s. 810.145(8), F.S., as a qualifying offense for purposes of designation as a sexual predator.

Section 3 amends s. 827.071(5), F.S., to provide that a separate offense may be charged for each child included in a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that shows sexual conduct by a child. This means, for example, that a person can be charged with two child pornography offenses if the person intentionally views a video that includes sexual conduct by two children. Previously, intentional viewing of a single video could only be charged as one offense no matter how many children are depicted in the video.

Section 4 amends s. 943.0435(1), F.S., to include violation of s. 810.145(8), F.S., as an offense that requires registration as a sexual offender.

Section 5 amends two subsections in s. 810.145, F.S., the video voyeurism law:

- Section 810.145(1)(c), F.S., currently defines a “place and time when a person has a reasonable expectation of privacy” as:

“a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person’s undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.”

The bill amends this definition to specifically list the interior of a residential dwelling. Because the definition provides that it is not limited to the listed examples, specific inclusion of the “interior of a residential dwelling” should not change application of the law.

- Section 810.145(8)(a), F.S., includes the three video voyeurism offenses that are elevated from a first degree misdemeanor to a third degree felony because of the relative ages of the offender and victim or the position of authority that the offender holds in regard to the victim. The bill raises these offenses to second degree felonies. This increases the maximum sentence from five years to fifteen years in prison, and increases the maximum fine from \$5,000 to \$10,000.

Section 6 amends s. 921.0022(3)(f), F.S., to rank the video voyeurism offenses raised to third degree felonies by Section 5 of the bill on the Offense Severity Ranking Chart for sentencing purposes. As unranked third degree felonies, these offenses were considered to be ranked at Level 1 and scored 4 sentencing points. As second degree felonies ranked at Level 6, they score 36 sentencing points. This greatly increases the chance that the offender will be sentenced to a term of imprisonment, particularly if he or she has prior convictions for any offense.

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 Criminal Justice Impact Conference met December 14, 2011, and found the prison bed impact of this bill to be indeterminate because of the section of the bill that provides that each child in each photograph, image, etc. that is knowingly possessed, controlled, or intentionally viewed is a separate offense. The number of such offenses cannot be determined. Additionally, FDLE reports that expanding the number of persons who qualify as sexual offenders and sexual predators will require programming changes to the sexual offender/sexual predator database, which will cost \$28,625 in non-recurring dollars; however, FDLE states they can absorb these costs with current resources.

VI. Technical Deficiencies:

None except as noted regarding Section 3 of the bill.

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 January 25, 2012:

Clarifies language regarding charging a separate offense for each child who is in a picture that includes sexual activity by a child.

- B. **Amendments:**

None.

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



840994

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 80 - 82
and insert:
then a separate offense may be charged for each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation. A person

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

And the title is amended as follows:

Delete lines 10 - 11



13 and insert:
14 a separate offense may be charged for each child; amending s.
15 943.0435, F.S.;
16

By Senator Benacquisto

27-00720-12

2012964__

A bill to be entitled

An act relating to protection of minors; providing a short title; amending s. 775.21, F.S.; requiring a person convicted of a second or subsequent violation of a specified video voyeurism provision to register as a sexual offender if the victim of the violation was a minor; amending s. 827.071, F.S.; providing that if more than one child is involved in a violation of provisions prohibiting sexual performance by a child, each child involved in the violation creates a separate offense; amending s. 943.0435, F.S.; requiring a person convicted of a video voyeurism violation to register as a sexual offender if the victim of the violation was a minor; amending s. 810.145, F.S.; revising the definition of the term "place and time when a person has a reasonable expectation of privacy" to include the interior of a residential dwelling; increasing the classification of specified video voyeurism offenses involving minors; amending s. 921.0022, F.S.; ranking a violation of s. 810.145(8)(b), F.S., above its default value for purposes of the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. This act may be cited as the "Protect Our Children Act of 2012."

Section 2. Paragraph (a) of subsection (4) of section

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775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first-degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent or guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025(2)(b); s. 827.071; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; or s. 985.701(1); or a

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59 violation of a similar law of another jurisdiction;

60 2. The offender has not received a pardon for any felony or
61 similar law of another jurisdiction that is necessary for the
62 operation of this paragraph; and

63 3. A conviction of a felony or similar law of another
64 jurisdiction necessary to the operation of this paragraph has
65 not been set aside in any postconviction proceeding.

66 Section 3. Paragraph (a) of subsection (5) of section
67 827.071, Florida Statutes, is amended to read:

68 827.071 Sexual performance by a child; penalties.—

69 (5) (a) It is unlawful for any person to knowingly possess,
70 control, or intentionally view a photograph, motion picture,
71 exhibition, show, representation, image, data, computer
72 depiction, or other presentation which, in whole or in part, he
73 or she knows to include any sexual conduct by a child. The
74 possession, control, or intentional viewing of each such
75 photograph, motion picture, exhibition, show, image, data,
76 computer depiction, representation, or presentation is a
77 separate offense. If a photograph, motion picture, exhibition,
78 show, representation, image, data, computer depiction, or other
79 presentation includes sexual conduct by more than one child,
80 then each such child in each such photograph, motion picture,
81 exhibition, show, representation, image, data, computer
82 depiction, or other presentation is a separate offense. A person
83 who violates this subsection commits a felony of the third
84 degree, punishable as provided in s. 775.082, s. 775.083, or s.
85 775.084.

86 Section 4. Paragraph (a) of subsection (1) of section
87 943.0435, Florida Statutes, is amended to read:

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88 943.0435 Sexual offenders required to register with the
89 department; penalty.—

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

91 (a)1. "Sexual offender" means a person who meets the
92 criteria in sub-subparagraph a., sub-subparagraph b., sub-
93 subparagraph c., or sub-subparagraph d., as follows:

94 a. (I) Has been convicted of committing, or attempting,
95 soliciting, or conspiring to commit, any of the criminal
96 offenses proscribed in the following statutes in this state or
97 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
98 or s. 787.025(2)(c), where the victim is a minor and the
99 defendant is not the victim's parent or guardian; s. 794.011,
100 excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.
101 800.04; s. 810.145(8)(a); s. 825.1025; s. 827.071; s. 847.0133;
102 s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138;
103 s. 847.0145; or s. 985.701(1); or any similar offense committed
104 in this state which has been redesignated from a former statute
105 number to one of those listed in this sub-sub-subparagraph; and

106 (II) Has been released on or after October 1, 1997, from
107 the sanction imposed for any conviction of an offense described
108 in sub-sub-subparagraph (I). For purposes of sub-sub-
109 subparagraph (I), a sanction imposed in this state or in any
110 other jurisdiction includes, but is not limited to, a fine,
111 probation, community control, parole, conditional release,
112 control release, or incarceration in a state prison, federal
113 prison, private correctional facility, or local detention
114 facility;

115 b. Establishes or maintains a residence in this state and
116 who has not been designated as a sexual predator by a court of

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 117 this state but who has been designated as a sexual predator, as
 118 a sexually violent predator, or by another sexual offender
 119 designation in another state or jurisdiction and was, as a
 120 result of such designation, subjected to registration or
 121 community or public notification, or both, or would be if the
 122 person were a resident of that state or jurisdiction, without
 123 regard to whether the person otherwise meets the criteria for
 124 registration as a sexual offender;

125 c. Establishes or maintains a residence in this state who
 126 is in the custody or control of, or under the supervision of,
 127 any other state or jurisdiction as a result of a conviction for
 128 committing, or attempting, soliciting, or conspiring to commit,
 129 any of the criminal offenses proscribed in the following
 130 statutes or similar offense in another jurisdiction: s. 787.01,
 131 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 132 the defendant is not the victim's parent or guardian; s.
 133 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 134 796.035; s. 800.04; s. 810.145(8)(a); s. 825.1025; s. 827.071;
 135 s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137;
 136 s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar
 137 offense committed in this state which has been redesignated from
 138 a former statute number to one of those listed in this sub-
 139 subparagraph; or

140 d. On or after July 1, 2007, has been adjudicated
 141 delinquent for committing, or attempting, soliciting, or
 142 conspiring to commit, any of the criminal offenses proscribed in
 143 the following statutes in this state or similar offenses in
 144 another jurisdiction when the juvenile was 14 years of age or
 145 older at the time of the offense:

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 146 (I) Section 794.011, excluding s. 794.011(10);
 147 (II) Section 800.04(4)(b) where the victim is under 12
 148 years of age or where the court finds sexual activity by the use
 149 of force or coercion;
 150 (III) Section 800.04(5)(c)1. where the court finds
 151 molestation involving unclothed genitals; or
 152 (IV) Section 800.04(5)(d) where the court finds the use of
 153 force or coercion and unclothed genitals.
 154 2. For all qualifying offenses listed in sub-subparagraph
 155 (1)(a)1.d., the court shall make a written finding of the age of
 156 the offender at the time of the offense.

157
 158 For each violation of a qualifying offense listed in this
 159 subsection, the court shall make a written finding of the age of
 160 the victim at the time of the offense. For a violation of s.
 161 800.04(4), the court shall additionally make a written finding
 162 indicating that the offense did or did not involve sexual
 163 activity and indicating that the offense did or did not involve
 164 force or coercion. For a violation of s. 800.04(5), the court
 165 shall additionally make a written finding that the offense did
 166 or did not involve unclothed genitals or genital area and that
 167 the offense did or did not involve the use of force or coercion.

168 Section 5. Paragraph (c) of subsection (1) and subsection
 169 (8) of section 810.145, Florida Statutes, are amended to read:

170 810.145 Video voyeurism.—

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

172 (c) "Place and time when a person has a reasonable
 173 expectation of privacy" means a place and time when a reasonable
 174 person would believe that he or she could fully disrobe in

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175 privacy, without being concerned that the person's undressing
 176 was being viewed, recorded, or broadcasted by another,
 177 including, but not limited to, the interior of a residential
 178 dwelling, bathroom, changing room, fitting room, dressing room,
 179 or tanning booth.

180 (8) (a) A person who is:

181 1. Eighteen years of age or older who is responsible for
 182 the welfare of a child younger than 16 years of age, regardless
 183 of whether the person knows or has reason to know the age of the
 184 child, and who commits an offense under this section against
 185 that child;

186 2. Eighteen years of age or older who is employed at a
 187 private school as defined in s. 1002.01; a school as defined in
 188 s. 1003.01; or a voluntary prekindergarten education program as
 189 described in s. 1002.53(3) (a), (b), or (c) and who commits an
 190 offense under this section against a student of the private
 191 school, school, or voluntary prekindergarten education program;
 192 or

193 3. Twenty-four years of age or older who commits an offense
 194 under this section against a child younger than 16 years of age,
 195 regardless of whether the person knows or has reason to know the
 196 age of the child

197
 198 commits a felony of the ~~second~~ third degree, punishable as
 199 provided in s. 775.082, s. 775.083, or s. 775.084.

200 (b) A person who violates this subsection and who has
 201 previously been convicted of or adjudicated delinquent for any
 202 violation of this section commits a felony of the second degree,
 203 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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204 Section 6. Paragraph (f) of subsection (3) of section
 205 921.0022, Florida Statutes, is amended to read:
 206 921.0022 Criminal Punishment Code; offense severity ranking
 207 chart.-

208 (3) OFFENSE SEVERITY RANKING CHART

209 (f) LEVEL 6

Florida Statute	Felony Degree	Description
316.193(2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1) (b)	3rd	Aggravated assault; intent to commit felony.

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217	784.041	3rd	Felony battery; domestic battery by strangulation.
218	784.048(3)	3rd	Aggravated stalking; credible threat.
219	784.048(5)	3rd	Aggravated stalking of person under 16.
220	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
221	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
222	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
223	784.081(2)	2nd	Aggravated assault on specified official or employee.
224	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
225	784.083(2)	2nd	Aggravated assault on code inspector.
226	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
227	790.115(2)(d)	2nd	Discharging firearm or weapon on school

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228			property.
	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
229	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
230	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
231	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
232	794.05(1)	2nd	Unlawful sexual activity with specified minor.
233	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
234	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
235	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
236			

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237 810.02 (3) (c) 2nd Burglary of occupied structure; unarmed;
no assault or battery.

238 810.145 (8) (b) 2nd Video voyeurism; certain minor victims;
2nd or subsequent offense.

239 812.014 (2) (b) 1. 2nd Property stolen \$20,000 or more, but
less than \$100,000, grand theft in 2nd
degree.

240 812.014 (6) 2nd Theft; property stolen \$3,000 or more;
coordination of others.

241 812.015 (9) (a) 2nd Retail theft; property stolen \$300 or
more; second or subsequent conviction.

242 812.015 (9) (b) 2nd Retail theft; property stolen \$3,000 or
more; coordination of others.

243 812.13 (2) (c) 2nd Robbery, no firearm or other weapon
(strong-arm robbery).

244 817.034 (4) (a) 1. 1st Communications fraud, value greater than
\$50,000.

245 817.4821 (5) 2nd Possess cloning paraphernalia with
intent to create cloned cellular
telephones.

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246 825.102 (1) 3rd Abuse of an elderly person or disabled
adult.

247 825.102 (3) (c) 3rd Neglect of an elderly person or disabled
adult.

248 825.1025 (3) 3rd Lewd or lascivious molestation of an
elderly person or disabled adult.

249 825.103 (2) (c) 3rd Exploiting an elderly person or disabled
adult and property is valued at less
than \$20,000.

250 827.03 (1) 3rd Abuse of a child.

251 827.03 (3) (c) 3rd Neglect of a child.

252 827.071 (2) & 2nd Use or induce a child in a sexual
(3) performance, or promote or direct such
performance.

253 836.05 2nd Threats; extortion.

254 836.10 2nd Written threats to kill or do bodily
injury.

255 843.12 3rd Aids or assists person to escape.

847.011 3rd Distributing, offering to distribute, or

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256 possessing with intent to distribute
obscene materials depicting minors.

847.012 3rd Knowingly using a minor in the
production of materials harmful to
minors.

257 847.0135(2) 3rd Facilitates sexual conduct of or with a
minor or the visual depiction of such
conduct.

258 914.23 2nd Retaliation against a witness, victim,
or informant, with bodily injury.

259 944.35(3)(a)2. 3rd Committing malicious battery upon or
inflicting cruel or inhuman treatment on
an inmate or offender on community
supervision, resulting in great bodily
harm.

260 944.40 2nd Escapes.

261 944.46 3rd Harboring, concealing, aiding escaped
prisoners.

262 944.47(1)(a)5. 2nd Introduction of contraband (firearm,
weapon, or explosive) into correctional
facility.

263

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264 951.22(1) 3rd Intoxicating drug, firearm, or weapon
introduced into county facility.

265 Section 7. This act shall take effect October 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/25/12

Meeting Date

Topic _____

Bill Number 0964
(if applicable)

Name Gail Colletta

Amendment Barcode _____
(if applicable)

Job Title President

Address 7034 Palazzuolo Reale
Street
Boynton Beach, FL
City State Zip

Phone 561-305-4959

E-mail gail@floridaactioncommittee.org

Speaking: For Against Information

Representing FLORIDA ACTION COMMITTEE

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)

11/25/12

Meeting Date

Topic _____

Bill Number 0964
(if applicable)

Name Victoria Peritz

Amendment Barcode _____
(if applicable)

Job Title _____

Address 100 Xanadu Place
Street

Phone (561) 305 3915

Jupiter, FL
City State Zip

E-mail vperitz@yahoo.com

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)

1/25/12
Meeting Date

Topic _____

Bill Number SB 964
(if applicable)

Name BRAD KING

Amendment Barcode _____
(if applicable)

Job Title STATE ATTORNEY, FIFTH CIRCUIT

Address 110 NW 1ST AVE SUITE 5000
Street

Phone 352-671-5914

Ocala FL 34475
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA PROSECUTING ATTORNEY'S ASSOC.

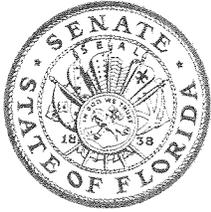
Appearing at request of Chair: Yes No

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:

Communications, Energy, and Public Utilities, *Chair*
Budget - Subcommittee on General Government
Appropriations, *Vice Chair*
Budget
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Education Pre-K - 12
Governmental Oversight and Accountability
Reapportionment
Transportation

SENATOR LIZBETH BENACQUISTO

27th District

December 6, 2011

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

RE: SB 964 – Protection of Minors

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 964, Protection of Minors, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 27

Cc: Amanda Cannon

REPLY TO:

- 12165 West Forest Hill Boulevard, Suite 1B, Wellington, Florida 33414 (561) 753-2440
- 17595 South Tamiami Trail, Suite 200-9, Fort Myers, Florida 33908 (239) 433-6599
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5356

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

A handwritten checkmark in black ink.

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 Criminal Justice Committee

BILL: CS/SB 1276

INTRODUCER: Criminal Justice Committee and Senator Latvala

SUBJECT: Hiring, Leasing, or Obtaining Personal Property or Equipment with Intent to Defraud

DATE: January 25, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			JU	
3.			BI	
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:

The bill amends s. 812.155, F.S., which sets forth the criminal law violations related to leased or hired personal property or equipment, in the following ways:

- Provides that a courier service with tracking ability is authorized to deliver notice of rental agreement noncompliance to a lessee under the statute;
- Creates a permissive inference with regard to proof of offenses;
- Provides that a defendant may not rely upon the defense that he or she is not in possession of the leased or hired property in prosecutions under the statute unless the owner is advised that he or she is not in possession of the property;
- Provides that, so long as the property owner has fulfilled the requirements of s. 812.155, F.S., he or she may report a rented vehicle as stolen and have it listed on any local or national registry of stolen vehicles; and
- Makes organizational and stylistic changes.

This bill substantially amends section 812.155 of the Florida Statutes.

II. Present Situation:

Section 812.155, F.S., prohibits certain acts with regard to rented personal property or equipment. Depending upon the value of the property the crimes are punishable as either a second degree misdemeanor or a third degree felony.¹

Section 812.155(1), F.S., prohibits obtaining custody of personal property or equipment, with the intent to defraud the owner, whether through trickery, deceit, or fraudulent or willful false representation. Section 812.155(2), F.S., prohibits the hiring or leasing of personal property with the intent to defraud the owner of the rent payable for the possession or use of the property. Paragraph (4)(a) of the statute provides that evidence of fraudulent intent may be proven by showing that a person obtained the property under false pretenses; absconded without payment; or by removing or attempting to remove the property from the county without the owner's permission.²

In order for there to be a prosecution for the conduct prohibited by s. 812.155, F.S., the rental agreement (or an addendum to the agreement) must contain the following statement and the statement must be initialed by the person hiring or leasing the property:

Failure to return rental property or equipment upon expiration of the rental period and failure to pay all amounts due (including costs for damage to the property or equipment) are evidence of abandonment or refusal to redeliver the property, punishable in accordance with section 812.155, Florida Statutes.³

Section 812.155(3), F.S., specifically prohibits a person from knowingly abandoning or refusing to return the leased personal property or equipment to the owner (or his or her agent), as agreed, at the end of the rental period.

The statute allows for a demand for return of the property to be made in person, by hand delivery, or by certified mail (return receipt requested) addressed to the lessee's address shown in the rental contract.⁴

Evidence of abandonment of the property or refusal to return it can be shown if the property is not returned within 5 days of the delivery of notice to the lessee by certified mail, or within 5 days of the return receipt from the certified mailing.⁵ Abandonment of or refusal to return the property may also be shown through evidence that the lessor has not paid any amounts due after a demand for return of the property has been made.⁶

¹ The crimes set forth in subsections (1)-(3) are misdemeanors of the second degree, punishable by up to 60 days incarceration and a \$500 fine, if the value of the item is less than \$300. If the value of the item is \$300 or more, the crimes are third degree felonies, punishable by up to 5 years incarceration and a \$1,000 fine. *See* s. 812.155(1)-(3), F.S.

² s. 812.155(4)(a), F.S.

³ s. 812.155(6), F.S.

⁴ s. 812.155(5), F.S.

⁵ s. 812.155(4)(b), F.S.

⁶ s. 812.155(4)(c), F.S.

III. Effect of Proposed Changes:

The bill provides an additional method by which the owner or agent of the owner of leased personal property or equipment may make a demand for return or provide notice to a lessee, such that the lessee's failure to respond to the demand or notice may be evidence of the abandonment of or refusal to return the leased property. Subsection (4) of s. 812.155, F.S., is amended by the bill to allow for delivery by courier service with tracking capability to the address of the lessee as it appears on the rental contract.

A new subsection is added to the statute providing that possession of personal property or equipment by a third party is not a defense for failure to return the property unless the lessee provides documentation to the owner or the court showing that the lessor is not in possession of the property without his or her consent.

The bill creates a permissive inference in paragraphs (4)(b) and (c) of s. 812.155, F.S., that would give the evidence of abandonment or refusal to return the personal property or equipment greater weight than it has under the current language found therein.

Proper notice or a demand for return of property (not responded to) may be considered as prima facie evidence of the crimes of abandonment of or refusal to return leased property. Considering (or not considering) the fact of the unresponded to notice or demand does not *require* a finding that an element of the crime has been proven. In other words, it is evidence a jury is *free to consider or to dismiss* as it determines whether the facts presented by the prosecution prove the crime beyond a reasonable doubt.

The bill provides that, so long as the property owner has fulfilled the requirements of s. 812.155, F.S., he or she may report a rented vehicle as stolen and have it listed on any local or national registry of stolen vehicles.

The bill also makes organizational and stylistic changes to subsections (1)-(3) of s. 812.155, F.S. These changes are not substantive in nature.

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:

A permissive inference may impermissibly shift the burden of proof of the elements of an offense from the prosecution, where it lies in a criminal trial. This could give rise to a constitutional claim based upon Due Process grounds.

As pointed out in the *Rygwelski* case, when the Florida Supreme Court applies the U.S. Supreme Court framework regarding permissive inferences and mandatory presumptions, it has construed mandatory statutory language as creating a permissive inference numerous times.⁷

For example, in *State v. Kahler*, 232 So.2d 166 (Fla.1970), the court reviewed a statute which provided that possession of an improperly labeled drug was *prima facie evidence* that such possession was unlawful. The court opined that “constitutional guarantees are not violated as long as there is a rational connection between the fact proven and the ultimate fact presumed and reasonable opportunity is afforded to rebut the presumption.” The court further stated that statutory language providing that proof of one fact is “prima facie evidence” of another fact does not relieve the State of its burden of proof.

According to the *Rygwelski* court’s reading of *Kahler*: “*Kahler* establishes that such language creates only a permissive inference (an evidentiary device that does not relieve the State of its burden).”⁸

The meaning and application of a provision from s. 812.155, F.S. (2005), was at issue in the *Rygwelski* court. The statutory language at that time stated that the failure to redeliver property within five days after receipt of, or within five days after return receipt from, the certified mailing of the demand for return “is prima facie evidence of fraudulent intent.”⁹ The court found that the language created a *permissive inference* according to existing Florida precedent like the *Kahler* case mentioned above.¹⁰

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

None.

B. Private Sector Impact:

The amendments made to s. 812.155, F.S., are likely to result in a quicker and more positive resolution of criminal cases for owners of leased or hired personal property or equipment.

⁷ *State v. Rygwelski*, 899 So.2d 498, 502 (Fla. 2nd DCA 2005).

⁸ *Id.* at 502.

⁹ s. 812.155(4)(b), F.S. (2005).

¹⁰ *State v. Rygwelski*, 899 So.2d 498, (Fla. 2nd DCA 2005). *See also State v. Higby*, 899 So.2d 1269 (Fla. 2nd DCA 2005) and *Smith v. State*, 9 So.3d 702 (Fla. 2nd DCA).

C. Government Sector Impact:

The bill does not create any new criminal offenses. Although the amendments made by the bill could result in a greater number of prosecutions under s. 812.155, F.S., that end in convictions, it is unlikely that there would be a prison bed impact as the felony offenses in the statute are unranked third degree felonies.

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 January 25, 2012:

- Deletes the language that created a rebuttable presumption of abandonment or refusal to return rented property or equipment if the property was not returned to the owner within 5 days of notice having been sent to the lessee by the methods specified in the bill. The bill now creates a permissive inference (prima facie evidence) where the property is not returned within 5 days of notice having been delivered, or of the certified mail delivery being shown to have failed by return receipt. The amended bill also eliminates the rebuttable presumption of abandonment or refusal to return the property where the lessee fails to pay any amount due which is incurred after the rental period has expired. The rebuttable presumption is replaced with the prima facie evidence standard.
- Eliminates the defense that the lessee is not in possession of the property where the lessee provides documentation to the owner or the court that the property or equipment was obtained without the lessee's consent.
- Provides that if the lessor has fulfilled the requirements of the statute, he or she may report an unreturned vehicle as a stolen vehicle to law enforcement authorities.

B. Amendments:

None.



820280

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/25/2012	.	
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	.	

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

Senate Amendment (with title amendment)

Delete lines 75 - 121
and insert:

(b) In a prosecution under subsection (3), failure to redeliver the property or equipment within 5 days after receiving the demand for return from a courier service with tracking capability or by certified mail, return receipt requested ~~receipt of~~, or within 5 days after delivery by the courier service or return receipt from ~~the certified mailing of the demand for return,~~ is prima facie evidence of abandonment or refusal to redeliver the property or equipment. Notice mailed by



13 certified mail, return receipt requested, or delivery by courier
14 with tracking capability to the address given by the renter at
15 the time of rental is ~~shall be deemed~~ sufficient and equivalent
16 to notice having been received by the renter, should the notice
17 be returned undelivered.

18 (c) In a prosecution under subsection (3), failure to pay
19 any amount due which is incurred as the result of the failure to
20 redeliver property or equipment after the rental period expires,
21 and after the demand for return is made, is prima facie evidence
22 of abandonment or refusal to redeliver the property or
23 equipment. Amounts due include unpaid rental for the time period
24 during which the property or equipment was not returned and
25 include the lesser of the cost of repairing or replacing the
26 property or equipment if it has been damaged.

27 (5) DEMAND FOR RETURN.—Demand for return of overdue
28 property or equipment and for payment of amounts due may be made
29 in person, by hand delivery, ~~or~~ by certified mail, return
30 receipt requested, or by courier service with tracking
31 capability, addressed to the lessee's address shown in the
32 rental contract.

33 (6) NOTICE REQUIRED.—As a prerequisite to prosecution under
34 this section, the following statement must be contained in the
35 agreement under which the owner or person lawfully possessing
36 the property or equipment has relinquished its custody, or in an
37 addendum to that agreement, and the statement must be initialed
38 by the person hiring or leasing the rental property or
39 equipment:

40
41 Failure to return rental property or equipment upon



820280

42 expiration of the rental period and failure to pay all
43 amounts due (including costs for damage to the
44 property or equipment) are evidence of abandonment or
45 refusal to redeliver the property, punishable in
46 accordance with section 812.155, Florida Statutes.

47 (7) POSSESSION BY OTHERS NOT A DEFENSE.—Possession of
48 personal property or equipment by a third party is not a defense
49 to failure to return the property or equipment.

50 (8) REPORTING VEHICLE AS STOLEN.—A lessor of a vehicle that
51 is not returned at the conclusion of the lease who satisfies the
52 requirements of this section regarding the vehicle is entitled
53 to report the vehicle as stolen to a law enforcement agency and
54 have the vehicle listed as stolen on any local or national
55 registry of such vehicles.

56
57 ===== T I T L E A M E N D M E N T =====

58 And the title is amended as follows:

59 Delete lines 5 - 22

60 and insert:

61 a prosecution for failing to redeliver property or
62 equipment within a specified time after receiving the
63 demand for return from a courier service with tracking
64 capability or by certified mail, return receipt
65 requested, or within a specified time after delivery
66 by the courier service or return receipt from the
67 certified mailing of the demand for return, is prima
68 facie evidence of abandonment or refusal to redeliver
69 the property or equipment; providing that notice
70 mailed by delivery by courier with tracking capability



820280

71 to the address given by the renter at the time of the
72 rental is sufficient and equivalent to notice having
73 been received by the renter, if the notice is returned
74 undelivered; providing that in a prosecution for
75 failing to pay any amount due which is incurred as the
76 result of the failure to redeliver property or
77 equipment after the rental period expires, and after
78 the demand for return is made, is prima facie evidence
79 of abandonment or refusal to redeliver the property or
80 equipment; providing that a demand for return of
81 overdue property or equipment and for payment of
82 amounts due may be made by courier service with
83 tracking capability; providing that possession of
84 personal property or equipment by a third party is not
85 a defense to failure to return the property or
86 equipment; providing that a lessor of a vehicle that
87 is not returned at the conclusion of a lease is
88 entitled to report the vehicle as stolen to a law
89 enforcement agency and have the vehicle listed as
90 stolen on any local or national registry of such
91 vehicles;



237778

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2012	.	
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	.	

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

1 **Senate Substitute for Amendment (820280) (with title**
2 **amendment)**

3
4 Delete lines 5 - 55
5 and insert:

6 (b) In a prosecution under subsection (3), failure to
7 redeliver the property or equipment within 5 days after
8 receiving the demand for return from a courier service with
9 tracking capability or by certified mail, return receipt
10 requested receipt of, or within 5 days after delivery by the
11 courier service or return receipt from, the certified mailing of
12 the demand for return, is prima facie evidence of abandonment or



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13 refusal to redeliver the property or equipment. Notice mailed by
14 certified mail, return receipt requested, or delivery by courier
15 with tracking capability to the address given by the renter at
16 the time of rental is ~~shall be deemed~~ sufficient and equivalent
17 to notice having been received by the renter, should the notice
18 be returned undelivered.

19 (c) In a prosecution under subsection (3), failure to pay
20 any amount due which is incurred as the result of the failure to
21 redeliver property or equipment after the rental period expires,
22 and after the demand for return is made, is prima facie evidence
23 of abandonment or refusal to redeliver the property or
24 equipment. Amounts due include unpaid rental for the time period
25 during which the property or equipment was not returned and
26 include the lesser of the cost of repairing or replacing the
27 property or equipment if it has been damaged.

28 (5) DEMAND FOR RETURN.—Demand for return of overdue
29 property or equipment and for payment of amounts due may be made
30 in person, by hand delivery, ~~or~~ by certified mail, return
31 receipt requested, or by courier service with tracking
32 capability, addressed to the lessee's address shown in the
33 rental contract.

34 (6) NOTICE REQUIRED.—As a prerequisite to prosecution under
35 this section, the following statement must be contained in the
36 agreement under which the owner or person lawfully possessing
37 the property or equipment has relinquished its custody, or in an
38 addendum to that agreement, and the statement must be initialed
39 by the person hiring or leasing the rental property or
40 equipment:
41



237778

42 Failure to return rental property or equipment upon
43 expiration of the rental period and failure to pay all
44 amounts due (including costs for damage to the
45 property or equipment) are evidence of abandonment or
46 refusal to redeliver the property, punishable in
47 accordance with section 812.155, Florida Statutes.

48 (7) THIRD PARTY POSSESSION.—Possession of personal property
49 or equipment by a third party does not alleviate the lessee of
50 his or her obligation to return the personal property or
51 equipment according to the terms stated in the contract by which
52 the property or equipment was leased or rented to the lessee,
53 and is not a defense against failure to return unless the lessee
54 provides the court or property owner with documentation that
55 demonstrates that the personal property or equipment was
56 obtained without the lessee's consent.

57 (8) REPORTING VEHICLE AS STOLEN.—A lessor of a vehicle that
58 is not returned at the conclusion of the lease who satisfies the
59 requirements of this section regarding the vehicle is entitled
60 to report the vehicle as stolen to a law enforcement agency and
61 have the vehicle listed as stolen on any local or national
62 registry of such vehicles.

63
64 ===== T I T L E A M E N D M E N T =====

65 And the title is amended as follows:

66 Delete lines 61 - 91

67 and insert:

68 prosecution for failing to redeliver property or
69 equipment within a specified time after receiving the
70



71 demand for return from a courier service with tracking
72 capability or by certified mail, return receipt
73 requested, or within a specified time after delivery
74 by the courier service or return receipt from the
75 certified mailing of the demand for return, is prima
76 facie evidence of abandonment or refusal to redeliver
77 the property or equipment; providing that notice
78 mailed by delivery by courier with tracking capability
79 to the address given by the renter at the time of the
80 rental is sufficient and equivalent to notice having
81 been received by the renter, if the notice is returned
82 undelivered; providing that in a prosecution for
83 failing to pay any amount due which is incurred as the
84 result of the failure to redeliver property or
85 equipment after the rental period expires, and after
86 the demand for return is made, is prima facie evidence
87 of abandonment or refusal to redeliver the property or
88 equipment; providing that a demand for return of
89 overdue property or equipment and for payment of
90 amounts due may be made by courier service with
91 tracking capability; providing that possession of
92 personal property or equipment by a third party does
93 not alleviate the lessee of his or her obligation to
94 return the personal property or equipment according to
95 the terms stated in the contract; providing an
96 exception when the personal property or equipment was
97 obtained without the lessee's consent; providing that
98 a lessor of a vehicle that is not returned at the
99 conclusion of a lease is entitled to report the



100 vehicle as stolen to a law enforcement agency and have
101 the vehicle listed as stolen on any local or national
102 registry of such vehicles;

By Senator Latvala

16-00800-12

20121276__

A bill to be entitled

An act relating to hiring, leasing, or obtaining personal property or equipment with the intent to defraud; amending s. 812.155, F.S.; providing that in a prosecution for failing to return leased property or equipment within a specified time to the lawful owner, failure to return the property after a demand made by certified mail or courier service creates a rebuttable presumption that the lessee abandoned or refused to return the property to the lessor; providing that notice mailed by certified mail, return receipt requested, or by delivery by courier with tracking capabilities, to the address given by the renter at the time of the rental is sufficient and equivalent to notice having been received by the renter, if the notice is returned undelivered; providing that possession of personal property or equipment by a third party is not a defense for failing to return the personal property or equipment to its lawful owner; providing that a demand for return of overdue property or equipment and for payment of amounts due may be made by courier service with tracking capabilities; providing an effective date.

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

Section 1. Section 812.155, Florida Statutes, is amended to read:

812.155 Hiring, leasing, or obtaining personal property or

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

16-00800-12

20121276__

equipment with the intent to defraud; failing to return hired or leased personal property or equipment; rules of evidence.—

(1) OBTAINING BY TRICK, FALSE REPRESENTATION, ETC.—Whoever, with the intent to defraud the owner or any person lawfully possessing any personal property or equipment, obtains the custody of the such personal property or equipment by trick, deceit, or fraudulent or willful false representation commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless the value of the personal property or equipment is of a value of \$300 or more; in that case event the person commits violation ~~constitutes~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) HIRING OR LEASING WITH THE INTENT TO DEFRAUD.—Whoever, with intent to defraud the owner or any person lawfully possessing ~~any~~ personal property or equipment of the rental thereof, hires or leases the personal property or equipment from the owner or the owner's agents or any person in lawful possession thereof commits ~~shall, upon conviction, be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless the value of the personal property or equipment is of a value of \$300 or more; in that case event the person commits violation ~~constitutes~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) FAILURE TO RETURN ~~REDELIVER~~ HIRED OR LEASED PERSONAL PROPERTY.—Whoever, after hiring or leasing ~~any~~ personal property or equipment under an agreement to return ~~redeliver~~ the personal property ~~same~~ to the person letting the such personal property

Page 2 of 5

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

16-00800-12 20121276__
 59 or equipment or his or her agent at the termination of the
 60 period for which it was let, shall, without the consent of the
 61 ~~such~~ person or persons knowingly abandon or refuse to return
 62 ~~redeliver~~ the personal property or equipment as agreed, commits
 63 ~~shall, upon conviction, be guilty of~~ a misdemeanor of the second
 64 degree, punishable as provided in s. 775.082 or s. 775.083,
 65 unless the value of the personal property or equipment is of a
 66 value of \$300 or more; in that case event the person commits
 67 ~~violation constitutes~~ a felony of the third degree, punishable
 68 as provided in s. 775.082, s. 775.083, or s. 775.084.

69 (4) EVIDENCE.—

70 (a) In a prosecution ~~prosecutions~~ under this section,
 71 obtaining the property or equipment under false pretenses;
 72 absconding without payment; or removing or attempting to remove
 73 the property or equipment from the county without the express
 74 written consent of the lessor, is evidence of fraudulent intent.

75 (b) In a prosecution under subsection (3), failure to
 76 return ~~redeliver~~ the hired or leased personal property or
 77 equipment to the lessor within 5 days after the lessor mailed a
 78 demand to the lessee by certified mail, return receipt
 79 requested, or delivered by courier service, with tracking
 80 capability, the demand to the lessee's address on the rental
 81 contract after receipt of, or within 5 days after ~~return receipt~~
 82 ~~from,~~ the certified mailing or delivery by courier service with
 83 tracking capabilities of the demand for return of the property,
 84 creates a rebuttable presumption is evidence of abandonment or
 85 refusal to return ~~redeliver~~ the property. Notice mailed by
 86 certified mail, return receipt requested, or delivery by courier
 87 with tracking capabilities, to the address given by the renter

16-00800-12 20121276__
 88 at the time of rental is ~~shall be deemed~~ sufficient and
 89 equivalent to notice having been received by the renter, should
 90 the notice be returned undelivered.

91 (c) In a prosecution under subsection (3), failure to pay
 92 any amount due which is incurred as the result of the failure to
 93 redeliver property after the rental period expires, and after
 94 the demand for return creates a rebuttable presumption is made,
 95 ~~is evidence~~ of abandonment or refusal to redeliver the property.
 96 Amounts due include unpaid rental for the time period during
 97 which the property or equipment was not returned and include the
 98 lesser of the cost of repairing or replacing the property or
 99 equipment if it has been damaged.

100 (d) Possession of personal property or equipment by a third
 101 party is not a defense for failing to return the personal
 102 property or equipment.

103 (5) DEMAND FOR RETURN.—Demand for return of overdue
 104 property or equipment and for payment of amounts due may be made
 105 in person, by hand delivery, or by certified mail, return
 106 receipt requested, or by courier service with tracking
 107 capabilities, addressed to the lessee's address shown in the
 108 rental contract.

109 (6) NOTICE REQUIRED.—As a prerequisite to prosecution under
 110 this section, the following statement must be contained in the
 111 agreement under which the owner or person lawfully possessing
 112 the property or equipment has relinquished its custody, or in an
 113 addendum to that agreement, and the statement must be initialed
 114 by the person hiring or leasing the rental property or
 115 equipment:
 116

16-00800-12

20121276

117 Failure to return rental property or equipment upon expiration
118 of the rental period and failure to pay all amounts due
119 (including costs for damage to the property or equipment) are
120 evidence of abandonment or refusal to redeliver the property,
121 punishable in accordance with section 812.155, Florida Statutes.

122 Section 2. This act shall take effect July 1, 2012.



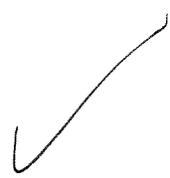
Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, Chair
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Children, Families, and Elder Affairs
Environmental Preservation and Conservation
Governmental Oversight and Accountability
Reappointment

SENATOR JACK LATVALA
16th District

January 12, 2011

The Honorable Senator Greg Evers, Chair
Senate Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100



Dear Chairman Evers:

I respectfully request consideration of Senate Bill 1276 regarding Hiring, Leasing, or Obtaining Personal Property with Intent to Defraud at your earliest convenience.

Senate Bill 1276 will allow those who deliberately and willfully fail to return a rental car to the leasing company to be prosecuted for theft. I would greatly appreciate the opportunity to present this legislation to the Committee on Criminal Justice as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack
Jack Latvala
State Senator
District 16

Has 3 references. You are the first.

JL: JW

cc: Amanda Cannon, Staff Director; Sue Arnold, Administrative Assistant

REPLY TO:

12425 28th Street North, Suite 102, St. Petersburg, Florida 33716 (727) 556-6500
405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5975

Senate's Website: www.flsenate.gov

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/25/12
Meeting Date

Topic Rental Car Theft

Bill Number 1276
(if applicable)

Name Doug Bell

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroe
Street
Tall.
City *State* *Zip*

Phone 222-3533

E-mail _____

Speaking: For Against Information

Representing Avis Budget Group

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)

1/24/12

Meeting Date

Topic _____

Bill Number 1276
(if applicable)

Name Leslie Dughi

Amendment Barcode _____
(if applicable)

Job Title _____

Address 101 E College Ave
Street

Phone 222-6391

City State Zip

E-mail dughi1@gtlaw.com

Speaking: For Against Information

Representing Enterprise, Alamo, National Rental Cars

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 Criminal Justice Committee

BILL: SB 1502

INTRODUCER: Senator Evers

SUBJECT: Controlled Substances

DATE: January 11, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.	_____	_____	HR	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill lists a number of synthetic cannabinoids and synthetic stimulants as Schedule I controlled substances. According to the Florida Department of Law Enforcement (FDLE), none of these substances has “an accepted medical use or a legitimate industrial or commercial purpose.”¹

This bill substantially amends section 893.03, Florida Statutes, and reenacts sections 893.12(1) - (6) and 921.0022(3)(b) – (e), Florida Statutes.

II. Present Situation:

Synthetic Cannabinoids

The FDLE has provided the following information on synthetic cannabinoids:

K2 or Spice, marketed as “synthetic marijuana,” is an herbal substance being sold in the United States as incense labeled “not for human consumption.” The products contain one or more synthetic compounds which interact with the body similarly to the primary psychoactive constituent of marijuana, delta-tetrahydrocannabinol, or THC. Therefore, the corrupt term of “synthetic marijuana” has been attached to these substances when in fact the correct term should be “synthetic cannabinoids.” Synthetic cannabinoids are distinctly different from marijuana and create unknown long-term medical risks and

¹ Analysis of SB 1502, Florida Department of Law Enforcement, dated January 12, 2011 (on file with the Committee on Criminal Justice). Further cited as “FDLE Analysis.”

immediate dangerous side effects when consumed. The synthetic cannabinoids do not mimic the chemical compound of THC, but cause pharmacological activity at the same receptors as THC in the brain, with the accompanying high potential for abuse.

The JWH series of compounds found in synthetic cannabinoids was created for research purposes to determine the relationship of these compounds in the body and document physiological responses with the CB1 and CB2 receptors in the brain and spleen. These substances, in the hundreds, were never intended to be used on humans; however, the publishing of research studies resulted in the creation of synthetic cannabinoids that are marketed for commercial distribution. Once the white powder is created, it can be taken alone or applied to any type of material such as a plant or paper and ingested in a manner similar to marijuana use. Some of the negative side effects include hallucinations, increased heart rate, increased anxiety, convulsions, unresponsiveness and suicidal thoughts.²

Synthetic Stimulants

The Florida Department of Law Enforcement (FDLE) has provided the following information on synthetic stimulants:

Psychoactive substances being marketed as “bath salts” are being produced as legal substitutes for ecstasy, cocaine, and amphetamines. The term ‘bath salts’ refer to commercially available products that have as part of their composition a legal stimulant called 3, 4-Methylenedioxypropylamphetamine, or MDPV. These synthetic stimulants are in a class of drugs known as synthetic cathinones.³ “Bath salts” can be comprised of different unregulated chemical substances and are being sold under a variety of names or brands. Both the law enforcement community and medical professionals indicate that “bath salts” are becoming increasingly popular due to the perception that they pose a seemingly safer alternative to illegal methods of getting “high.” Synthetic cathinones produce a euphoric effect on the user comparable to more common illicit drugs, and therefore have the same potential for abuse.

“Bath salt” products are known to produce certain side effects, some of which are quite severe. The following is the list of milder, short-term side effects associated with consumption of this drug as documented by medical personnel during treatment of abusers:

- Increased heart rate
- Increased alertness and awareness
- Agitation
- Anxiety

² *Id.*

³ Cathinone is a Schedule I controlled substance under s. 893.03(1)(c)8., F.S. It is an alkaloid found in the shrub *Catha edulis* (khat) and is chemically similar to amphetamines and other substances. “Consideration of the cathinones” (March 2010), Advisory Council on the Misuse of Drugs, United Kingdom, <http://www.homeoffice.gov.uk/publications/drugs/acmd1/acmd-cathinodes-report-2010?view=Binary>. The “molecular architecture” of cathinone “can be altered to produces a series of different compounds which are closely structurally related to cathinone.” *Id.* (This footnote is not part of the quoted text.)

- Diminished requirement for sleep
- Fits and delusions
- Lack of appetite
- Nosebleeds

More serious side effects associated with these drugs reportedly include:

- Muscle spasms
- Hallucinations
- Blood circulation problems, including increased blood pressure
- Aggression
- Kidney failure
- Severe paranoia
- Seizures
- Panic attacks
- Risk of renal failure
- Sharp increase in body temperature

In most extreme cases, powdered “bath salt” products have been linked to self-mutilation and drug induced deaths to include an increased risk of suicide.⁴

Schedule I Controlled Substances

A substance is a “controlled substance” if it is listed in any of five schedules in s. 893.03, F.S. The particular scheduling determines penalties that may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. Relevant to the bill, a substance in Schedule I is considered to have a high potential for abuse and no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards.

Recent Legislation

In 2011, the Legislature listed a number of synthetic cannabinoids and synthetic stimulants in Schedule 1.⁵ The following synthetic cannabinoids were listed in Schedule I:

- 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol, also known as CP 47,497 and its dimethyloctyl (C8) homologue⁶
- (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol, also known as HU-210
- 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018
- 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073
- 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, also known as JWH-200⁷

⁴ FDLE Analysis.

⁵ Chapters 2001-73 and 2011-90, L.O.F.

⁶ A “homologue” is “a chemical compound in a series in which each compound differs by one or more alkyl functional groups on an alkyl side chain. s. 893.02(11), F.S.

As a result of the 2011 legislation, penalties for unlawful acts involving synthetic cannabinoids are generally the same as penalties for unlawful acts involving other controlled substances listed in s. 893.03(1)(c), F.S. The exception is that simple possession of 3 grams or less of these 5 synthetic cannabinoids in a non-powdered form is a first degree misdemeanor.⁸

The 2011 legislation also listed the following synthetic stimulants in Schedule I:

- 3,4-methylenedioxymethcathinone
- 3,4-methylenedioxypyrovalerone (MDPV)
- Methymethcathinone
- Methoxymethcathinone
- Methoxymethcathinone
- Fluoromethcathinone⁹

III. Effect of Proposed Changes:

Section 1 amends s. 893.03, F.S., to list the following synthetic cannabinoids and synthetic stimulants (none of which currently appear in any schedule) in Schedule I:

- BZP (Benzylpiperazine)
- Fluorophenylpiperazine
- Methylphenylpiperazine
- Chlorophenylpiperazine
- Methoxyphenylpiperazine
- DBZP (1,4-dibenzylpiperazine).
- TFMPP (3-Trifluoromethylphenylpiperazine)
- MBDB (Methylbenzodioxolylbutanamine)
- 5-Hydroxy-alpha-methyltryptamine
- 5-Hydroxy-N-methyltryptamine
- 5-Methoxy-N-methyl-N-isopropyltryptamine
- 5-Methoxy-alpha-methyltryptamine
- Methyltryptamine
- 5-Methoxy-N,N-dimethyltryptamine
- 5-Methyl-N,N-dimethyltryptamine
- Tyramine (4-Hydroxyphenethylamine)
- 5-Methoxy-N,N-Diisopropyltryptamine
- DiPT (N,N-Diisopropyltryptamine)
- DPT (N,N-Dipropyltryptamine)
- 4-Hydroxy-N,N-diisopropyltryptamine
- Methoxytryptamine
- DOI (4-Iodo-2,5-dimethoxyamphetamine)

⁷ Section 893.03(1)(c)46.-50., F.S.

⁸ Section 893.13(6)(b), F.S.

⁹ Section 893.03(1)(c)40.-45., F.S.

- DOC (4-Chloro-2,5-dimethoxyamphetamine)
- 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine)
- 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine)
- 2C-C (4-Chloro-2,5-dimethoxyphenethylamine)
- 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine)
- 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine)
- 2C-T-7 (2,5-Dimethoxy-4-propylthiophenethylamine)
- 2C-I (4-Iodo-2,5-dimethoxyphenethylamine)
- Butylone (beta-keto-N-methylbenzodioxolylpropylamine)
- Ethcathinone
- Ethylone (3,4-methylenedioxy-N-ethylcathinone)
- Naphyrone (naphthylpyrovalerone)
- N-N-Dimethyl-3,4-methylenedioxcathinone
- N-N-Diethyl-3,4-methylenedioxcathinone
- 3,4-methylenedioxy-propiofenone
- 2-Bromo-3,4-Methylenedioxypropiofenone
- 3,4-methylenedioxy-propiofenone-2-oxime
- N-Acetyl-3,4-methylenedioxcathinone
- N-Acetyl-N-Methyl-3,4-Methylenedioxcathinone
- N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone
- Bromomethcathinone
- Buphedrone (alpha-methylamino-butyrophenone)
- Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine)
- Dimethylcathinone
- Dimethylmethcathinone
- Pentylone (beta-Keto-Methylbenzodioxolylpentanamine)
- (MDPPP) 3,4-Methylenedioxy-alpha-pyrrolidinopropiofenone
- (MDPBP) 3,4-Methylenedioxy-alpha-pyrrolidinobutiophenone
- Methoxypyrrolidinopropiofenone (MOPPP)
- Methylpyrrolidinohexiophenone (MPHP)
- Benocyclidine (BCP) or benzothiophenylcyclohexylpiperidine (BTCP)
- Fluoromethylaminobutyrophenone (F-MABP)
- Methoxypyrrolidinobutyrophenone (MeO-PBP)
- Ethylpyrrolidinobutyrophenone (Et-PBP)
- 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT)
- Methyleneaminobutyrophenone (Me-EABP)
- Methylaminobutyrophenone (MABP)
- Pyrrolidinopropiofenone
- Pyrrolidinobutiophenone (PBP)
- Pyrrolidinovalerophenone (PVP)
- Methylpyrrolidinopropiofenone (MPPP)
- JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole)
- JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone)
- JWH-019 (Naphthalen-1-yl-(1-pentylindol-3-yl)methanone)

- JWH-020 (1-heptyl-3-(1-naphthoyl)indole)
- JWH-072 (naphthalen-1-yl(1-propyl-1H-indol-3-yl)methanone)
- JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone)
- JHW-122 (1-Pentyl-3-(40methyl-1-naphthoyl)indole)
- JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)
- JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-indole)
- JWH-201 (1-pentyl-3-(4-methocyphenylacetyl)indole)
- JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-yl)ethanone)
- JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone)
- JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone)
- JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)ethanone)
- JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole)
- JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole)
- HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)
- HU-308 ([91R,2R,5R-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol)
- HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione)
- CB-13 (Naphthalen-1-yl-(4-pentylloxynaphthalen-1-yl)methanone)
- CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide)
- CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide)
- CP55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl) cyclohexyl]-5-(2-methyloctan-2-yl)phenol.)
- AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone)
- AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]- (naphthalen-1-yl)methanone)
- RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-yl)methanone)
- RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenylethanone))
- WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone)
- WIN55,212-3 [(3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone)

The FDLE states that the scheduling of these substances “would give state and local law enforcement the ability to affect a lawful arrest and seek criminal prosecution against an individual engaged in the possession, distribution, and unlawful use of these chemical substances.”

Sections 2 and 3 reenact, respectively, s. 893.12(1) - (6), F.S., and s. 921.0022(3)(b) - (e), F.S., to incorporate the amendments made to s. 893.03, F.S., in Section 1 of the bill.

Section 4 provides that the act take effect October 1, 2012.

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 FDLE states that the bill “should have little impact on the private sector and would only affect those retailers who are currently profiting on the sale of chemical substances known to be abused by those seeking an altered mental state or ‘high.’ Although synthetic stimulants have been sold to abusers labeled as ‘bath salts’ or ‘plant food,’ these labels were a subterfuge on the part of sellers to attempt to conceal their true nature as drugs of abuse. [The bill] ... will have no impact on manufacturers, distributors or retailers of actual bath products or fertilizers. None of the new substances listed in [the bill] ... have an accepted medical use or a legitimate industrial or commercial purpose.”¹⁰

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any of legislation has reviewed SB 1502 and estimates the bill will have an insignificant prison bed impact.

The FDLE states that the bill “could potentially increase the number of evidence submissions into FDLE’s Crime Laboratory System. The lab system will need to acquire all of the required standards necessary to test the proposed chemical substances.”¹¹ The department also notes that “[l]ocal agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a similar rise in submissions associated with the additions of the proposed chemical substances.”¹²

¹⁰ FDLE Analysis.

¹¹ FDLE Analysis.

¹² *Id.*

VI. Technical Deficiencies:

The 2011 legislation on the synthetic cannabinoids, in part, amended s. 893.13(6)(b), F.S., to provide that simple possession of the synthetic cannabinoids listed in s. 893.03(1)(c)46.-50., F.S., in a non-powdered form is a first degree-misdemeanor.

While the bill schedules a number of new synthetic cannabinoids, it does not amend s. 893.13(6)(b), F.S. Staff has confirmed with the FDLE that the new substances do not exist only in a powdered form. Therefore, it appears that s. 893.13(6)(b), F.S., should be amended to include by reference the new substances.

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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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2012	.	
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The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment

Delete lines 147 - 231
and insert:

- 84. Naphyrone (naphthylpyrovalerone).
- 85. N-N-Dimethyl-3,4-methylenedioxcathinone.
- 86. N-N-Diethyl-3,4-methylenedioxcathinone.
- 87. 3,4-methylenedioxy-propiofenone.
- 88. 2-Bromo-3,4-Methylenedioxypropiofenone.
- 89. 3,4-methylenedioxy-propiofenone-2-oxime.
- 90. N-Acetyl-3,4-methylenedioxcathinone.
- 91. N-Acetyl-N-Methyl-3,4-Methylenedioxcathinone.



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- 13 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone.
14 93. Bromomethcathinone.
15 94. Buphedrone (alpha-methylamino-butyrophenone).
16 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
17 96. Dimethylcathinone.
18 97. Dimethylmethcathinone.
19 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
20 99. (MDPPP) 3,4-Methylenedioxy-alpha-
21 pyrrolidinopropiophenone.
22 100. (MDPBP) 3,4-Methylenedioxy-alpha-
23 pyrrolidinobutiophenone.
24 101. Methoxypyrrolidinopropiophenone (MOPPP).
25 102. Methylpyrrolidinohexiophenone (MPHP).
26 103. Benzocyclidine (BCP) or
27 benzothiophenylcyclohexylpiperidine (BTCP).
28 104. Fluoromethylaminobutyrophenone (F-MABP).
29 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
30 106. Ethylpyrrolidinobutyrophenone (Et-PBP).
31 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
32 108. Methylethylaminobutyrophenone (Me-EABP).
33 109. Methylaminobutyrophenone (MABP).
34 110. Pyrrolidinopropiophenone.
35 111. Pyrrolidinobutiophenone (PBP).
36 112. Pyrrolidinovalerophenone (PVP).
37 113. Methylpyrrolidinopropiophenone (MPPP).
38 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
39 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
40 naphthalenylmethanone).
41 116. JWH-019 (Naphthanlen-1-yl-(1-pentylindol-3-



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- 42 yl)methanone).
- 43 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
- 44 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-
- 45 yl)methanone).
- 46 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
- 47 yl)methanone).
- 48 120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
- 49 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-
- 50 tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
- 51 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-
- 52 indole).
- 53 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
- 54 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-
- 55 yl)ethanone).
- 56 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-
- 57 yl)methanone).
- 58 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-
- 59 yl)ethanone).
- 60 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-
- 61 yl)ethanone).
- 62 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
- 63 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
- 64 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-2-
- 65 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)).
- 66 131. HU-308 ([91R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-
- 67 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl)methanol).
- 68 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-
- 69 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
- 70 1,4-dione).



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- 71 133. CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-
72 yl)methanone).
- 73 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
74 undecanamide).
- 75 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
76 undecanamide).
- 77 136. CP55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-
78 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).
- 79 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-2-
80 iodophenyl)methanone).
- 81 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-
82 (naphthalen-1-yl)methanone).
- 83 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-
84 yl)methanone)).
- 85 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-
86 methoxyphenylethanone).
- 87 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
88 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
89 naphthalenylmethanone).
- 90



803350

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2012	.	
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The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment (with title amendment)

Delete lines 479 - 486

and insert:

less of a controlled substance described in s. 893.03(1)(c)46.-50. and 114.-142., the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the purposes of this subsection, "cannabis" does not include the resin extracted from the plants of the genus Cannabis, or any compound manufacture, salt, derivative, mixture, or preparation of such resin, and a controlled substance described in s. 893.03(1)(c)46.-50. and 114.-142. does not include the substance



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13 in a powdered

14

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

16 And the title is amended as follows:

17 Delete line 15

18 and insert:

19 thereto; providing that it is a misdemeanor of the
20 first degree to possess specified amounts of certain
21 synthetic cannabinoids in nonpowdered form; providing
22 an effective date.

By Senator Evers

2-01108B-12

20121502__

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 I
 4 controlled substances certain specified materials,
 5 compounds, mixtures, or preparations that contain
 6 hallucinogenic substances or that contain any of these
 7 substances' salts, isomers, and salts of isomers, if
 8 the existence of such salts, isomers, and salts of
 9 isomers is possible within the specific chemical
 10 designation; reenacting ss. 893.13(1)-(6) and
 11 921.0022(3)(b)-(e), F.S., relating to prohibited acts
 12 involving controlled substances and the Criminal
 13 Punishment Code, respectively, to incorporate the
 14 amendments made to s. 893.03, F.S., in references
 15 thereto; providing an effective date.

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

18
 19 Section 1. Paragraph (c) of subsection (1) of section
 20 893.03, Florida Statutes, is amended to read:

21 893.03 Standards and schedules.—The substances enumerated
 22 in this section are controlled by this chapter. The controlled
 23 substances listed or to be listed in Schedules I, II, III, IV,
 24 and V are included by whatever official, common, usual,
 25 chemical, or trade name designated. The provisions of this
 26 section shall not be construed to include within any of the
 27 schedules contained in this section any excluded drugs listed
 28 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 29 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical

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

2-01108B-12

20121502__

30 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 31 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 32 Anabolic Steroid Products."

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

38 (c) Unless specifically excepted or unless listed in
 39 another schedule, any material, compound, mixture, or
 40 preparation that ~~which~~ contains any quantity of the following
 41 hallucinogenic substances or that ~~which~~ contains any of their
 42 salts, isomers, and salts of isomers, if ~~whenever~~ the existence
 43 of such salts, isomers, and salts of isomers is possible within
 44 the specific chemical designation:

- 45 1. Alpha-ethyltryptamine.
- 46 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-
 47 methylaminorex).
- 48 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
- 49 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 50 5. 4-Bromo-2, 5-dimethoxyphenethylamine.
- 51 6. Bufotenine.
- 52 7. Cannabis.
- 53 8. Cathinone.
- 54 9. Diethyltryptamine.
- 55 10. 2,5-Dimethoxyamphetamine.
- 56 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
- 57 12. Dimethyltryptamine.
- 58 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine

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59 analog of phencyclidine).
 60 14. N-Ethyl-3-piperidyl benzilate.
 61 15. N-ethylamphetamine.
 62 16. Fenethylamine.
 63 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
 64 18. Ibogaine.
 65 19. Lysergic acid diethylamide (LSD).
 66 20. Mescaline.
 67 21. Methcathinone.
 68 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
 69 23. 4-methoxyamphetamine.
 70 24. 4-methoxymethamphetamine.
 71 25. 4-Methyl-2,5-dimethoxyamphetamine.
 72 26. 3,4-Methylenedioxy-N-ethylamphetamine.
 73 27. 3,4-Methylenedioxyamphetamine.
 74 28. N-Methyl-3-piperidyl benzilate.
 75 29. N,N-dimethylamphetamine.
 76 30. Parahexyl.
 77 31. Peyote.
 78 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine
 79 analog of phencyclidine).
 80 33. Psilocybin.
 81 34. Psilocyn.
 82 35. Salvia divinorum, except for any drug product approved
 83 by the United States Food and Drug Administration which contains
 84 Salvia divinorum or its isomers, esters, ethers, salts, and
 85 salts of isomers, esters, and ethers, if whenever the existence
 86 of such isomers, esters, ethers, and salts is possible within
 87 the specific chemical designation.

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88 36. Salvinorin A, except for any drug product approved by
 89 the United States Food and Drug Administration which contains
 90 Salvinorin A or its isomers, esters, ethers, salts, and salts of
 91 isomers, esters, and ethers, if whenever the existence of such
 92 isomers, esters, ethers, and salts is possible within the
 93 specific chemical designation.
 94 37. Tetrahydrocannabinols.
 95 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
 96 (Thiophene analog of phencyclidine).
 97 39. 3,4,5-Trimethoxyamphetamine.
 98 40. 3,4-Methylenedioxy-methcathinone.
 99 41. 3,4-Methylenedioxypropylvalerone (MDPV).
 100 42. Methylmethcathinone.
 101 43. Methoxymethcathinone.
 102 44. Fluoromethcathinone.
 103 45. Methylethcathinone.
 104 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
 105 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
 106 homologue.
 107 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
 108 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
 109 also known as HU-210.
 110 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.
 111 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.
 112 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole, also
 113 known as JWH-200.
 114 51. BZP (Benzylpiperazine).
 115 52. Fluorophenylpiperazine.
 116 53. Methylphenylpiperazine.

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117 54. Chlorophenylpiperazine.
 118 55. Methoxyphenylpiperazine.
 119 56. DBZP (1,4-dibenzylpiperazine).
 120 57. TFMPP (3-Trifluoromethylphenylpiperazine).
 121 58. MBDB (Methylbenzodioxolylbutanamine).
 122 59. 5-Hydroxy-alpha-methyltryptamine.
 123 60. 5-Hydroxy-N-methyltryptamine.
 124 61. 5-Methoxy-N-methyl-N-isopropyltryptamine.
 125 62. 5-Methoxy-alpha-methyltryptamine.
 126 63. Methyltryptamine.
 127 64. 5-Methoxy-N,N-dimethyltryptamine.
 128 65. 5-Methyl-N,N-dimethyltryptamine.
 129 66. Tyramine (4-Hydroxyphenethylamine).
 130 67. 5-Methoxy-N,N-Diisopropyltryptamine.
 131 68. DiPT (N,N-Diisopropyltryptamine).
 132 69. DPT (N,N-Dipropyltryptamine).
 133 70. 4-Hydroxy-N,N-diisopropyltryptamine.
 134 71. Methoxytryptamine.
 135 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
 136 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
 137 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
 138 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
 139 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
 140 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
 141 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
 142 79. 2C-T-7 (2,5-Dimethoxy-4-propylthiophenethylamine).
 143 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
 144 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).
 145 82. Ethcathinone.

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146 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
 147 84. Naphyrone (naphthylpyrovalerone).
 148 85. N-N-Dimethyl-3,4-methylenedioxcathinone.
 149 86. N-N-Diethyl-3,4-methylenedioxcathinone.
 150 87. 3,4-methylenedioxy-propiofenone.
 151 88. 2-Bromo-3,4-Methylenedioxypropiofenone.
 152 89. 3,4-methylenedioxy-propiofenone-2-oxime.
 153 90. N-Acetyl-3,4-methylenedioxcathinone.
 154 91. N-Acetyl-N-Methyl-3,4-Methylenedioxcathinone.
 155 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone.
 156 93. Bromomethcathinone.
 157 94. Buphedrone (alpha-methylamino-butyrophenone).
 158 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
 159 96. Dimethylcathinone.
 160 97. Dimethylmethcathinone.
 161 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
 162 99. (MDPPP) 3,4-Methylenedioxy-alpha-
 163 pyrrolidinopropiofenone.
 164 100. (MDPBP) 3,4-Methylenedioxy-alpha-
 165 pyrrolidinobutiophenone.
 166 101. Methoxypyrrolidinopropiofenone (MOPPP).
 167 102. Methylpyrrolidinohexiophenone (MPHP).
 168 103. Benocyclidine (BCP) or
 169 benzothiophenylcyclohexylpiperidine (BTCP).
 170 104. Fluoromethylaminobutyrophenone (F-MABP).
 171 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
 172 106. Ethylpyrrolidinobutyrophenone (Et-PBP).
 173 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
 174 108. Methyl-ethylaminobutyrophenone (Me-EABP).

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175 109. Methylaminobutyrophenone (MABP).
 176 110. Pyrrolidinopropiophenone.
 177 111. Pyrrolidinobutiophenone (PBP).
 178 112. Pyrrolidinovalerophenone (PVP).
 179 113. Methylpyrrolidinopropiophenone (MPPP).
 180 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
 181 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
 182 naphthalenylmethanone).
 183 116. JWH-019 (Naphthalen-1-yl-(1-pentylindol-3-
 184 yl)methanone).
 185 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
 186 118. JWH-072 (naphthalen-1-yl(1-propyl-1H-indol-3-
 187 yl)methanone).
 188 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
 189 yl)methanone).
 190 120. JWH-122 (1-Pentyl-3-(40methyl-1-naphthoyl)indole).
 191 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-
 192 tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran).
 193 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-indole).
 194 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
 195 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-
 196 yl)ethanone).
 197 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-
 198 yl)methanone).
 199 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-
 200 yl)ethanone).
 201 127. JWH-251 (2-(2-methylphenyl)-1-(1 pentyl-1H-indol-3-
 202 yl)ethanone).
 203 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).

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204 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
 205 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 206 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 207 ol).
 208 131. HU-308 ([91R,2R,5R-2-[2,6-dimethoxy-4-(2-methyloctan-
 209 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol).
 210 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-
 211 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
 212 1,4-dione).
 213 133. CB-13 (Naphthalen-1-yl-(4-pentylloxynaphthalen-1-
 214 yl)methanone).
 215 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
 216 undecanamide).
 217 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
 218 undecanamide).
 219 136. CP55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl)
 220 cyclohexyl]-5-(2-methyloctan-2-yl)phenol.)
 221 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]- (2-
 222 iodophenyl)methanone).
 223 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-
 224 (naphthalen-1-yl)methanone).
 225 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-
 226 yl)methanone).
 227 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-
 228 methoxypehnylethanone)).
 229 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
 230 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
 231 naphthalenylmethanone).
 232 142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-

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233 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
 234 naphthalenylmethanone).

235 Section 2. For the purpose of incorporating the amendment
 236 made by this act to section 893.03, Florida Statutes, in
 237 references thereto, subsections (1), (2), (3), (4), (5), and (6)
 238 of section 893.13, Florida Statutes, are reenacted to read:

239 893.13 Prohibited acts; penalties.—

240 (1) (a) Except as authorized by this chapter and chapter
 241 499, it is unlawful for any person to sell, manufacture, or
 242 deliver, or possess with intent to sell, manufacture, or
 243 deliver, a controlled substance. Any person who violates this
 244 provision with respect to:

245 1. A controlled substance named or described in s.
 246 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.,
 247 commits a felony of the second degree, punishable as provided in
 248 s. 775.082, s. 775.083, or s. 775.084.

249 2. A controlled substance named or described in s.
 250 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,
 251 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of
 252 the third degree, punishable as provided in s. 775.082, s.
 253 775.083, or s. 775.084.

254 3. A controlled substance named or described in s.
 255 893.03(5) commits a misdemeanor of the first degree, punishable
 256 as provided in s. 775.082 or s. 775.083.

257 (b) Except as provided in this chapter, it is unlawful to
 258 sell or deliver in excess of 10 grams of any substance named or
 259 described in s. 893.03(1) (a) or (1) (b), or any combination
 260 thereof, or any mixture containing any such substance. Any
 261 person who violates this paragraph commits a felony of the first

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262 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 263 775.084.

264 (c) Except as authorized by this chapter, it is unlawful
 265 for any person to sell, manufacture, or deliver, or possess with
 266 intent to sell, manufacture, or deliver, a controlled substance
 267 in, on, or within 1,000 feet of the real property comprising a
 268 child care facility as defined in s. 402.302 or a public or
 269 private elementary, middle, or secondary school between the
 270 hours of 6 a.m. and 12 midnight, or at any time in, on, or
 271 within 1,000 feet of real property comprising a state, county,
 272 or municipal park, a community center, or a publicly owned
 273 recreational facility. For the purposes of this paragraph, the
 274 term "community center" means a facility operated by a nonprofit
 275 community-based organization for the provision of recreational,
 276 social, or educational services to the public. Any person who
 277 violates this paragraph with respect to:

278 1. A controlled substance named or described in s.
 279 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.,
 280 commits a felony of the first degree, punishable as provided in
 281 s. 775.082, s. 775.083, or s. 775.084. The defendant must be
 282 sentenced to a minimum term of imprisonment of 3 calendar years
 283 unless the offense was committed within 1,000 feet of the real
 284 property comprising a child care facility as defined in s.
 285 402.302.

286 2. A controlled substance named or described in s.
 287 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,
 288 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of
 289 the second degree, punishable as provided in s. 775.082, s.
 290 775.083, or s. 775.084.

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

295
 296 This paragraph does not apply to a child care facility unless
 297 the owner or operator of the facility posts a sign that is not
 298 less than 2 square feet in size with a word legend identifying
 299 the facility as a licensed child care facility and that is
 300 posted on the property of the child care facility in a
 301 conspicuous place where the sign is reasonably visible to the
 302 public.

303 (d) Except as authorized by this chapter, it is unlawful
 304 for any person to sell, manufacture, or deliver, or possess with
 305 intent to sell, manufacture, or deliver, a controlled substance
 306 in, on, or within 1,000 feet of the real property comprising a
 307 public or private college, university, or other postsecondary
 308 educational institution. Any person who violates this paragraph
 309 with respect to:

310 1. A controlled substance named or described in s.
 311 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 312 commits a felony of the first degree, punishable as provided in
 313 s. 775.082, s. 775.083, or s. 775.084.

314 2. A controlled substance named or described in s.
 315 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 316 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 317 the second degree, punishable as provided in s. 775.082, s.
 318 775.083, or s. 775.084.

319 3. Any other controlled substance, except as lawfully sold,

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320 manufactured, or delivered, must be sentenced to pay a \$500 fine
 321 and to serve 100 hours of public service in addition to any
 322 other penalty prescribed by law.

323 (e) Except as authorized by this chapter, it is unlawful
 324 for any person to sell, manufacture, or deliver, or possess with
 325 intent to sell, manufacture, or deliver, a controlled substance
 326 not authorized by law in, on, or within 1,000 feet of a physical
 327 place for worship at which a church or religious organization
 328 regularly conducts religious services or within 1,000 feet of a
 329 convenience business as defined in s. 812.171. Any person who
 330 violates this paragraph with respect to:

331 1. A controlled substance named or described in s.
 332 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 333 commits a felony of the first degree, punishable as provided in
 334 s. 775.082, s. 775.083, or s. 775.084.

335 2. A controlled substance named or described in s.
 336 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 337 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 338 the second degree, punishable as provided in s. 775.082, s.
 339 775.083, or s. 775.084.

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

344 (f) Except as authorized by this chapter, it is unlawful
 345 for any person to sell, manufacture, or deliver, or possess with
 346 intent to sell, manufacture, or deliver, a controlled substance
 347 in, on, or within 1,000 feet of the real property comprising a
 348 public housing facility at any time. For purposes of this

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349 section, the term "real property comprising a public housing
350 facility" means real property, as defined in s. 421.03(12), of a
351 public corporation created as a housing authority pursuant to
352 part I of chapter 421. Any person who violates this paragraph
353 with respect to:

354 1. A controlled substance named or described in s.
355 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
356 commits a felony of the first degree, punishable as provided in
357 s. 775.082, s. 775.083, or s. 775.084.

358 2. A controlled substance named or described in s.
359 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
360 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
361 the second degree, punishable as provided in s. 775.082, s.
362 775.083, or s. 775.084.

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

367 (g) Except as authorized by this chapter, it is unlawful
368 for any person to manufacture methamphetamine or phencyclidine,
369 or possess any listed chemical as defined in s. 893.033 in
370 violation of s. 893.149 and with intent to manufacture
371 methamphetamine or phencyclidine. If any person violates this
372 paragraph and:

373 1. The commission or attempted commission of the crime
374 occurs in a structure or conveyance where any child under 16
375 years of age is present, the person commits a felony of the
376 first degree, punishable as provided in s. 775.082, s. 775.083,
377 or s. 775.084. In addition, the defendant must be sentenced to a

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378 minimum term of imprisonment of 5 calendar years.

379 2. The commission of the crime causes any child under 16
380 years of age to suffer great bodily harm, the person commits a
381 felony of the first degree, punishable as provided in s.
382 775.082, s. 775.083, or s. 775.084. In addition, the defendant
383 must be sentenced to a minimum term of imprisonment of 10
384 calendar years.

385 (h) Except as authorized by this chapter, it is unlawful
386 for any person to sell, manufacture, or deliver, or possess with
387 intent to sell, manufacture, or deliver, a controlled substance
388 in, on, or within 1,000 feet of the real property comprising an
389 assisted living facility, as that term is used in chapter 429.
390 Any person who violates this paragraph with respect to:

391 1. A controlled substance named or described in s.
392 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
393 commits a felony of the first degree, punishable as provided in
394 s. 775.082, s. 775.083, or s. 775.084.

395 2. A controlled substance named or described in s.
396 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
397 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
398 the second degree, punishable as provided in s. 775.082, s.
399 775.083, or s. 775.084.

400 (2)(a) Except as authorized by this chapter and chapter
401 499, it is unlawful for any person to purchase, or possess with
402 intent to purchase, a controlled substance. Any person who
403 violates this provision with respect to:

404 1. A controlled substance named or described in s.
405 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
406 commits a felony of the second degree, punishable as provided in

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407 s. 775.082, s. 775.083, or s. 775.084.

408 2. A controlled substance named or described in s.
409 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
410 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
411 the third degree, punishable as provided in s. 775.082, s.
412 775.083, or s. 775.084.

413 3. A controlled substance named or described in s.
414 893.03(5) commits a misdemeanor of the first degree, punishable
415 as provided in s. 775.082 or s. 775.083.

416 (b) Except as provided in this chapter, it is unlawful to
417 purchase in excess of 10 grams of any substance named or
418 described in s. 893.03(1)(a) or (1)(b), or any combination
419 thereof, or any mixture containing any such substance. Any
420 person who violates this paragraph commits a felony of the first
421 degree, punishable as provided in s. 775.082, s. 775.083, or s.
422 775.084.

423 (3) Any person who delivers, without consideration, not
424 more than 20 grams of cannabis, as defined in this chapter,
425 commits a misdemeanor of the first degree, punishable as
426 provided in s. 775.082 or s. 775.083. For the purposes of this
427 paragraph, "cannabis" does not include the resin extracted from
428 the plants of the genus *Cannabis* or any compound manufacture,
429 salt, derivative, mixture, or preparation of such resin.

430 (4) Except as authorized by this chapter, it is unlawful
431 for any person 18 years of age or older to deliver any
432 controlled substance to a person under the age of 18 years, or
433 to use or hire a person under the age of 18 years as an agent or
434 employee in the sale or delivery of such a substance, or to use
435 such person to assist in avoiding detection or apprehension for

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436 a violation of this chapter. Any person who violates this
437 provision with respect to:

438 (a) A controlled substance named or described in s.
439 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
440 commits a felony of the first degree, punishable as provided in
441 s. 775.082, s. 775.083, or s. 775.084.

442 (b) A controlled substance named or described in s.
443 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
444 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
445 the second degree, punishable as provided in s. 775.082, s.
446 775.083, or s. 775.084.

447
448 Imposition of sentence may not be suspended or deferred, nor
449 shall the person so convicted be placed on probation.

450 (5) It is unlawful for any person to bring into this state
451 any controlled substance unless the possession of such
452 controlled substance is authorized by this chapter or unless
453 such person is licensed to do so by the appropriate federal
454 agency. Any person who violates this provision with respect to:

455 (a) A controlled substance named or described in s.
456 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
457 commits a felony of the second degree, punishable as provided in
458 s. 775.082, s. 775.083, or s. 775.084.

459 (b) A controlled substance named or described in s.
460 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
461 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
462 the third degree, punishable as provided in s. 775.082, s.
463 775.083, or s. 775.084.

464 (c) A controlled substance named or described in s.

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465 893.03(5) commits a misdemeanor of the first degree, punishable
 466 as provided in s. 775.082 or s. 775.083.

467 (6) (a) It is unlawful for any person to be in actual or
 468 constructive possession of a controlled substance unless such
 469 controlled substance was lawfully obtained from a practitioner
 470 or pursuant to a valid prescription or order of a practitioner
 471 while acting in the course of his or her professional practice
 472 or to be in actual or constructive possession of a controlled
 473 substance except as otherwise authorized by this chapter. Any
 474 person who violates this provision commits a felony of the third
 475 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 476 775.084.

477 (b) If the offense is the possession of not more than 20
 478 grams of cannabis, as defined in this chapter, or 3 grams or
 479 less of a controlled substance described in s. 893.03(1)(c)46.-
 480 50., the person commits a misdemeanor of the first degree,
 481 punishable as provided in s. 775.082 or s. 775.083. For the
 482 purposes of this subsection, "cannabis" does not include the
 483 resin extracted from the plants of the genus *Cannabis*, or any
 484 compound manufacture, salt, derivative, mixture, or preparation
 485 of such resin, and a controlled substance described in s.
 486 893.03(1)(c)46.-50. does not include the substance in a powdered
 487 form.

488 (c) Except as provided in this chapter, it is unlawful to
 489 possess in excess of 10 grams of any substance named or
 490 described in s. 893.03(1)(a) or (1)(b), or any combination
 491 thereof, or any mixture containing any such substance. Any
 492 person who violates this paragraph commits a felony of the first
 493 degree, punishable as provided in s. 775.082, s. 775.083, or s.

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494 775.084.

495 (d) Notwithstanding any provision to the contrary of the
 496 laws of this state relating to arrest, a law enforcement officer
 497 may arrest without warrant any person who the officer has
 498 probable cause to believe is violating the provisions of this
 499 chapter relating to possession of cannabis.

500 Section 3. For the purpose of incorporating the amendment
 501 made by this act to section 893.03, Florida Statutes, in
 502 references thereto, paragraphs (b), (c), (d), and (e) of
 503 subsection (3) of section 921.0022, Florida Statutes, are
 504 reenacted to read:

505 921.0022 Criminal Punishment Code; offense severity ranking
 506 chart.-

507 (3) OFFENSE SEVERITY RANKING CHART

508 (b) LEVEL 2

509

Florida Statute	Felony Degree	Description
510 379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
511 379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
512 403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or

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 any quantity for commercial purposes, or
 hazardous waste.

513 517.07 3rd Registration of securities and
 furnishing of prospectus required.

514 590.28(1) 3rd Intentional burning of lands.

515 784.05(3) 3rd Storing or leaving a loaded firearm
 within reach of minor who uses it to
 inflict injury or death.

516 787.04(1) 3rd In violation of court order, take,
 entice, etc., minor beyond state limits.

517 806.13(1)(b)3. 3rd Criminal mischief; damage \$1,000 or more
 to public communication or any other
 public service.

518 810.061(2) 3rd Impairing or impeding telephone or power
 to a dwelling; facilitating or
 furthering burglary.

519 810.09(2)(e) 3rd Trespassing on posted commercial
 horticulture property.

520 812.014(2)(c)1. 3rd Grand theft, 3rd degree; \$300 or more
 but less than \$5,000.

521

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 812.014(2)(d) 3rd Grand theft, 3rd degree; \$100 or more
 but less than \$300, taken from
 unenclosed curtilage of dwelling.

522 812.015(7) 3rd Possession, use, or attempted use of an
 antishoplifting or inventory control
 device countermeasure.

523 817.234(1)(a)2. 3rd False statement in support of insurance
 claim.

524 817.481(3)(a) 3rd Obtain credit or purchase with false,
 expired, counterfeit, etc., credit card,
 value over \$300.

525 817.52(3) 3rd Failure to redeliver hired vehicle.

526 817.54 3rd With intent to defraud, obtain mortgage
 note, etc., by false representation.

527 817.60(5) 3rd Dealing in credit cards of another.

528 817.60(6)(a) 3rd Forgery; purchase goods, services with
 false card.

529 817.61 3rd Fraudulent use of credit cards over \$100
 or more within 6 months.

530 826.04 3rd Knowingly marries or has sexual

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intercourse with person to whom related.
531 831.01 3rd Forgery.
532 831.02 3rd Uttering forged instrument; utters or
publishes alteration with intent to
defraud.
533 831.07 3rd Forging bank bills, checks, drafts, or
promissory notes.
534 831.08 3rd Possessing 10 or more forged notes,
bills, checks, or drafts.
535 831.09 3rd Uttering forged notes, bills, checks,
drafts, or promissory notes.
536 831.11 3rd Bringing into the state forged bank
bills, checks, drafts, or notes.
537 832.05(3)(a) 3rd Cashing or depositing item with intent
to defraud.
538 843.08 3rd Falsely impersonating an officer.
539 893.13(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.

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540 893.147(2) 3rd Manufacture or delivery of drug
paraphernalia.
541 (c) LEVEL 3
542
543 Florida Felony
Statute Degree Description
544 119.10(2)(b) 3rd Unlawful use of confidential information
from police reports.
545 316.066 3rd Unlawfully obtaining or using
(3)(b)-(d) confidential crash reports.
546 316.193(2)(b) 3rd Felony DUI, 3rd conviction.
547 316.1935(2) 3rd Fleeing or attempting to elude law
enforcement officer in patrol vehicle
with siren and lights activated.
548 319.30(4) 3rd Possession by junkyard of motor vehicle
with identification number plate
removed.
549 319.33(1)(a) 3rd Alter or forge any certificate of title
to a motor vehicle or mobile home.
550 319.33(1)(c) 3rd Procure or pass title on stolen vehicle.

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551 319.33(4) 3rd With intent to defraud, possess, sell,
etc., a blank, forged, or unlawfully
obtained title or registration.

552 327.35(2)(b) 3rd Felony BUI.

553 328.05(2) 3rd Possess, sell, or counterfeit
fictitious, stolen, or fraudulent titles
or bills of sale of vessels.

554 328.07(4) 3rd Manufacture, exchange, or possess vessel
with counterfeit or wrong ID number.

555 376.302(5) 3rd Fraud related to reimbursement for
cleanup expenses under the Inland
Protection Trust Fund.

556 379.2431 3rd Taking, disturbing, mutilating,
(1)(e)5. destroying, causing to be destroyed,
transferring, selling, offering to sell,
molesting, or harassing marine turtles,
marine turtle eggs, or marine turtle
nests in violation of the Marine Turtle
Protection Act.

557 379.2431 3rd Soliciting to commit or conspiring to
(1)(e)6. commit a violation of the Marine Turtle
Protection Act.

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558 400.9935(4) 3rd Operating a clinic without a license or
filing false license application or
other required information.

559 440.1051(3) 3rd False report of workers' compensation
fraud or retaliation for making such a
report.

560 501.001(2)(b) 2nd Tamper with a consumer product or the
container using materially
false/misleading information.

561 624.401(4)(a) 3rd Transacting insurance without a
certificate of authority.

562 624.401(4)(b)1. 3rd Transacting insurance without a
certificate of authority; premium
collected less than \$20,000.

563 626.902(1)(a) & 3rd Representing an unauthorized insurer.
(b)

564 697.08 3rd Equity skimming.

565 790.15(3) 3rd Person directs another to discharge
firearm from a vehicle.

566 796.05(1) 3rd Live on earnings of a prostitute.

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567	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
568	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
569	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
570	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
571	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
572	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
573	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
574	817.233	3rd	Burning to defraud insurer.
575	817.234	3rd	Unlawful solicitation of persons

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576	(8)(b)-(c)		involved in motor vehicle accidents.
577	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
578	817.236	3rd	Filing a false motor vehicle insurance application.
579	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
580	817.413(2)	3rd	Sale of used goods as new.
581	817.505(4)	3rd	Patient brokering.
582	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
583	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
584	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
	838.021(3)(b)	3rd	Threatens unlawful harm to public

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585 servant.

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

586 860.15(3) 3rd Overcharging for repairs and parts.

587 870.01(2) 3rd Riot; inciting or encouraging.

588 893.13(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
589 (4) drugs).

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.

590 893.13(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
591 facility.

893.13(6)(a) 3rd Possession of any controlled substance

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592 other than felony possession of
cannabis.

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

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

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

595 893.13(7)(a)11. 3rd Furnish false or fraudulent material
information on any document or record
required by chapter 893.

596 893.13(8)(a)1. 3rd Knowingly assist a patient, other
person, or owner of an animal in
obtaining a controlled substance through
deceptive, untrue, or fraudulent
597 representations in or related to the
practitioner's practice.

893.13(8)(a)2. 3rd Employ a trick or scheme in the
practitioner's practice to assist a
patient, other person, or owner of an
animal in obtaining a controlled

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				substance.
598	893.13(8)(a)3.	3rd		Knowingly write a prescription for a controlled substance for a fictitious person.
599	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.
600	918.13(1)(a)	3rd		Alter, destroy, or conceal investigation evidence.
601	944.47	3rd		Introduce contraband to correctional facility.
	(1)(a)1.-2.			
602	944.47(1)(c)	2nd		Possess contraband while upon the grounds of a correctional institution.
603	985.721	3rd		Escapes from a juvenile facility (secure detention or residential commitment facility).
604				
605	(d) LEVEL 4			
606	Florida Statute	Felony Degree		Description

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607	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.
608	499.0051(1)	3rd		Failure to maintain or deliver pedigree papers.
609	499.0051(2)	3rd		Failure to authenticate pedigree papers.
610	499.0051(6)	2nd		Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
611	784.07(2)(b)	3rd		Battery of law enforcement officer, firefighter, etc.
612	784.074(1)(c)	3rd		Battery of sexually violent predators facility staff.
613	784.075	3rd		Battery on detention or commitment facility staff.
614	784.078	3rd		Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
615				

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616 784.08(2)(c) 3rd Battery on a person 65 years of age or
older.

617 784.081(3) 3rd Battery on specified official or
employee.

618 784.082(3) 3rd Battery by detained person on visitor or
other detainee.

619 784.083(3) 3rd Battery on code inspector.

620 784.085 3rd Battery of child by throwing, tossing,
projecting, or expelling certain fluids
or materials.

621 787.03(1) 3rd Interference with custody; wrongly takes
minor from appointed guardian.

622 787.04(2) 3rd Take, entice, or remove child beyond
state limits with criminal intent
pending custody proceedings.

623 787.04(3) 3rd Carrying child beyond state lines with
criminal intent to avoid producing child
at custody hearing or delivering to
designated person.

790.115(1) 3rd Exhibiting firearm or weapon within
1,000 feet of a school.

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624 790.115(2)(b) 3rd Possessing electric weapon or device,
destructive device, or other weapon on
school property.

625 790.115(2)(c) 3rd Possessing firearm on school property.

626 800.04(7)(c) 3rd Lewd or lascivious exhibition; offender
less than 18 years.

627 810.02(4)(a) 3rd Burglary, or attempted burglary, of an
unoccupied structure; unarmed; no
assault or battery.

628 810.02(4)(b) 3rd Burglary, or attempted burglary, of an
unoccupied conveyance; unarmed; no
assault or battery.

629 810.06 3rd Burglary; possession of tools.

630 810.08(2)(c) 3rd Trespass on property, armed with firearm
or dangerous weapon.

631 812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000 or more
but less than \$20,000.

632 812.014 3rd Grand theft, 3rd degree, a will,
(2)(c)4.-10. firearm, motor vehicle, livestock, etc.

633

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634	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
635	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
636	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
637	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
638	837.02(1)	3rd	Perjury in official proceedings.
639	837.021(1)	3rd	Make contradictory statements in official proceedings.
640	838.022	3rd	Official misconduct.
641	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
642	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.

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643	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
644	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
645	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreatment or bond jumping).
646	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
647	874.05(1)	3rd	Encouraging or recruiting another to join a criminal gang.
648	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).
649	914.14(2)	3rd	Witnesses accepting bribes.
650	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
651	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.

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652 918.12 3rd Tampering with jurors.

653 934.215 3rd Use of two-way communications device to
facilitate commission of a crime.

654 (e) LEVEL 5

655 Florida Felony

656 Statute Degree Description

657 316.027(1)(a) 3rd Accidents involving personal injuries,
failure to stop; leaving scene.

658 316.1935(4)(a) 2nd Aggravated fleeing or eluding.

659 322.34(6) 3rd Careless operation of motor vehicle with
suspended license, resulting in death or
serious bodily injury.

660 327.30(5) 3rd Vessel accidents involving personal
injury; leaving scene.

661 381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing
HIV positive.

662 440.10(1)(g) 2nd Failure to obtain workers' compensation
coverage.

663

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664 440.105(5) 2nd Unlawful solicitation for the purpose of
making workers' compensation claims.

665 440.381(2) 2nd Submission of false, misleading, or
incomplete information with the purpose
of avoiding or reducing workers'
compensation premiums.

666 624.401(4)(b)2. 2nd Transacting insurance without a
certificate or authority; premium
collected \$20,000 or more but less than
\$100,000.

667 626.902(1)(c) 2nd Representing an unauthorized insurer;
repeat offender.

668 790.01(2) 3rd Carrying a concealed firearm.

669 790.162 2nd Threat to throw or discharge destructive
device.

670 790.163(1) 2nd False report of deadly explosive or
weapon of mass destruction.

671 790.221(1) 2nd Possession of short-barreled shotgun or
machine gun.

790.23 2nd Felons in possession of firearms,
ammunition, or electronic weapons or

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				devices.
672	800.04 (6) (c)	3rd		Lewd or lascivious conduct; offender less than 18 years.
673	800.04 (7) (b)	2nd		Lewd or lascivious exhibition; offender 18 years or older.
674	806.111 (1)	3rd		Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
675	812.0145 (2) (b)	2nd		Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
676	812.015 (8)	3rd		Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
677	812.019 (1)	2nd		Stolen property; dealing in or trafficking in.
678	812.131 (2) (b)	3rd		Robbery by sudden snatching.
679	812.16 (2)	3rd		Owning, operating, or conducting a chop shop.
680	817.034 (4) (a)2.	2nd		Communications fraud, value \$20,000 to

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				\$50,000.
681	817.234 (11) (b)	2nd		Insurance fraud; property value \$20,000 or more but less than \$100,000.
682	817.2341 (1), (2) (a) & (3) (a)	3rd		Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
683	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.
684	817.625 (2) (b)	2nd		Second or subsequent fraudulent use of scanning device or reencoder.
685	825.1025 (4)	3rd		Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
686	827.071 (4)	2nd		Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a

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687 child.

827.071(5) 3rd Possess, control, or intentionally view
any photographic material, motion
picture, etc., which includes sexual
conduct by a child.

688 839.13(2)(b) 2nd Falsifying records of an individual in
the care and custody of a state agency
involving great bodily harm or death.

689 843.01 3rd Resist officer with violence to person;
resist arrest with violence.

690 847.0135(5)(b) 2nd Lewd or lascivious exhibition using
computer; offender 18 years or older.

691 847.0137 3rd Transmission of pornography by
(2) & (3) electronic device or equipment.

692 847.0138 3rd Transmission of material harmful to
(2) & (3) minors to a minor by electronic device
or equipment.

693 874.05(2) 2nd Encouraging or recruiting another to
join a criminal gang; second or
subsequent offense.

694 893.13(1)(a)1. 2nd Sell, manufacture, or deliver cocaine

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695 (or other s. 893.03(1)(a), (1)(b),
(1)(d), (2)(a), (2)(b), or (2)(c)4.
drugs).

893.13(1)(c)2. 2nd Sell, manufacture, or deliver cannabis
(or other s. 893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
(2)(c)7., (2)(c)8., (2)(c)9., (3), or
(4) drugs) within 1,000 feet of a child
care facility, school, or state, county,
or municipal park or publicly owned
recreational facility or community
center.

696 893.13(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.

697 893.13(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.

698 893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine

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(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.

699

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).

700

893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing of
controlled substance.

701

702

Section 4. This act shall take effect October 1, 2012.

CourtSmart Tag Report

Room: LL 37
Caption: BCriminal Justice Committee

Case:
Judge:

Type:

Started: 1/25/2012 3:37:29 PM

Ends: 1/25/2012 5:30:23 PM

Length: 01:52:55

3:37:43 PM Meeting to order
3:37:54 PM Tab 5 - SB 872 Senator Fasano
3:40:12 PM Penny Mecklenburg
3:45:43 PM Roll call
3:46:07 PM Tab 6 - SB 964 Senator Benacquisto
3:48:55 PM Gail Colletta, Florida Action Committee
3:58:23 PM Victoria Peritz, Jupiter, FL
4:04:06 PM Brad King, 5th Circuit Court, Prosecutor
4:19:53 PM Roll call
4:20:20 PM Tab 4 - SB 346 by Senator Ring presented by Wally Eccleston, Leg. Asst.
4:24:18 PM Roll call
4:24:42 PM Tab 7 SB 1276 - Senator Latvala (Presented by Jennifer Wilson, Leg. Asst.)
4:27:42 PM
4:27:48 PM Roll call
4:29:02 PM Tab 3 - SB 732 Senator Bogdanoff (Workshop)
4:46:50 PM Brad King, State Attorney, Fifth Circuit, Florida Prosecuting Attorneys Assoc.
4:58:43 PM Honorable Nancy Daniels, Florida Public Defender Assoc, Inc.
5:05:50 PM Nicholas Cox, Office of Statewide Prosecution
5:11:02 PM LucyAnn Walker-Fraser, OPPAGA
5:18:46 PM Det. Lorri Hall, Jacksonville Sheriff's Office
5:22:24 PM Det. Lorri Hall, Jacksonville Sheriff's Office
5:22:24 PM Shannon MacGillis, Asst. Statewide Prosecutor
5:27:59 PM Frank MenuSmith, Florida Sheriffs Association
5:29:50 PM Meeting adjourned