

Tab 1	SB 570 by Bracy; (Identical to H 00355) Sentencing						
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Tab 2	SB 1178 by Bracy; (Similar to H 00653) Public Records/Photographs or Video or Audio Recordings that Depict or Record Killing of a Person						
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Tab 3	SB 1886 by Brandes; (Similar to H 00733) Contraband in County Detention Facilities						
671436	A	S	RCS	CJ, Brandes	Delete L.63 - 65:	02/20 12:48 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Bracy, Chair
Senator Baxley, Vice Chair

MEETING DATE: Tuesday, February 20, 2018
TIME: 11:00 a.m.—1:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Bracy, Chair; Senator Baxley, Vice Chair; Senators Bean, Bradley, Brandes, Grimsley, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 570 Bracy (Similar S 866, Identical H 355)	Sentencing; Revising the computation of the lowest permissible sentence under the Criminal Punishment Code, etc. CJ 02/20/2018 Fav/CS JU ACJ AP	Fav/CS Yeas 4 Nays 2
2	SB 1178 Bracy (Similar H 653)	Public Records/Photographs or Video or Audio Recordings that Depict or Record Killing of a Person; Expanding an exemption from public records requirements for a photograph or video or audio recording held by an agency which depicts or records the killing of a law enforcement officer to include a photograph or video or audio recording held by an agency which depicts or records the killing of a person; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 01/29/2018 Temporarily Postponed CJ 02/12/2018 Temporarily Postponed CJ 02/20/2018 Favorable GO RC	Favorable Yeas 6 Nays 0
3	SB 1886 Brandes (Similar H 733)	Contraband in County Detention Facilities; Prohibiting introduction into or possession on the grounds of any county detention facility of any cellular telephone or other portable communication device; defining the term "portable communication device", etc. CJ 02/20/2018 Fav/CS JU RC	Fav/CS Yeas 6 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 570

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Sentencing

DATE: February 21, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			JU	
3.			ACJ	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 570 amends s. 893.13, F.S., which enhances the penalty for controlled substances offenses when those offenses are committed within 1,000 feet of certain places or facilities. These protected areas are sometimes referred to as “drug-free zones.”

The bill reduces from 1,000 feet to 250 feet the distance for drug free zones around parks, community centers, publicly owned recreational facilities, colleges and universities, public housing facilities, and convenience businesses. The bill does not reduce the distance (1,000 feet) for drug free zones around K-12 schools, child care facilities, places of worship, and assisted living facilities.

The bill also provides that only the sale or manufacture of a controlled substance in any drug free zone is subject to an enhanced penalty under s. 893.13, F.S. Currently, controlled substance acts applicable to drug free zone violations include controlled substance sales, manufacture, delivery, and possession with intent to sell, manufacture, or deliver.

The bill will likely result in some decrease in prison beds because the bill decreases the distance around several drug free zones and limits the enhanced penalty to the sale or manufacture of controlled substances, which means that fewer persons will likely be arrested and prosecuted for a drug free zone violation. See Section V. Fiscal Impact Statement.

II. Present Situation:

Drug Free Zones

Florida law enhances the penalty for certain controlled substances offenses when those offenses are committed within 1,000 feet of certain places or facilities.¹ These protected areas are sometimes referred to as “drug-free zones” or “DFZs.”²

Florida’s DFZ provisions are found in s. 893.13(1)(c), (d), (e), (f), and (h), F.S. While not articulated in these provisions or in the chapter laws creating them, purposes that have typically been articulated for DFZs include, but are not limited to, enhancing public safety (e.g., reducing drug activity and drug-related crimes in the DFZs), reducing nuisance, and improving quality of life. Florida’s first DFZ provision was created in 1987³ and applied only to K-12 schools, but subsequent enactments created new types of DFZs. Florida created its K-12 school DFZ approximately three years after Congress enacted a school DFZ law, which the sponsor, former U.S. Senator Paula Hawkins, stated was intended to “deter drug distribution in and around schools” and help “eliminate outside negative influences” around schools.⁴

Section 893.13(1)(a), F.S., punishes the sale, manufacture, or delivery, or possession with intent to sell manufacture, or deliver, a controlled substance as a first degree misdemeanor,⁵ third degree felony,⁶ or second degree felony,⁷ depending upon the type of controlled substance involved in the drug activity.⁸ For example, selling cocaine (a Schedule (2)(a) controlled substance)⁹ is a second degree felony¹⁰ but selling cannabis (a Schedule (1)(c) controlled substance)¹¹ is a third degree felony.¹²

¹ *Thomas v. State*, 61 So. 3d 1157, 1159 (Fla. 1st DCA 2011). Some of the information reported in this section of the analysis was obtained from *Review Penalties for Drug-free Zone Violations*, Interim Report 2012-166 (Oct. 2011), Senate Criminal Justice Committee, The Florida Senate, available at

<http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-116cj.pdf> (last visited on Feb. 19, 2018).

² The DFZ provisions discussed in this analysis differ from similarly-named provisions enacted by local ordinance that punish with trespassing penalties those who engage in drug activity in designated zones.

³ Chapter 87-243, L.O.F.

⁴ 130 Cong. Rec. S559 (daily ed. Jan. 31, 1984).

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

⁶ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

⁷ A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

⁸ Controlled substances appear in one of five schedules under s. 893.03, F.S. Penalties are generally greatest for drug activity (like drug sales) that involves Schedule 1 and 2 controlled substances. Scheduling is determined by specific criteria set forth in s. 893.03, F.S. For example, a Schedule 1 substance is a substance which has a high potential for abuse and has no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Section 893.03(1), F.S.

⁹ Section 893.03(2)(a)4., F.S.

¹⁰ Section 893.13(1)(a)1., F.S.

¹¹ Section 893.03(1)(c)7., F.S.

¹² Section 893.13(1)(a)2., F.S.

Generally, this described drug activity is punished under s. 893.13(1)(a), F.S.¹³ However, when this drug activity is committed in, on, or within 1,000 feet¹⁴ of certain places and facilities, the degree of the offense is increased by one degree and the penalty is enhanced. For example, it is a first degree felony to sell cocaine within 1,000 feet of the real property of a K-12 school.¹⁵ In contrast, if this sale occurs outside of a K-12 school DFZ (or another DFZ), the offense is a second degree felony.¹⁶

Florida's current DFZs are created in, on, or within 1,000 feet of:

- The real property comprising a child care facility¹⁷ between the hours of 6 a.m. and 12 midnight, if the owner or operator of the facility posts a sign according to specifications set forth in s. 893.13, F.S.;¹⁸
- The real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight;¹⁹
- The real property comprising a state, county, or municipal park (no time restriction);²⁰
- The real property comprising a community center (no time restriction);²¹
- The real property comprising a publicly owned recreational facility (no time restriction);²²
- The real property comprising a public or private college, university, or other postsecondary educational institution (no time restriction);²³
- A physical place of worship at which a church or religious organization regularly conducts religious services (no time restriction);²⁴
- A convenience business (between the hours of 11 p.m. and 5 a.m.);²⁵

¹³ However, s. 893.13(1)(b), F.S., provides that it is a first degree felony to unlawfully sell or deliver more than 10 grams of any Schedule (1)(a) or (1)(b) controlled substance. Further, some controlled substances when possessed, sold, etc., in a specified quantity can be punished as drug trafficking under s. 893.135, F.S., which is generally a first degree felony. A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

¹⁴ Distance is measured "as the crow flies, not as the car drives." *Howard v. State*, 591 So. 2d 1067, 1068 (Fla. 4th DCA 1991). For example, with the K-2 school DFZ, distance is measured in a straight line from the boundary of the school's real property.

¹⁵ Section 893.13(1)(c)1., F.S.

¹⁶ Section 893.13(1)(a)1., F.S.

¹⁷ Section 402.302(2), F.S., provides that a "child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. "Child care facility" does not include: public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.; summer camps having children in full-time residence; summer day camps; bible schools normally conducted during vacation periods; and operators of transient establishments, as defined in ch. 509, F.S., which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of ch. 435, F.S. *Id.*

¹⁸ Section 893.13(1)(c), F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* "Community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. *Id.*

²² *Id.*

²³ Section 893.13(1)(d), F.S.

²⁴ Section 893.13(1)(e), F.S.

²⁵ *Id.* Section 812.171, F.S., defines a "convenience business" as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m. The term "convenience business" does not include: a business that is solely or primarily a restaurant; a business that

- The real property comprising a public housing facility (no time restriction);²⁶ and
- The real property comprising an assisted living facility,²⁷ as that term is used in ch. 429, F.S. (no time restriction).²⁸

The DFZ provisions do not require either intent to commit a drug offense in a DFZ²⁹ or knowledge that the offense is being committed within a DFZ.³⁰ Like the penalties for violations of s. 893.13(1)(a), F.S., the enhanced penalties for DFZ violations depend on the type of controlled substance involved. For example, selling cocaine in a K-12 school DFZ is a first degree felony³¹ but selling cannabis in the same DFZ (or another DFZ) is a second degree felony.³²

Controlled substance acts committed in a DFZ are sometimes ranked higher in the offense severity ranking chart of the Criminal Punishment Code than those same acts when committed outside a DFZ.³³ This impacts the scoring of the lowest permissible sentence, which is based on sentence points accrued. Higher-ranked offenses score more sentence pointed than lower-ranked offenses.³⁴ Further, a three-year mandatory minimum term of imprisonment must be imposed for some controlled substance offenses when committed in any of the following DFZs: K-12 school; park; community center; and publicly owned recreational facility.³⁵

Data on Florida Drug Free Zone Violations

According to recent information compiled by the Office of Program Policy Analysis and Government Accountability (OPPAGA) from the Department of Corrections data, there were 2,019 inmates in state prison as of October 31, 2017, with a primary offense consisting of a DFZ violation. The OPPAGA provided the following breakdown regarding DFZ violators in state prison:

- Forty-six percent of these inmates (919 inmates) committed a violation of s. 893.13(1)(c), F.S. (K-12 school, child care facility, park, community center, or publicly owned recreational facility);
- Forty-five percent of these inmates (916 inmates) committed a violation of s. 893.13(1)(e), F.S. (place of worship or convenience business);

always has at least five employees on the premises after 11 p.m. and before 5 a.m.; and a business that has at least 10,000 square feet of retail floor space.

²⁶ Section 893.13(1)(f), F.S. “Real property comprising a public housing facility” means real property, as defined in s. 421.03(12), F.S., of a public corporation created as a housing authority pursuant to part I of ch. 421, F.S. *Id.*

²⁷ Section 429.02(5), F.S., defines an “assisted living facility” as any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

²⁸ Section 893.13(1)(h), F.S.

²⁹ *Spry v. State*, 912 So. 2d 384, 386 (Fla. 2d DCA 2005).

³⁰ *Dickerson v. State*, 783 So. 2d 1144, 1148 (Fla. 5th DCA 2001), *review denied*, 819 So. 2d 134 (Fla. 2002).

³¹ Section 893.13(1)(c)1., F.S.

³² Section 893.13(1)(c)2., F.S.

³³ For example, selling cannabis in violation of s. 893.13(1)(a)2., F.S., is a level 3 offense; selling cannabis within 1,000 feet of a K-12 school is a level 5 offense. Section 921.0022(3)(c) and (e), F.S.

³⁴ Section 921.0024(1)(a), F.S. For example, in the example cited, *supra*, at n. 33, a level 3 primary offense scores 16 sentence points and a level 5 primary offense scores 28 sentence points.

³⁵ Section 893.13(1)(c)1., F.S.

- Five percent of these inmates (111 inmates) committed a violation of s. 893.13(1)(d), F.S. (college, university or postsecondary institution);
- Three percent of these inmates (67 inmates) committed a violation of s. 893.13(1)(f), F.S. (public housing facility); and
- One percent of these inmates (6 inmates) committed a violation of s. 893.13(1)(h), F.S. (assisted living facility).³⁶

Further, according to the OPPAGA, 47 percent of drug offenders in Florida prisons are black, but 84 percent of inmates with DFZ violations are black.³⁷

State Studies on the Impact on Drug Free Zones

Studies of municipalities in other states suggest significant proliferation of DFZs in densely populated (primarily urban) areas. In 2005, a legislative committee of the Connecticut General Assembly found that, of twelve municipalities studied, a significant percentage of the total geographical areas of urban and “urban-like” suburban municipalities were in DFZs.³⁸ In 2006, the Utah Sentencing Commission found that DFZs covered 75 to 85 percent of all livable space in the four cities it studied (Randolph, Richfield, Murray, and St. George).³⁹ In a 2007 report, the New Jersey Commission to Review Criminal Sentencing concluded from data in a previous report of the commission that “New Jersey’s densely populated urban areas have been literally transformed into massive, unsegmented ‘drug free’ zones. Consequently, the protected areas demarcated by the statutes no longer exist, having merged with contiguous zones.”⁴⁰

III. Effect of Proposed Changes:

The bill amends s. 893.13, F.S., which enhances the penalty for controlled substances offenses when those offenses are committed within 1,000 feet of certain places or facilities.

The bill reduces from 1,000 feet to 250 feet the DFZ around parks, community centers, publicly owned recreational facilities, colleges and universities, public housing facilities, and convenience businesses. The bill does not reduce the distance (1,000 feet) for drug free zones around K-12 schools, child care facilities, places of worship, and assisted living facilities.

³⁶ This data was included in an OPPAGA presentation on DFZs before the Senate Appropriations Subcommittee on Criminal and Civil Justice on Feb. 8, 2018, available at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/ACJ/MeetingRecords/MeetingPacket_4218.pdf (last visited on Feb. 19, 2018).

³⁷ *Id.*

³⁸ *Mandatory Minimum Sentences* (Dec. 2005), Legislative Program Review & Investigations Committee, Connecticut General Assembly, available at https://www.cga.ct.gov/2005/pridata/Studies/Mandatory_Minimum_Sentences_Final_Report.htm (last visited on Feb. 19, 2018). “Almost the total geographical areas of Bridgeport, Hartford, and New Haven are within ‘drug free’ zones.” *Id.* These municipalities were categorized by the committee as “urban.” *Id.*

³⁹ *Annual Report* (2016), p. 2, Utah Sentencing Commission, available at <https://justice.utah.gov/Sentencing/AnnualReports/Sentencing2006.pdf> (last visited on Feb. 19, 2018).

⁴⁰ *Supplemental Report on New Jersey’s Drug Free Zone Crimes & Proposal for Reform* (April 2007), p. 4, New Jersey Commission to Review Criminal Sentencing, available at <http://www.sentencing.nj.gov/downloads/supplemental%20schoolzonereport.pdf> (last visited on Feb. 19, 2018).

The bill also provides that only the sale or manufacture of a controlled substance in any DFZ is subject to an enhanced penalty under s. 893.13, F.S. Currently, controlled substance acts applicable to DFZ violations include controlled substance sales, manufacture, delivery, and possession with intent to sell, manufacture, or deliver.

The bill also amends s. 921.0024, F.S., the offense severity ranking chart of the Criminal Punishment Code, to amend descriptions of drug free zone violations ranked in the chart to reflect the changes made by the bill to s. 893.13, F.S. The bill does not change the ranking of these offenses.

The effective date of the bill is October 1, 2018.

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, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed CS/SB 570. However, the bill will likely result in some decrease in prison beds because the bill decreases the distance around several DFZs and limits the enhanced penalty to the sale or manufacture of controlled substances, which means that fewer persons will likely be arrested and prosecuted for a DFZ violation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Crime and Justice Institute's Recommendations Regarding Drug Free Zones

In a 2018 report prepared for the Legislature by the Crime and Justice Institute (Institute), the Institute recommended narrowing Florida's DFZs. Specifically, the Institute recommended "[removing] locations within the enumerated list that are not exclusively or primarily focused on a vulnerable population," and "[requiring] an intent to commit the offense in the designated zone or that the conduct occurred within the presence of a minor."⁴¹

The Institute included several findings in support of its recommendations. The Institute found:

[P]iecemeal policy making in many states led to expansion of these zones well beyond their original intent. Locations were added to include places where children might be rather than those primarily children-centered and the perimeter around these protected locations expanded from 100 or 300 feet to 1,000 feet or more. The result has been far more people receiving more severe penalties for the same criminal conduct, and the impact is often far greater in urban areas where these locations are more prevalent.⁴²

Regarding Florida's DFZs, the Institute found that "[t]he quantity of drugs is irrelevant and there is no requirement that the individual be aware that he or she is in proximity to the particular location or that they are selling or intending to sell to the vulnerable population protected by the zone."⁴³ Further, "Florida's [DFZs] are significantly broader than in many other states."⁴⁴

The Institute also noted efforts in Utah, South Carolina, and Indiana to limit their drug free zones:

Utah removed locations such as parks, shopping malls, sports facilities, arenas, and movie theatres from the list of drug-free zone locations and reduced the zone surrounding the location from 1,000 feet to 100 feet. South Carolina, amended its drug-free zone statute to require an intent by the defendant to engage in commercial drug activity within the protected location. In a bill signed by then Governor Mike Pence, Indiana reduced their perimeter from 1,000 feet to 500 feet and eliminated public housing complexes and youth program centers from the zone list. In the same measure, it also added the requirement that a minor must be reasonably expected to be present when the underlying drug offense occurs.⁴⁵

⁴¹ Len Engel and Maura McNamara, *Data-Driven Solutions to Improve Florida's Criminal Justice System* (Feb. 2018), Crime and Justice Institute, p. 19, available at http://www.crj.org/assets/2018/01/FINAL_Data-Driven-Solutions-to-Improve-Floridas-Criminal-Justice-System.pdf (last visited on Feb. 19, 2018).

⁴² *Id.* at p. 18.

⁴³ *Id.* at p. 19.

⁴⁴ *Id.* at p. 19.

⁴⁵ *Id.* at p. 19 (footnotes omitted).

Senate Criminal Justice Staff's Proposed Options for Drug Free Zones

In a 2012 interim report on DFZs, Senate Criminal Justice Committee staff proposed a number of options for amending Florida's DFZ provisions, including modifying the distance standard (1,000 feet) for some or all of the DFZs and limiting the type of controlled substance offenses subject to an enhanced penalty under the DFZ provisions.⁴⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.13 and 921.0024.

IX. 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 February 20, 2018:

The Committee Substitute:

- Deletes all provisions of the original bill which amended several sentencing provisions to raise the sentencing point ceiling for determining the lowest permissible sentence a court may impose under the Criminal Punishment Code;
- Reduces from 1,000 feet to 250 feet the distance for drug free zones around parks, community centers, publicly owned recreational facilities, colleges and universities, public housing facilities, and convenience businesses;
- Provides that only sale or manufacture of a controlled substance in any drug free zone is subject to an enhanced penalty under s. 893.13, F.S.; and
- Amends descriptions of drug free zone violations ranked in the offense severity ranking chart of the Criminal Punishment Code to reflect the changes made by the bill to s. 893.13, F.S.

- B. Amendments:

None.

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

⁴⁶ *Review Penalties for Drug-free Zone Violations*, Interim Report 2012-166 (Oct. 2011), p. 10, Senate Criminal Justice Committee, The Florida Senate, available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-116cj.pdf> (last visited on Feb. 19, 2018).



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2018	.	
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The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (c), (d), (e), (f), and (h) of
subsection (1) of section 893.13, Florida Statutes, are amended
to read:

893.13 Prohibited acts; penalties.—

(1)

(c) Except as authorized by this chapter, a person may not



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11 ~~sell, or~~ manufacture, ~~or deliver, or possess with intent to~~
12 ~~sell, manufacture, or deliver,~~ a controlled substance in, on, or
13 within 1,000 feet of the real property comprising a child care
14 facility as defined in s. 402.302 or a public or private
15 elementary, middle, or secondary school between the hours of 6
16 a.m. and 12 midnight, or at any time in, on, or within 250 ~~1,000~~
17 feet of real property comprising a state, county, or municipal
18 park, a community center, or a publicly owned recreational
19 facility. As used in this paragraph, the term "community center"
20 means a facility operated by a nonprofit community-based
21 organization for the provision of recreational, social, or
22 educational services to the public. A person who violates this
23 paragraph with respect to:

24 1. A controlled substance named or described in s.
25 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
26 commits a felony of the first degree, punishable as provided in
27 s. 775.082, s. 775.083, or s. 775.084. The defendant must be
28 sentenced to a minimum term of imprisonment of 3 calendar years
29 unless the offense was committed within 1,000 feet of the real
30 property comprising a child care facility as defined in s.
31 402.302.

32 2. A controlled substance named or described in s.
33 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
34 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
35 the second degree, punishable as provided in s. 775.082, s.
36 775.083, or s. 775.084.

37 3. Any other controlled substance, except as lawfully sold,
38 or manufactured, ~~or delivered,~~ must be sentenced to pay a \$500
39 fine and to serve 100 hours of public service in addition to any



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40 other penalty prescribed by law.

41
42 This paragraph does not apply to a child care facility unless
43 the owner or operator of the facility posts a sign that is not
44 less than 2 square feet in size with a word legend identifying
45 the facility as a licensed child care facility and that is
46 posted on the property of the child care facility in a
47 conspicuous place where the sign is reasonably visible to the
48 public.

49 (d) Except as authorized by this chapter, a person may not
50 ~~sell, or manufacture, or deliver, or possess with intent to~~
51 ~~sell, manufacture, or deliver,~~ a controlled substance in, on, or
52 within 250 ~~1,000~~ feet of the real property comprising a public
53 or private college, university, or other postsecondary
54 educational institution. A person who violates this paragraph
55 with respect to:

56 1. A controlled substance named or described in s.
57 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
58 commits a felony of the first degree, punishable as provided in
59 s. 775.082, s. 775.083, or s. 775.084.

60 2. A controlled substance named or described in s.
61 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
62 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
63 the second degree, punishable as provided in s. 775.082, s.
64 775.083, or s. 775.084.

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



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69 (e) Except as authorized by this chapter, a person may not
70 ~~sell, or manufacture, or deliver, or possess with intent to~~
71 ~~sell, manufacture, or deliver,~~ a controlled substance not
72 authorized by law in, on, or within 1,000 feet of a physical
73 place for worship at which a church or religious organization
74 regularly conducts religious services or within 250 ~~1,000~~ feet
75 of a convenience business as defined in s. 812.171. A person who
76 violates this paragraph with respect to:

77 1. A controlled substance named or described in s.
78 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
79 commits a felony of the first degree, punishable as provided in
80 s. 775.082, s. 775.083, or s. 775.084.

81 2. A controlled substance named or described in s.
82 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
83 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
84 the second degree, punishable as provided in s. 775.082, s.
85 775.083, or s. 775.084.

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

90 (f) Except as authorized by this chapter, a person may not
91 ~~sell, or manufacture, or deliver, or possess with intent to~~
92 ~~sell, manufacture, or deliver,~~ a controlled substance in, on, or
93 within 250 ~~1,000~~ feet of the real property comprising a public
94 housing facility at any time. As used in this section, the term
95 "real property comprising a public housing facility" means real
96 property, as defined in s. 421.03(12), of a public corporation
97 created as a housing authority pursuant to part I of chapter



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98 421. A person who violates this paragraph with respect to:

99 1. A controlled substance named or described in s.

100 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.

101 commits a felony of the first degree, punishable as provided in
102 s. 775.082, s. 775.083, or s. 775.084.

103 2. A controlled substance named or described in s.

104 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

105 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of

106 the second degree, punishable as provided in s. 775.082, s.

107 775.083, or s. 775.084.

108 3. Any other controlled substance, except as lawfully sold,

109 or manufactured, ~~or delivered,~~ must be sentenced to pay a \$500

110 fine and to serve 100 hours of public service in addition to any
111 other penalty prescribed by law.

112 (h) Except as authorized by this chapter, a person may not

113 sell, or manufacture, ~~or deliver, or possess with intent to~~

114 ~~sell, manufacture, or deliver,~~ a controlled substance in, on, or

115 within 1,000 feet of the real property comprising an assisted

116 living facility, as that term is used in chapter 429. A person

117 who violates this paragraph with respect to:

118 1. A controlled substance named or described in s.

119 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.

120 commits a felony of the first degree, punishable as provided in
121 s. 775.082, s. 775.083, or s. 775.084.

122 2. A controlled substance named or described in s.

123 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

124 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of

125 the second degree, punishable as provided in s. 775.082, s.

126 775.083, or s. 775.084.



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

131 Section 2. Paragraphs (c), (e), and (g) of subsection (3)
132 of section 921.0022, Florida Statutes, are amended to read:

133 921.0022 Criminal Punishment Code; offense severity ranking
134 chart.—

135 (3) OFFENSE SEVERITY RANKING CHART

136 (c) LEVEL 3

137

Florida Statute	Felony Degree	Description
138 119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
139 316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
140 316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
141 316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.



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142	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
143	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
144	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
145	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
146	327.35(2)(b)	3rd	Felony BUI.
147	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
148	328.07(4)	3rd	Manufacture, exchange, or



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149

376.302 (5)

3rd

possess vessel with
counterfeit or wrong ID
number.

Fraud related to
reimbursement for cleanup
expenses under the Inland
Protection Trust Fund.

150

379.2431
(1) (e) 5.

3rd

Taking, disturbing,
mutilating, destroying,
causing to be destroyed,
transferring, selling,
offering to sell,
molesting, or harassing
marine turtles, marine
turtle eggs, or marine
turtle nests in violation
of the Marine Turtle
Protection Act.

151

379.2431
(1) (e) 6.

3rd

Possessing any marine
turtle species or
hatchling, or parts
thereof, or the nest of any
marine turtle species
described in the Marine
Turtle Protection Act.

152



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153	379.2431 (1) (e) 7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
154	400.9935 (4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
155	400.9935 (4) (e)	3rd	Filing a false license application or other required information or failing to report information.
156	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
157	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
	624.401 (4) (a)	3rd	Transacting insurance without a certificate of



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158			authority.
	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
159			
	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
160			
	697.08	3rd	Equity skimming.
161			
	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
162			
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
163			
	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
164			
	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with



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165			firearm or dangerous weapon.
166	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
167	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
168	815.04 (5) (b)	2nd	Computer offense devised to defraud or obtain property.
169	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
170	817.233	3rd	Burning to defraud insurer.
171	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
172	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
	817.236	3rd	Filing a false motor



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173			vehicle insurance application.
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
174			
	817.413 (2)	3rd	Sale of used goods as new.
175			
	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
176			
	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
177			
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
178			
	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
179			



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180	843.19	3rd	Injure, disable, or kill police dog or horse.
181	860.15 (3)	3rd	Overcharging for repairs and parts.
182	870.01 (2)	3rd	Riot; inciting or encouraging.
183	893.13 (1) (a) 2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs).
184	893.13 (1) (d) 2.	2nd	Sell, <u>or</u> 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 <u>250</u> 1,000 feet of university.
	893.13 (1) (f) 2.	2nd	Sell, <u>or</u> manufacture, or deliver s. 893.03 (1) (c),



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(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 250 ~~1,000~~
feet of public housing
facility.

185

893.13 (4) (c) 3rd Use or hire of minor;
deliver to minor other
controlled substances.

186

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

187

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

188

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

189

893.13 (7) (a) 10. 3rd Affix false or forged label



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to package of controlled
substance.

190

893.13(7)(a)11.

3rd

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

191

893.13(8)(a)1.

3rd

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

192

893.13(8)(a)2.

3rd

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

193

893.13(8)(a)3.

3rd

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



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	Florida Statute	Felony Degree	Description
203	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
204	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
205	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
206	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
207	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
208	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving



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away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

209

379.367(4) 3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

210

379.407(5)(b)3. 3rd Possession of 100 or more undersized spiny lobsters.

211

381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing HIV positive.

212

440.10(1)(g) 2nd Failure to obtain workers' compensation coverage.

213

440.105(5) 2nd Unlawful solicitation for the purpose of making workers' compensation claims.

214

440.381(2) 2nd Submission of false, misleading, or incomplete information with the



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223	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
224	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
225	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
226	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
227	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
228	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
229	812.131 (2) (b)	3rd	Robbery by sudden snatching.
230	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
231	817.034 (4) (a) 2.	2nd	Communications fraud, value



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244	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
245	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
246	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
247	893.13 (1) (a) 1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).
248	893.13 (1) (c) 2.	2nd	Sell, <u>or</u> 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, <u>or</u> school, or <u>within 250 feet of a state, county, or municipal park or publicly owned recreational facility or community center.</u>



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controlled substance.

254
255
256
257

(g) LEVEL 7

258
259
260

Florida Statute	Felony Degree	Description
316.027(2)(c)	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

261
262



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disfiguration, permanent
disability, or death.

263

409.920 3rd Medicaid provider fraud; \$10,000
(2) (b) 1.a. or less.

264

409.920 2nd Medicaid provider fraud; more than
(2) (b) 1.b. \$10,000, but less than \$50,000.

265

456.065 (2) 3rd Practicing a health care
profession without a license.

266

456.065 (2) 2nd Practicing a health care
profession without a license which
results in serious bodily injury.

267

458.327 (1) 3rd Practicing medicine without a
license.

268

459.013 (1) 3rd Practicing osteopathic medicine
without a license.

269

460.411 (1) 3rd Practicing chiropractic medicine
without a license.

270

461.012 (1) 3rd Practicing podiatric medicine
without a license.

271

462.17 3rd Practicing naturopathy without a



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license.

272

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

273

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

274

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

275

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

276

467.201 3rd Practicing midwifery without a
license.

277

468.366 3rd Delivering respiratory care
services without a license.

278

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

279

483.901 (7) 3rd Practicing medical physics without
a license.

280

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

281



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282

484.053 3rd Dispensing hearing aids without a license.

283

494.0018(2) 1st Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.

284

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.

285

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

286

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

287

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



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288	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
289	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
290	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
291	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
292	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
293	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or



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303	784.083(1)	1st	Aggravated battery on code inspector.
304	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
305	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
306	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
307	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
308	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
309	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
310			



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311	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
312	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
313	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
314	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.
315	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
316	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18



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years of age.

317

800.04 (5) (c) 2. 2nd Lewd or lascivious molestation;
victim 12 years of age or older
but younger than 16 years of age;
offender 18 years of age or older.

318

800.04 (5) (e) 1st Lewd or lascivious molestation;
victim 12 years of age or older
but younger than 16 years;
offender 18 years or older; prior
conviction for specified sex
offense.

319

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

320

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

321

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

322

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

323

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

324



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- 325 812.014 (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.
- 326 812.014 (2) (b) 2. 2nd Property stolen, cargo valued at
less than \$50,000, grand theft in
2nd degree.
- 327 812.014 (2) (b) 3. 2nd Property stolen, emergency medical
equipment; 2nd degree grand theft.
- 328 812.014 (2) (b) 4. 2nd Property stolen, law enforcement
equipment from authorized
emergency vehicle.
- 329 812.0145 (2) (a) 1st Theft from person 65 years of age
or older; \$50,000 or more.
- 330 812.019 (2) 1st Stolen property; initiates,
organizes, plans, etc., the theft
of property and traffics in stolen
property.
- 331 812.131 (2) (a) 2nd Robbery by sudden snatching.
- 812.133 (2) (b) 1st Carjacking; no firearm, deadly



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weapon, or other weapon.

332

817.034 (4) (a) 1. 1st Communications fraud, value
greater than \$50,000.

333

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

334

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

335

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

336

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

337

817.535 (2) (a) 3rd Filing false lien or other
unauthorized document.

338

817.611 (2) (b) 2nd Traffic in or possess 15 to 49
counterfeit credit cards or
related documents.



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339	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
340	825.103 (3) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
341	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
342	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
343	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
344	838.015	2nd	Bribery.
345	838.016	2nd	Unlawful compensation or reward for official behavior.
346	838.021 (3) (a)	2nd	Unlawful harm to a public servant.



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347	838.22	2nd	Bid tampering.
348	843.0855 (2)	3rd	Impersonation of a public officer or employee.
349	843.0855 (3)	3rd	Unlawful simulation of legal process.
350	843.0855 (4)	3rd	Intimidation of a public officer or employee.
351	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
352	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
353	872.06	2nd	Abuse of a dead human body.
354	874.05 (2) (b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
355	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.



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361	893.135 (1) (c) 1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
362	893.135 (1) (c) 2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
363	893.135 (1) (c) 2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
364	893.135 (1) (c) 3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
365	893.135 (1) (c) 3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
366	893.135 (1) (c) 4.b. (I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
367	893.135 (1) (d) 1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.
368	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.
369	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.



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370	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
371	893.135 (1) (h) 1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
372	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
373	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
374	893.135 (1) (m) 2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
375	893.135 (1) (m) 2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.
376	893.135 (1) (n) 2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
377			



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378	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
379	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
380	896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
381	943.0435 (4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
382	943.0435 (8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
383	943.0435 (9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
	943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a



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sexual offender.

384

943.0435(14) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

385

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

386

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

387

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

388

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

389

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

390

985.4815(12) 3rd Failure to report or providing



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false information about a sexual
offender; harbor or conceal a
sexual offender.

391

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

392

393

394 Section 3. This act shall take effect October 1, 2018.

395

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

397 And the title is amended as follows:

398 Delete everything before the enacting clause
399 and insert:

400 A bill to be entitled
401 An act relating to sentencing; amending s. 893.13,
402 F.S., reducing the distance applicable to certain
403 controlled substance offenses committed within certain
404 drug free zones; providing that only offenses
405 involving sale or manufacturing of a controlled
406 substance are subject to enhanced penalties when
407 committed within a drug free zone; amending s.
408 921.0024, F.S., conforming descriptions of drug free
409 zone offenses in the offense severity ranking chart of
410 the Criminal Punishment Code to reflect amendments to
411 those offenses in s. 893.13, F.S.; providing an
412 effective date.

By Senator Bracy

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1 A bill to be entitled
 2 An act relating to sentencing; amending s. 921.0024,
 3 F.S.; revising the computation of the lowest
 4 permissible sentence under the Criminal Punishment
 5 Code; reenacting ss. 775.082(10), 921.00241(1),
 6 921.0026(1) and (2) (m), 921.00265(1), 924.06(1) (e),
 7 948.01(7) and (8), 948.06(2) (i) and (j) and (8) (b),
 8 and 948.20(1), F.S., relating to penalties, prison
 9 diversion programs, mitigating circumstances,
 10 recommended sentences, appeals by defendants,
 11 placement on probation or community control,
 12 violations of probation and community control, and
 13 drug offender probation, respectively, to incorporate
 14 the amendment made to s. 921.0024, 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. Subsection (2) of section 921.0024, Florida
 20 Statutes, is amended to read:

21 921.0024 Criminal Punishment Code; worksheet computations;
 22 scoresheets.—

23 (2) (a) The lowest permissible sentence is the minimum
 24 sentence that may be imposed by the trial court, absent a valid
 25 reason for departure.

26 (b) For offenses committed on or after October 1, 1998, and
 27 before October 1, 2018, the lowest permissible sentence is any
 28 nonstate prison sanction in which the total sentence points
 29 equals or is less than 44 points, unless the court determines

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30 within its discretion that a prison sentence, which may be up to
 31 the statutory maximums for the offenses committed, is
 32 appropriate. When the total sentence points exceeds 44 points,
 33 the lowest permissible sentence in prison months shall be
 34 calculated by subtracting 28 points from the total sentence
 35 points and decreasing the remaining total by 25 percent.

36 (c) For offenses committed on or after October 1, 2018, the
 37 lowest permissible sentence is any nonstate prison sanction in
 38 which the total sentence points equals or is less than 52
 39 points, unless the court determines within its discretion that a
 40 prison sentence, which may be up to the statutory maximums for
 41 the offenses committed, is appropriate. When the total sentence
 42 points exceeds 52 points, the lowest permissible sentence in
 43 prison months shall be calculated by subtracting 36 points from
 44 the total sentence points and decreasing the remaining total by
 45 25 percent.

46 (d) The total sentence points shall be calculated only as a
 47 means of determining the lowest permissible sentence. The
 48 permissible range for sentencing shall be the lowest permissible
 49 sentence up to and including the statutory maximum, as defined
 50 in s. 775.082, for the primary offense and any additional
 51 offenses before the court for sentencing. The sentencing court
 52 may impose such sentences concurrently or consecutively.
 53 However, any sentence to state prison must exceed 1 year. If the
 54 lowest permissible sentence under the code exceeds the statutory
 55 maximum sentence as provided in s. 775.082, the sentence
 56 required by the code must be imposed. If the total sentence
 57 points are greater than or equal to 363, the court may sentence
 58 the offender to life imprisonment. An offender sentenced to life

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59 imprisonment under this section is not eligible for any form of
60 discretionary early release, except executive clemency or
61 conditional medical release under s. 947.149.

62 Section 2. For the purpose of incorporating the amendment
63 made by this act to section 921.0024, Florida Statutes, in a
64 reference thereto, subsection (10) of section 775.082, Florida
65 Statutes, is reenacted to read:

66 775.082 Penalties; applicability of sentencing structures;
67 mandatory minimum sentences for certain reoffenders previously
68 released from prison.—

69 (10) If a defendant is sentenced for an offense committed
70 on or after July 1, 2009, which is a third degree felony but not
71 a forcible felony as defined in s. 776.08, and excluding any
72 third degree felony violation under chapter 810, and if the
73 total sentence points pursuant to s. 921.0024 are 22 points or
74 fewer, the court must sentence the offender to a nonstate prison
75 sanction. However, if the court makes written findings that a
76 nonstate prison sanction could present a danger to the public,
77 the court may sentence the offender to a state correctional
78 facility pursuant to this section.

79 Section 3. For the purpose of incorporating the amendment
80 made by this act to section 921.0024, Florida Statutes, in a
81 reference thereto, subsection (1) of section 921.00241, Florida
82 Statutes, is reenacted to read:

83 921.00241 Prison diversion program.—

84 (1) Notwithstanding s. 921.0024 and effective for offenses
85 committed on or after July 1, 2009, a court may divert from the
86 state correctional system an offender who would otherwise be
87 sentenced to a state facility by sentencing the offender to a

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88 nonstate prison sanction as provided in subsection (2). An
89 offender may be sentenced to a nonstate prison sanction if the
90 offender meets all of the following criteria:

91 (a) The offender's primary offense is a felony of the third
92 degree.

93 (b) The offender's total sentence points score, as provided
94 in s. 921.0024, is not more than 48 points, or the offender's
95 total sentence points score is 54 points and 6 of those points
96 are for a violation of probation, community control, or other
97 community supervision, and do not involve a new violation of
98 law.

99 (c) The offender has not been convicted or previously
100 convicted of a forcible felony as defined in s. 776.08, but
101 excluding any third degree felony violation under chapter 810.

102 (d) The offender's primary offense does not require a
103 minimum mandatory sentence.

104 Section 4. For the purpose of incorporating the amendment
105 made by this act to section 921.0024, Florida Statutes, in
106 references thereto, subsection (1) and paragraph (m) of
107 subsection (2) of section 921.0026, Florida Statutes, are
108 reenacted to read:

109 921.0026 Mitigating circumstances.—This section applies to
110 any felony offense, except any capital felony, committed on or
111 after October 1, 1998.

112 (1) A downward departure from the lowest permissible
113 sentence, as calculated according to the total sentence points
114 pursuant to s. 921.0024, is prohibited unless there are
115 circumstances or factors that reasonably justify the downward
116 departure. Mitigating factors to be considered include, but are

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117 not limited to, those listed in subsection (2). The imposition
 118 of a sentence below the lowest permissible sentence is subject
 119 to appellate review under chapter 924, but the extent of
 120 downward departure is not subject to appellate review.

121 (2) Mitigating circumstances under which a departure from
 122 the lowest permissible sentence is reasonably justified include,
 123 but are not limited to:

124 (m) The defendant's offense is a nonviolent felony, the
 125 defendant's Criminal Punishment Code scoresheet total sentence
 126 points under s. 921.0024 are 60 points or fewer, and the court
 127 determines that the defendant is amenable to the services of a
 128 postadjudicatory treatment-based drug court program and is
 129 otherwise qualified to participate in the program as part of the
 130 sentence. For purposes of this paragraph, the term "nonviolent
 131 felony" has the same meaning as provided in s. 948.08(6).

132 Section 5. For the purpose of incorporating the amendment
 133 made by this act to section 921.0024, Florida Statutes, in a
 134 reference thereto, subsection (1) of section 921.00265, Florida
 135 Statutes, is reenacted to read:

136 921.00265 Recommended sentences; departure sentences;
 137 mandatory minimum sentences.—This section applies to any felony
 138 offense, except any capital felony, committed on or after
 139 October 1, 1998.

140 (1) The lowest permissible sentence provided by
 141 calculations from the total sentence points pursuant to s.
 142 921.0024(2) is assumed to be the lowest appropriate sentence for
 143 the offender being sentenced. A departure sentence is prohibited
 144 unless there are mitigating circumstances or factors present as
 145 provided in s. 921.0026 which reasonably justify a departure.

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146 Section 6. For the purpose of incorporating the amendment
 147 made by this act to section 921.0024, Florida Statutes, in a
 148 reference thereto, paragraph (e) of subsection (1) of section
 149 924.06, Florida Statutes, is reenacted to read:

150 924.06 Appeal by defendant.—

151 (1) A defendant may appeal from:

152 (e) A sentence imposed under s. 921.0024 of the Criminal
 153 Punishment Code which exceeds the statutory maximum penalty
 154 provided in s. 775.082 for an offense at conviction, or the
 155 consecutive statutory maximums for offenses at conviction,
 156 unless otherwise provided by law.

157 Section 7. For the purpose of incorporating the amendment
 158 made by this act to section 921.0024, Florida Statutes, in
 159 references thereto, subsections (7) and (8) of section 948.01,
 160 Florida Statutes, are reenacted to read:

161 948.01 When court may place defendant on probation or into
 162 community control.—

163 (7) (a) Notwithstanding s. 921.0024 and effective for
 164 offenses committed on or after July 1, 2009, the sentencing
 165 court may place the defendant into a postadjudicatory treatment-
 166 based drug court program if the defendant's Criminal Punishment
 167 Code scoresheet total sentence points under s. 921.0024 are 60
 168 points or fewer, the offense is a nonviolent felony, the
 169 defendant is amenable to substance abuse treatment, and the
 170 defendant otherwise qualifies under s. 397.334(3). The
 171 satisfactory completion of the program shall be a condition of
 172 the defendant's probation or community control. As used in this
 173 subsection, the term "nonviolent felony" means a third degree
 174 felony violation under chapter 810 or any other felony offense

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175 that is not a forcible felony as defined in s. 776.08.

176 (b) The defendant must be fully advised of the purpose of
 177 the program, and the defendant must agree to enter the program.
 178 The original sentencing court shall relinquish jurisdiction of
 179 the defendant's case to the postadjudicatory drug court program
 180 until the defendant is no longer active in the program, the case
 181 is returned to the sentencing court due to the defendant's
 182 termination from the program for failure to comply with the
 183 terms thereof, or the defendant's sentence is completed.

184 (8) (a) Notwithstanding s. 921.0024 and effective for
 185 offenses committed on or after July 1, 2016, the sentencing
 186 court may place the defendant into a postadjudicatory mental
 187 health court program if the offense is a nonviolent felony, the
 188 defendant is amenable to mental health treatment, including
 189 taking prescribed medications, and the defendant is otherwise
 190 qualified under s. 394.47892(4). The satisfactory completion of
 191 the program must be a condition of the defendant's probation or
 192 community control. As used in this subsection, the term
 193 "nonviolent felony" means a third degree felony violation under
 194 chapter 810 or any other felony offense that is not a forcible
 195 felony as defined in s. 776.08. Defendants charged with
 196 resisting an officer with violence under s. 843.01, battery on a
 197 law enforcement officer under s. 784.07, or aggravated assault
 198 may participate in the mental health court program if the court
 199 so orders after the victim is given his or her right to provide
 200 testimony or written statement to the court as provided in s.
 201 921.143.

202 (b) The defendant must be fully advised of the purpose of
 203 the mental health court program, and the defendant must agree to

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204 enter the program. The original sentencing court shall
 205 relinquish jurisdiction of the defendant's case to the
 206 postadjudicatory mental health court program until the defendant
 207 is no longer active in the program, the case is returned to the
 208 sentencing court due to the defendant's termination from the
 209 program for failure to comply with the terms thereof, or the
 210 defendant's sentence is completed.

211 (c) The Department of Corrections may establish designated
 212 and trained mental health probation officers to support
 213 individuals under supervision of the mental health court
 214 program.

215 Section 8. For the purpose of incorporating the amendment
 216 made by this act to section 921.0024, Florida Statutes, in
 217 references thereto, paragraphs (i) and (j) of subsection (2) and
 218 paragraph (b) of subsection (8) of section 948.06, Florida
 219 Statutes, are reenacted to read:

220 948.06 Violation of probation or community control;
 221 revocation; modification; continuance; failure to pay
 222 restitution or cost of supervision.—

223 (2)

224 (i)1. Notwithstanding s. 921.0024 and effective for
 225 offenses committed on or after July 1, 2009, the court may order
 226 the defendant to successfully complete a postadjudicatory
 227 treatment-based drug court program if:

228 a. The court finds or the offender admits that the offender
 229 has violated his or her community control or probation;

230 b. The offender's Criminal Punishment Code scoresheet total
 231 sentence points under s. 921.0024 are 60 points or fewer after
 232 including points for the violation;

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233 c. The underlying offense is a nonviolent felony. As used
 234 in this subsection, the term "nonviolent felony" means a third
 235 degree felony violation under chapter 810 or any other felony
 236 offense that is not a forcible felony as defined in s. 776.08;

237 d. The court determines that the offender is amenable to
 238 the services of a postadjudicatory treatment-based drug court
 239 program;

240 e. The court has explained the purpose of the program to
 241 the offender and the offender has agreed to participate; and

242 f. The offender is otherwise qualified to participate in
 243 the program under the provisions of s. 397.334(3).

244 2. After the court orders the modification of community
 245 control or probation, the original sentencing court shall
 246 relinquish jurisdiction of the offender's case to the
 247 postadjudicatory treatment-based drug court program until the
 248 offender is no longer active in the program, the case is
 249 returned to the sentencing court due to the offender's
 250 termination from the program for failure to comply with the
 251 terms thereof, or the offender's sentence is completed.

252 (j)1. Notwithstanding s. 921.0024 and effective for
 253 offenses committed on or after July 1, 2016, the court may order
 254 the offender to successfully complete a postadjudicatory mental
 255 health court program under s. 394.47892 or a military veterans
 256 and servicemembers court program under s. 394.47891 if:

257 a. The court finds or the offender admits that the offender
 258 has violated his or her community control or probation;

259 b. The underlying offense is a nonviolent felony. As used
 260 in this subsection, the term "nonviolent felony" means a third
 261 degree felony violation under chapter 810 or any other felony

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262 offense that is not a forcible felony as defined in s. 776.08.
 263 Offenders charged with resisting an officer with violence under
 264 s. 843.01, battery on a law enforcement officer under s. 784.07,
 265 or aggravated assault may participate in the mental health court
 266 program if the court so orders after the victim is given his or
 267 her right to provide testimony or written statement to the court
 268 as provided in s. 921.143;

269 c. The court determines that the offender is amenable to
 270 the services of a postadjudicatory mental health court program,
 271 including taking prescribed medications, or a military veterans
 272 and servicemembers court program;

273 d. The court explains the purpose of the program to the
 274 offender and the offender agrees to participate; and

275 e. The offender is otherwise qualified to participate in a
 276 postadjudicatory mental health court program under s.
 277 394.47892(4) or a military veterans and servicemembers court
 278 program under s. 394.47891.

279 2. After the court orders the modification of community
 280 control or probation, the original sentencing court shall
 281 relinquish jurisdiction of the offender's case to the
 282 postadjudicatory mental health court program until the offender
 283 is no longer active in the program, the case is returned to the
 284 sentencing court due to the offender's termination from the
 285 program for failure to comply with the terms thereof, or the
 286 offender's sentence is completed.

287 (8)

288 (b) For purposes of this section and ss. 903.0351, 948.064,
 289 and 921.0024, the term "violent felony offender of special
 290 concern" means a person who is on:

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291 1. Felony probation or community control related to the
 292 commission of a qualifying offense committed on or after the
 293 effective date of this act;

294 2. Felony probation or community control for any offense
 295 committed on or after the effective date of this act, and has
 296 previously been convicted of a qualifying offense;

297 3. Felony probation or community control for any offense
 298 committed on or after the effective date of this act, and is
 299 found to have violated that probation or community control by
 300 committing a qualifying offense;

301 4. Felony probation or community control and has previously
 302 been found by a court to be a habitual violent felony offender
 303 as defined in s. 775.084(1)(b) and has committed a qualifying
 304 offense on or after the effective date of this act;

305 5. Felony probation or community control and has previously
 306 been found by a court to be a three-time violent felony offender
 307 as defined in s. 775.084(1)(c) and has committed a qualifying
 308 offense on or after the effective date of this act; or

309 6. Felony probation or community control and has previously
 310 been found by a court to be a sexual predator under s. 775.21
 311 and has committed a qualifying offense on or after the effective
 312 date of this act.

313 Section 9. For the purpose of incorporating the amendment
 314 made by this act to section 921.0024, Florida Statutes, in a
 315 reference thereto, subsection (1) of section 948.20, Florida
 316 Statutes, is reenacted to read:

317 948.20 Drug offender probation.—

318 (1) If it appears to the court upon a hearing that the
 319 defendant is a chronic substance abuser whose criminal conduct

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320 is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent
 321 felony if such nonviolent felony is committed on or after July
 322 1, 2009, and notwithstanding s. 921.0024 the defendant's
 323 Criminal Punishment Code scoresheet total sentence points are 60
 324 points or fewer, the court may either adjudge the defendant
 325 guilty or stay and withhold the adjudication of guilt. In either
 326 case, the court may also stay and withhold the imposition of
 327 sentence and place the defendant on drug offender probation or
 328 into a postadjudicatory treatment-based drug court program if
 329 the defendant otherwise qualifies. As used in this section, the
 330 term "nonviolent felony" means a third degree felony violation
 331 under chapter 810 or any other felony offense that is not a
 332 forcible felony as defined in s. 776.08.

333 Section 10. This act shall take effect October 1, 2018.

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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)

2/20/18

Meeting Date

SB 570

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Robert Trammell

Job Title Gen Counsel

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Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Public Defenders

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1178

INTRODUCER: Senator Bracy

SUBJECT: Public Records/Photographs or Video or Audio Recordings that Depict or Record Killing of a Person

DATE: January 26, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>GO</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 1178 amends s. 406.136, F.S., and expands an existing public records exemption to make confidential and exempt photographs and video and audio recordings that depict or record the killing of *a person*. Currently, this statute makes confidential and exempt the photographs and video and audio recordings that depict or record the killing of *a law enforcement officer who was acting in accordance with his or her official duties*. The current exemption and the exemption created by the bill only apply to such photographs or recordings held by an agency.

The bill specifies that the term “killing of a person” does not include the killing of a person in the care and custody of a state agency.

The exemption is retroactive and applies to all such photographs or recordings, regardless of whether the killing of the person occurred before, on, or after July 1, 2015. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of the act, which restrict or limit access to any such photographs or recordings.

The bill provides a public necessity statement as required by the Florida Constitution.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. Because the bill expands a public record exemption, it requires a two-thirds vote for final passage.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process:

- What specific records or meetings are affected by the exemption?

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁵ Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?²¹

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Prior Exemption for Photographs and Recordings Depicting the Killing of a Law Enforcement Officer

In 2011, the Legislature created s. 406.136, F.S., which provided a public record exemption for photographs and video and audio recordings that depict or record the killing of *a person*.²⁴ The exemption provided that such photographs and recordings were confidential and exempt. Most of the provisions relevant to that exemption are mirrored in current law (see discussion, *infra*).

The exemption was subject to the Open Government Sunset Review Act and as such, was to be repealed on October 2, 2016, unless reviewed and reenacted by the Legislature.²⁵

Based upon the Open Government Sunset Review of the exemption, staff of the Senate Criminal Justice Committee recommended that the Legislature retain the public records exemption as originally enacted.²⁶ Staff noted that this recommendation was made:

in light of information gathered for the Open Government Sunset Review, indicating that there was a public necessity to continue protecting photographs and video and audio recordings that depict or record the killing of any person when held by an agency because they are highly sensitive and personal representations of the deceased. As such, widespread and continuous display of these photographs or recordings subjects the surviving family members to unwarranted trauma and emotional distress and harms the memory of the deceased.²⁷

²¹ Section 119.15(6)(a), F.S.

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Chapter 2011-115, L.O.F. (creating s. 406.136, F.S., effective July 1, 2011). “Killing of a person” was defined to mean “all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.” Section 406.136(1), F.S. (2015).

²⁵ Section 406.136(9), F.S. (2015).

²⁶ *Bill Analysis and Fiscal Impact Statement (SB 7022)* (February 23, 2016), p. 6, The Florida Senate, available at <http://www.flsenate.gov/Session/Bill/2016/7022/Analyses/2016s7022.rc.PDF> (last visited on Jan. 24, 2018).

²⁷ *Id.* The majority of responses to a staff-prepared Open Government Sunset Review survey recommended reenactment of the exemption to protect information that is personal and highly sensitive, the release of which subjects the surviving family members to further trauma and emotional distress. Survey respondents included state agencies, state universities and colleges,

Current Exemption for Photographs and Recordings Depicting the Killing of a Law Enforcement Officer

During the 2016 Regular Session, the Legislature elected not to reenact the exemption as originally enacted but rather to narrow the exemption so that it applies only to photographs and video and audio recordings that depict the killing of *a law enforcement officer who was acting in accordance with his or her official duties*.²⁸ These photographs and video and audio recordings are confidential and exempt from public record requirements, except that the exemption permits a surviving spouse to view or copy any such photograph or video recording and listen to or copy any such audio recording.²⁹ If there is no surviving spouse, the deceased's surviving parents may access the records, and if there are no surviving parents, an adult child of the deceased may access the records.³⁰ The surviving relative who has the authority to access the records may designate in writing an agent to obtain them.³¹

In addition, a local governmental entity or a state or federal agency, in furtherance of its official duties and pursuant to a written request, may view or copy any such photograph or video recording and listen to or copy any such audio recording. Unless otherwise required in the performance of the entity's or agency's duties, the identity of the deceased must remain confidential and exempt.³²

Persons other than those covered by these exceptions may only have access to such photographs and recordings if they obtain a court order. Upon a showing of good cause, a court may issue an order authorizing any person to view or copy any such photograph or video recording and listen to or copy any such audio recording. The court may prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.³³

municipalities, and local law enforcement agencies that receive or maintain such records. "Reenactment was generally recommended to continue protecting the surviving family members from emotional distress and trauma and protecting the memory of the deceased." *Bill Analysis and Fiscal Impact Statement (SB 7022)* (February 23, 2016), p. 6, n. 37, The Florida Senate, available at <http://www.flsenate.gov/Session/Bill/2016/7022/Analyses/2016s7022.rc.PDF> (last visited on Jan. 24, 2018).

²⁸ Chapter 2016-214, L.O.F. The term "killing of a law enforcement officer who was acting in accordance with his or her official duties" is defined to mean all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death. Section 406.136(1), F.S.

²⁹ Section 406.136(2), F.S.

³⁰ *Id.*

³¹ Section 406.136(3)(a), F.S.

³² Section 406.136(3)(b), F.S.

³³ Section 406.136(4), F.S.

In all cases, the viewing, copying, listening to, or other handling of any such photograph or recording must be under the direct supervision of the custodian of the record or the custodian's designee.³⁴

If a petition is filed with the court to view, listen to, or copy such photograph or recording, a surviving spouse must be given reasonable notice that the petition has been filed, a copy of the petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, notice must be given to the parents of the deceased and, if the deceased has no living parent, then to the adult children of the deceased.³⁵

It is a third degree felony for any custodian of such photograph or recording to willfully and knowingly violate these provisions.³⁶ The same penalty applies to anyone who willfully and knowingly violates a court order issued under these provisions.³⁷

The exemption does not apply to photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, nothing prohibits a court in such proceedings, upon good cause shown, from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recording in the same manner as previously described.³⁸

The exemption is retroactive and applies to all such photographs or recordings, regardless of whether the killing of the person occurred before, on, or after July 1, 2011. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of the act, which restrict or limit access to any such photographs or recordings.³⁹

III. Effect of Proposed Changes:

The bill amends s. 406.136, F.S., and expands an existing public records exemption to make confidential and exempt photographs and video and audio recordings that depict or record the killing of *a person*.⁴⁰ Currently, this statute makes confidential and exempt the photographs and video and audio recordings that depict or record the killing of *a law enforcement officer who was acting in accordance with his or her official duties*. The current exemption and the exemption created by the bill only apply to such photographs or recordings held by an agency.

The bill specifies that the term “killing of a person” does not include the killing of a person in the care and custody of a state agency. The term “care and custody of a state agency” includes, but is

³⁴ Section 406.136(4)(c), F.S.

³⁵ Section 406.136(5), F.S.

³⁶ Section 406.136(6)(a), F.S. A third degree felony is punishable by a term of imprisonment up to 5 years, a fine up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

³⁷ Section 406.136(6)(b), F.S.

³⁸ Section 406.136(6)(c), F.S. In *State v. Schenecker*, No. 11-CF-001376A (Fla. 13th Cir.Ct. August 3, 2011), *cert. denied sub nom.*, *Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011), the circuit court applied the exemption to crime scene photographs of homicide victims.

³⁹ Section 406.136(7), F.S.

⁴⁰ This change not only expands the existing exemption but reverts the exemption back to the exemption that was in place from 2011 until the Legislature narrowed the exemption in 2016.

not limited to: a protective investigation, protective supervision, or foster care as those terms are defined in s. 39.01, F.S.; a protective investigation or protective supervision of a vulnerable adult as those terms are defined in s. 415.102, F.S.; or an inmate in custody of the Department of Corrections.

The bill also retains provisions relevant to the current exemption, such as who may access the records and in what manner, but substitutes the term “person” for “a law enforcement officer who was acting in accordance with his or her official duties.”

The exemption is retroactive and applies to all such photographs or recordings, regardless of whether the killing of the person occurred before, on, or after July 1, 2015. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to such photographs or recordings.

The bill provides a public necessity statement as required by the Florida Constitution. The statement includes legislative findings that indicate:

- Photographs and video and audio recordings are highly sensitive representations of the deceased that, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and detract from the memory of the deceased;
- Dissemination of the photographs and video and audio recordings may be used by terrorists to attract followers, inspire others to kill, or educe violent acts;
- There are other types of available information, such as crime scene reports, which are less intrusive and injurious to the immediate family of the deceased and which continue to provide for public oversight; and
- The exemption should be given retroactive application because it is remedial in nature.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. Because the bill expands a public record exemption, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill expands a public record exemption, and includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the public records exemption in this bill appears to be no broader than necessary to accomplish its stated purpose.

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 may have an indeterminate fiscal impact on agencies relating to training and redaction of exempt information. However, costs may be minimal and would be absorbed by the agencies because training and redaction of exempt information are part of the day-to-day responsibilities of agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 406.136 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Bracy

11-01201-18

20181178__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 406.136, F.S.; defining the terms "killing of a
 4 person" and "care and custody of a state agency";
 5 expanding an exemption from public records
 6 requirements for a photograph or video or audio
 7 recording held by an agency which depicts or records
 8 the killing of a law enforcement officer to include a
 9 photograph or video or audio recording held by an
 10 agency which depicts or records the killing of a
 11 person; specifying that the exemption from public
 12 records requirements does not apply to the killing of
 13 a person in the care and custody of a state agency;
 14 providing for future legislative review and repeal of
 15 the exemption; providing a statement of public
 16 necessity; providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Section 406.136, Florida Statutes, is amended to
 21 read:
 22 406.136 A photograph or video or audio recording that
 23 depicts or records the killing of a person ~~law enforcement~~
 24 ~~officer who was acting in accordance with his or her official~~
 25 ~~duties.~~
 26 (1) As used in this section, the term "killing of a person"
 27 ~~"killing of a law enforcement officer who was acting in~~
 28 ~~accordance with his or her official duties"~~ means all acts or
 29 events that cause or otherwise relate to the death of any human

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30 ~~being a law enforcement officer who was acting in accordance~~
 31 ~~with his or her official duties~~, including any related acts or
 32 events immediately preceding or subsequent to the acts or events
 33 that were the proximate cause of death. The term does not
 34 include the killing of a person in the care and custody of a
 35 state agency. For purposes of this subsection, the term "care
 36 and custody of a state agency" includes, but is not limited to,
 37 a protective investigation, protective supervision, or foster
 38 care as those terms are defined in s. 39.01; a protective
 39 investigation or protective supervision of a vulnerable adult as
 40 those terms are defined in s. 415.102; or an inmate in custody
 41 of the Department of Corrections.
 42 (2) A photograph or video or audio recording that depicts
 43 or records the killing of a person ~~law enforcement officer who~~
 44 ~~was acting in accordance with his or her official duties~~ is
 45 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 46 of the State Constitution, except that a surviving spouse of the
 47 ~~deceased decedent~~ may view and copy any such photograph or video
 48 recording or listen to or copy any such audio recording. If
 49 there is no surviving spouse, ~~then~~ the surviving parents shall
 50 have access to such records. If there is no surviving spouse or
 51 parent, ~~the then an adult~~ children ~~child~~ shall have access to
 52 such records.
 53 (3) (a) The deceased's surviving relative, with whom
 54 authority rests to obtain such records, may designate in writing
 55 an agent to obtain such records.
 56 (b) A local governmental entity, or a state or federal
 57 agency, in furtherance of its official duties, pursuant to a
 58 written request, may view or copy a photograph or video

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59 recording or may listen to or copy an audio recording of the
60 killing of a person law enforcement officer who was acting in
61 ~~accordance with his or her official duties~~ and, unless otherwise
62 required in the performance of its ~~their~~ duties, the identity of
63 the deceased shall remain confidential and exempt.

64 (c) The custodian of the record, or his or her designee,
65 may not permit any other person to view or copy such photograph
66 or video recording or listen to or copy such audio recording
67 without a court order.

68 (4) (a) The court, upon a showing of good cause, may issue
69 an order authorizing any person to view or copy a photograph or
70 video recording that depicts or records the killing of a person
71 ~~law enforcement officer who was acting in accordance with his or~~
72 ~~her official duties~~ or to listen to or copy an audio recording
73 that depicts or records the killing of a person law enforcement
74 ~~officer who was acting in accordance with his or her official~~
75 ~~duties~~ and may prescribe any restrictions or stipulations that
76 the court deems appropriate.

77 (b) In determining good cause, the court shall consider:

- 78 1. Whether such disclosure is necessary for the public
79 evaluation of governmental performance;
- 80 2. The seriousness of the intrusion into the family's right
81 to privacy and whether such disclosure is the least intrusive
82 means available; and
- 83 3. The availability of similar information in other public
84 records, regardless of form.

85 (c) In all cases, the viewing, copying, listening to, or
86 other handling of a photograph or video or audio recording that
87 depicts or records the killing of a person law enforcement

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88 ~~officer who was acting in accordance with his or her official~~
89 ~~duties~~ must be under the direct supervision of the custodian of
90 the record or his or her designee.

91 (5) A surviving spouse shall be given reasonable notice of
92 a petition filed with the court to view or copy a photograph or
93 video recording that depicts or records the killing of a person
94 ~~law enforcement officer who was acting in accordance with his or~~
95 ~~her official duties~~ or to listen to or copy any such audio
96 recording, a copy of such petition, and reasonable notice of the
97 opportunity to be present and heard at any hearing on the
98 matter. If there is no surviving spouse, ~~then~~ such notice must
99 be given to the parents of the deceased and, if the deceased has
100 no surviving living parent, ~~then~~ to the adult children of the
101 deceased.

102 (6) (a) Any custodian of a photograph or video or audio
103 recording that depicts or records the killing of a person law
104 ~~enforcement officer who was acting in accordance with his or her~~
105 ~~official duties~~ who willfully and knowingly violates this
106 section commits a felony of the third degree, punishable as
107 provided in s. 775.082, s. 775.083, or s. 775.084.

108 (b) Any person who willfully and knowingly violates a court
109 order issued pursuant to this section commits a felony of the
110 third degree, punishable as provided in s. 775.082, s. 775.083,
111 or s. 775.084.

112 (c) A criminal or administrative proceeding is exempt from
113 this section but, unless otherwise exempted, is subject to all
114 other provisions of chapter 119, 7 provided, however, ~~that~~ this
115 section does not prohibit a court in a criminal or
116 administrative proceeding upon good cause shown from restricting

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117 or otherwise controlling the disclosure of a killing, crime
118 scene, or similar photograph or video or audio recording
119 ~~recordings~~ in the manner prescribed in this section herein.

120 (7) ~~The~~ This exemption in this section shall be given
121 retroactive application and shall apply to all photographs or
122 video or audio recordings that depict or record the killing of a
123 person law enforcement officer who was acting in accordance with
124 his or her official duties, regardless of whether the killing of
125 the person occurred before, on, or after July 1, 2015 2011.
126 However, ~~nothing~~ this section herein is not intended to, and ~~nor~~
127 may not be construed to, overturn or abrogate or alter any
128 existing orders duly entered into by any court of this state, as
129 of the effective date of this act, which restrict or limit
130 access to any photographs or video or audio recordings that
131 depict or record the killing of a person law enforcement officer
132 who was acting in accordance with his or her official duties.

133 (8) This section only applies to such photographs and video
134 and audio recordings held by an agency as defined in s. 119.011.

135 (9) This section is subject to the Open Government Sunset
136 Review Act in accordance with s. 119.15 and shall stand repealed
137 on October 2, 2023, unless reviewed and saved from repeal
138 through reenactment by the Legislature.

139 Section 2. (1) The Legislature finds that it is a public
140 necessity that photographs and video and audio recordings that
141 depict or record the killing of a person be made confidential
142 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
143 Art. I of the State Constitution. The Legislature finds that
144 photographs and video and audio recordings that depict or record
145 the killing of a person render a graphic and often disturbing

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146 visual or aural representation of the deceased. Such photographs
147 and video and audio recordings provide a view of the deceased in
148 the final moments of life, often bruised, bloodied, broken, with
149 bullet wounds or other wounds, cut open, dismembered, or
150 decapitated. As such, photographs and video and audio recordings
151 that depict or record the killing of a person are highly
152 sensitive representations of the deceased which, if heard,
153 viewed, copied, or publicized, could result in trauma, sorrow,
154 humiliation, or emotional injury to the immediate family of the
155 deceased and detract from the memory of the deceased. The
156 Legislature recognizes that the existence of the Internet and
157 the proliferation of personal computers and cellular telephones
158 throughout the world encourage and promote the wide
159 dissemination of such photographs and video and audio recordings
160 and that widespread unauthorized dissemination of such
161 photographs and video and audio recordings would subject the
162 immediate family of the deceased to continuous injury.

163 (2) In addition to the emotional and mental injury that
164 these photographs and recordings may cause family members, the
165 Legislature is also concerned that dissemination of photographs
166 and video and audio recordings that depict or record the killing
167 of a person is harmful to the public. The Legislature is gravely
168 concerned and saddened by the horrific mass killings perpetrated
169 at the Pulse nightclub in Orlando and the Fort Lauderdale-
170 Hollywood International Airport. The Legislature is concerned
171 that, if these photographs and recordings are released,
172 terrorists will use them to attract followers, bring attention
173 to their causes, and inspire others to kill. The Legislature
174 also finds that dissemination of these photographs and

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175 recordings may also educe violent acts by the mentally ill or
176 morally corrupt.

177 (3) The Legislature further recognizes that there continues
178 to be other types of available information, such as crime scene
179 reports, which are less intrusive and injurious to the immediate
180 family of the deceased and which continue to provide for public
181 oversight. The Legislature further finds that the exemption
182 provided in this act should be given retroactive application
183 because it is remedial in nature.

184 Section 3. This act shall take effect October 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/20/18
Meeting Date

5B 1178
Bill Number (if applicable)

Topic Public Rewards/Video Recordings

Amendment Barcode (if applicable)

Name Dennis Strange

Job Title Constable

Address 2400 West Colonial Ave
Street

Phone 407-254-7000

Del 71 32804
City State Zip

Email dennis.strange@del.fl.gov

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Orange County Sheriff

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1886

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Contraband in County Detention Facilities

DATE: February 21, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1886 amends s. 951.22, F.S., adding cell phones and other portable communication devices (PCDs) to the definition of contraband articles that are prohibited from introduction into a county detention facility. The bill creates a new criminal penalty for the introduction of a cell phone or PCD into a county detention facility and modifies the existing criminal penalties for introduction of contraband into a county detention facility by making it a:

- First-degree misdemeanor for a person to introduce any:
 - Currency or coin;
 - Article of food or clothing;
 - Tobacco products as defined in s. 210.25(12), F.S.;
 - Cigarette as defined in s. 210.01(1), F.S.;
 - Cigar; or
 - Beverage that causes or may cause intoxication; and
- Third-degree felony for a person to introduce any:
 - Specified drugs or controlled substances as defined in s. 893.02(4), F.S.;
 - Firearm or instrumentality that is customarily used or is intended to be used as a dangerous weapon;
 - Instrumentality of any nature that may assist with an escape from a county detention facility; or
 - Cell phone or PCD.

Additionally, the bill amends s. 921.0022, F.S., specifying that the introduction of all enumerated articles of contraband into a county detention facility that are classified as a felony offense have a Level 6 ranking in the offense severity ranking chart.

The Criminal Justice Impact Conference met on January 29, 2018, and determined that this bill will result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

The bill is effective October 1, 2018.

II. Present Situation:

Florida law makes it a crime for a person to introduce unauthorized specified items, also known as “contraband,” into state correctional institutions,¹ county detention facilities,² and juvenile detention facilities or commitment programs.³ The offense of introducing contraband into a specified facility is either a second or third degree felony,⁴ depending on the type of contraband introduced and the facility.⁵ Additionally, each statute addressing this issue defines “contraband” differently.

Section 944.47(1)(a), F.S., which applies to state correctional facilities, defines “contraband” to include any:

- Written or recorded communication or any currency or coin.
- Article of food or clothing.
- Intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Controlled substance as defined in s. 893.02(4), F.S., or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
- Firearm or weapon of any kind or any explosive substance.
- Cellular telephone or other portable communication device (PCDs)⁶ intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution.

¹ Section 944.47, F.S.

² Section 951.22, F.S.

³ Section 985.711, F.S.

⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. 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.

⁵ Sections 944.47(2), 951.22(2), and 985.711(2), F.S. Introduction of contraband includes the actual giving or transmission of a prohibited article, as well as the intent to give or transmit a prohibited article.

⁶ Section 944.47(1)(a)6., F.S., defines “PCD” as any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA’s, laptop computers, or any components of these devices which are intended to be used to assemble such devices. The term also includes any new technology that is developed for similar purposes. However, the term PCD does not include any device having communication capabilities which has been approved or issued by the Department of Corrections (DOC) for investigative or institutional security purposes or for conducting other state business.

A person who introduces a cell phone into a state correctional facility commits a third-degree felony.⁷

Section 951.22(1), F.S., which applies to county correctional facilities, defines “contraband” to include any:

- Written or recorded communication.
- Currency or coin.
- Article of food or clothing.
- Tobacco products as defined in s. 210.25(12), F.S.,⁸ any cigarette as defined in s. 210.01(1), F.S.,⁹ or any cigar.
- Intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s. 893.02(4), F.S.
- Firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon.
- Instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.

Section 951.22, F.S., further provides it is a third degree felony to commit introduction of contraband into a county detention facility.

Section 985.711, F.S., which applies to juvenile detention facilities, defines “contraband” to include any:

- Unauthorized article of food or clothing.
- Intoxicating beverage or any beverage that causes or may cause an intoxicating effect.
- Controlled substance, as defined in s. 893.02(4), F.S., or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.
- Firearm or weapon of any kind or any explosive substance.¹⁰

Cellular Phones and Portable Communication Devices as Contraband

Contraband, especially PCDs, within correctional facilities can create a dangerous environment and present particular challenges for correctional staff. Cell phone use in state and county

⁷ Section 944.47, F.S., further provides it is a third degree felony to introduce a written or recorded communication, currency or coin, or an article of food or clothing; and it is a second degree felony to introduce an intoxicating beverage, controlled substance, prescription or nonprescription drug that has a specified effect, firearm, weapon, or explosive substance.

⁸ Section 210.25(12), F.S., defines “tobacco products” to mean loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing. However, this definition excludes cigarettes, as defined by s. 210.01(1), F.S., and cigars.

⁹ Section 210.01(1), F.S., defines “cigarette” to mean any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

¹⁰ Section 985.711, F.S., provides it is a third degree felony to introduce an unauthorized article of food or clothing, but a second degree felony to introduce any of the other enumerated articles.

correctional facilities has been linked to threats, murder, complex criminal schemes, and escapes.¹¹ Additionally, since many inmates in county detention facilities are awaiting trial, there is a heightened risk that cell phones could be used to intimidate witnesses and obstruct justice.¹² The presence of PCDs in correctional facilities bypass security policies and safeguards put in place by a correctional agency to ensure safe communications by persons in its custody.¹³ Such security policies may include oversight such as requiring inmate calls to be monitored and recorded and only allowing an inmate to make calls to previously authorized parties. These policies aid in preventing inmates from making threatening calls to citizens as well as to inhibit their ability to arrange contraband deliveries, plan escapes, or otherwise engage in criminal enterprise while in prison.¹⁴

As mentioned above, it is only a crime to introduce cell telephones or other portable electronic devices into state correctional institutions. The DOC reports that it confiscated from facilities:

- 6563 cell phones and 3517 cell phone accessories (such as chargers, SIM cards, battery packs) in FY 2015-16; and
- 9670 cell phones and 4886 cell phone accessories in FY 2016-17.

County detention facilities may prohibit cellular telephones by rule, allowing officers to confiscate phones and discipline inmates on those grounds.¹⁵ However, law enforcement cannot criminally charge a person for having a cell phone in a county detention facility or fully investigate how cell phones enter the facility.¹⁶ According to the Florida Department of Law

¹¹ Dan Sweeney and Lisa Huriash, *Prisons Can't Stop Influx of Illegal Cellphones*, SUN SENTINEL (September 27, 2014), available at <http://www.sun-sentinel.com/local/palm-beach/fl-south-bay-cell-phones-20140926-story.html> (last visited February 15, 2018); Matt Riley, *Southern Prisons Have a Cellphone Smuggling Problem*, NBC NEWS, (September 30, 2017), available at <https://www.nbcnews.com/news/corrections/southern-prisons-have-smuggled-cellphone-problem-n790251> (last visited February 15, 2018); Crimesider Staff, *Indictment: Gang leader ordered hit on baby from jail*, CBS NEWS (May 18, 2016), available at <https://www.cbsnews.com/news/indictment-gang-member-ordered-hit-on-baby-from-jail/> (last visited February 12, 2018); and Eryn Rogers, *Cellphones in the Hands of Inmates Causing Problems*, 7 NEWS WSPA (July 21, 2016), available at <http://wspa.com/2016/07/21/cellphones-in-the-hands-of-inmates-causing-problems/> (last visited on February 19, 2018).

¹² Peter Hermann, *Death For Byers in Witness Hit?*, THE BALTIMORE SUN (April 27, 2009), available at <http://www.baltimoresun.com/bs-mtblog-2009-04-death-for-byers-in-hit-story.html> (last visited February 19, 2018); Federal Communications Commission, *Putting an End to Illegal Cell Phone Use in Prisons*, available at <https://transition.fcc.gov/pshs/docs/summits/Combating-Contraband-Cell-Phones-in-Prison-Handout-v4.pdf> (last visited February 19, 2018); and Vivian Giang, *Inmate Talks To Us Over An Illegal Cell Phone About Working The Jailhouse Black Market*, BUSINESS INSIDER (July 2, 2012), available at <http://www.businessinsider.com/prisoner-shares-with-us-a-glimpse-of-the-hustle-behind-bars-2012-6> (last visited February 19, 2018).

¹³ Office of Program Policy and Government Accountability, *Corrections' Contraband Effort is Sound; Cell Phone Penalties and Warden Consistency Are Needed*, Report No. 08-20, p. 3, (April, 2008), available at <http://www.oppaga.state.fl.us/reports/pdf/0820rpt.pdf> (last visited February 19, 2018) (hereinafter cited as "OPPAGA Report").

¹⁴ *Id.*

¹⁵ See, e.g., Florida Sheriffs Association, *Florida Model Jail Standards, Standard Number 14.1*, p. 62, available at https://www.flsheriffs.org/uploads/docs/FMJS_07-01-2017.pdf (last visited February 15, 2018).

¹⁶ Law enforcement may apply for a search warrant to search the contents of a cell phone when the phone constitutes evidence relevant to proving a felony has been committed. Section 933.02, F.S.; *Smallwood v. State*, 113 So.3d 724 (Fla. 2013). As possession of a cell phone in a county detention facility is not currently a felony crime, law enforcement may not obtain a warrant to inspect the contents of a cell phone discovered in a jail unless there is probable cause to connect the phone to another independent crime.

Enforcement's Statistical Analysis Center, there were 2,058 arrest charges for contraband in county jails during FY 2016-17 and 1,933 in FY 2015-16.¹⁷

Prior to 2008, the introduction of cell phones and PCDs into state correctional facilities was handled through rule and disciplinary report procedures, similar to the manner that county jails are addressing the introduction of such items currently.¹⁸ During the 2008 Legislative Session, s. 944.47, F.S., was amended to add PCDs to the list of contraband articles.¹⁹

In anticipation of the 2008 legislation, the Office of Program Policy and Government Accountability (OPPAGA) evaluated whether the legislation was appropriate and necessary and reported its findings to the Legislature in April, 2008. The OPPAGA reported that contraband enters prisons through a variety of ways, including through inmate work squads, mail or prison deliveries, or through employees or visitors.²⁰ The OPPAGA found that inmates could pay from \$300 to \$3,000 to have a PCD brought into a facility and since the introduction of a PCD was only prohibited in rule, rather than a criminal offense, the repercussions for such introduction were minimal, including that an:

- Inmate caught with a prohibited PCD was subject to a disciplinary report, confined to a cell for no more than 60 days, and had to attend a disciplinary hearing that may result in the reduction of gain-time;²¹
- Employee who was found to have introduced a PCD was only subject to termination and revocation of his or her law enforcement certification (if a sworn correctional officer); and
- Civilian who was found to have introduced a PCD was subject to permanent revocation of his or her visiting rights.²²

The OPPAGA found that making the conveyance of PCDs to state correctional institutions a third degree felony was necessary to reduce incentives and deter inmates, staff, and visitors from committing this violation even though the legislation would likely result in an increase of commitments to state prison.²³

Criminal Punishment Code

The Criminal Punishment Code²⁴ applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.²⁵ A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to

¹⁷ Email from Ron Draa, Director of Legislative Affairs, Florida Department of Law Enforcement, RE: SB 1886 (February 16, 2018).

¹⁸ OPPAGA Report, p. 1.

¹⁹ Section 4, ch. 2008-250, L.O.F.

²⁰ OPPAGA Report, p. 2.

²¹ Gain-time is earned by an inmate in accordance with s. 944.275, F.S., and can reduce the inmate's overall time served.

²² OPPAGA Report, p. 4.

²³ OPPAGA Report, p. 4 and 6.

²⁴ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Criminal Punishment Code is effective for offenses committed on or after October 1, 1998.

²⁵ Section 921.0022, F.S. Additionally, s. 921.0023, F.S., provides that if an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.

the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record; and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.²⁶

The lowest permissible sentence in which total sentence points equal to or are less than 44 points is any nonstate prison sanction.²⁷ If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.²⁸

The DOC reports that in FY 2016-17 there were 803 offenders sentenced for a violation of introducing or possessing contraband upon the grounds of any county detention facility, which is a third degree felony that is listed in Level 6 of the offense severity ranking chart. Of those sentenced, 224 were sentenced to prison for an average of 27.8 months.²⁹

III. Effect of Proposed Changes:

The bill amends s. 951.22(1), F.S., adding cell phones and other PCDs to the definition of contraband. The bill creates a new criminal penalty for the introduction of a cell phone or PCD into a county detention facility and modifies the existing criminal penalties for introduction of contraband into a county detention facility by making it a:

- First-degree misdemeanor for a person to introduce any:
 - Currency or coin;
 - Article of food or clothing;
 - Tobacco products as defined in s. 210.25(12), F.S.;
 - Cigarette as defined in s. 210.01(1), F.S.;
 - Cigar; or
 - Beverage that causes or may cause intoxication; and
- Third-degree felony for a person to introduce any:
 - Specified drugs or controlled substances as defined in s. 893.02(4), F.S.;
 - Firearm or instrumentality that is customarily used or is intended to be used as a dangerous weapon;
 - Instrumentality of any nature that may assist with an escape from a county detention facility; or
 - Cell phone or PCD.

The bill defines the term for cell phone and PCDs as any device carried, worn, or stored, which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet or any other electronic device and which allows communications in any form. The bill further provides that these devices include, but are not

²⁶ Section 921.0024, F.S. Further, s. 921.0026, F.S., provides that a judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are mitigating "circumstances or factors that reasonably justify the downward departure."

²⁷ Section 921.0042(2), F.S.

²⁸ Florida Department of Corrections and the Office of State Courts Administrator, *Florida Criminal Punishment Code Scoresheet Preparation Manual*, p. 20, (July 1, 2016), available at http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf (last visited on February 19, 2018).

²⁹ Criminal Justice Impact Conference, Office of Economic and Demographic Research, Narrative Analysis of Adopted Impacts: SB 1886 – Contraband in County Detention Facilities, January 29, 2018.

limited to, portable two-way pagers, handheld radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDAs, laptop computers, or any components of these devices which are intended to be used to assemble such devices. The term also includes any new technology that is developed for similar purposes. The bill excludes from this definition any device having communication capabilities that have been approved or issued by the sheriff or officer in charge for investigative or institutional security purposes or for conducting other official business. This definition mirrors the definition that is found for the introduction of a cell phone or PCD into a state correctional facility.

Additionally, the bill amends s. 921.0022, F.S., specifying that a third-degree felony offense of introduction of contraband into a county detention facility is ranked as a Level 6 offense in the offense severity ranking chart.

The bill is effective October 1, 2018.

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 on January 29, 2018, and determined that this bill will result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 951.22 and 921.0022.

IX. 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 February 20, 2018:

The committee substitute amends s. 951.22, F.S., making it a felony for a person to introduce a cell phone or PCD into a county detention facility. The committee substitute also modifies the existing criminal penalties from a third-degree felony to a first-degree misdemeanor for a person to introduce any currency or coin, article of food or clothing, tobacco products, cigarette, cigar, or beverage that causes or may cause intoxication into a county detention facility.

- B. **Amendments:**

None.



671436

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2018	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 63 - 65
and insert:

(2) A person who ~~Whoever~~ violates any provision of this section as it pertains to an article of contraband described in paragraphs (a)-(g) subsection (1) commits a first degree misdemeanor punishable as provided in s. 775.082 or s. 775.083. In all other cases, a violation of a provision of this section constitutes ~~shall be guilty of a felony of the third degree,~~



671436

11 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

By Senator Brandes

24-01410-18

20181886__

1 A bill to be entitled
 2 An act relating to contraband in county detention
 3 facilities; amending s. 951.22, F.S.; prohibiting
 4 introduction into or possession on the grounds of any
 5 county detention facility of any cellular telephone or
 6 other portable communication device; defining the term
 7 "portable communication device"; providing criminal
 8 penalties; amending s. 921.0022, F.S.; conforming
 9 provisions to changes made by the act; providing an
 10 effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 951.22, Florida Statutes, is amended to
 15 read:

16 951.22 County detention facilities; contraband articles.—

17 (1) It is unlawful, except through regular channels as duly
 18 authorized by the sheriff or officer in charge, to introduce
 19 into or possess upon the grounds of any county detention
 20 facility as defined in s. 951.23 or to give to or receive from
 21 any inmate of any such facility wherever said inmate is located
 22 at the time or to take or to attempt to take or send therefrom
 23 any of the following articles which are hereby declared to be
 24 contraband:

25 ~~(a) for the purposes of this act, to wit: Any written or~~
 26 recorded communication.†

27 (b) Any currency or coin.†

28 (c) Any article of food or clothing.†

29 (d) Any tobacco products as defined in s. 210.25(12).†

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30 (e) Any cigarette as defined in s. 210.01(1).†

31 (f) Any cigar.†

32 (g) Any intoxicating beverage or beverage which causes or
 33 may cause an intoxicating effect.†

34 (h) Any narcotic, hypnotic, or excitative drug or drug of
 35 any kind or nature, including nasal inhalators, sleeping pills,
 36 barbiturates, and controlled substances as defined in s.
 37 893.02(4).†

38 (i) Any firearm or any instrumentality customarily used or
 39 which is intended to be used as a dangerous weapon.† ~~and~~

40 (j) Any instrumentality of any nature that may be or is
 41 intended to be used as an aid in effecting or attempting to
 42 effect an escape from a county facility.

43 (k) Any cellular telephone or other portable communication
 44 device intentionally and unlawfully introduced inside the secure
 45 perimeter of any county detention facility without prior
 46 authorization or consent from the sheriff or officer in charge
 47 of such detention facility. As used in this paragraph, the term
 48 "portable communication device" means any device carried, worn,
 49 or stored which is designed or intended to receive or transmit
 50 verbal or written messages, access or store data, or connect
 51 electronically to the Internet or any other electronic device
 52 and which allows communications in any form. Such devices
 53 include, but are not limited to, portable two-way pagers,
 54 handheld radios, cellular telephones, Blackberry-type devices,
 55 personal digital assistants or PDAs, laptop computers, or any
 56 components of these devices which are intended to be used to
 57 assemble such devices. The term also includes any new technology
 58 that is developed for similar purposes. Excluded from this

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59 definition is any device having communication capabilities which
 60 has been approved or issued by the sheriff or officer in charge
 61 for investigative or institutional security purposes or for
 62 conducting other official business.

63 (2) ~~A person who whoever~~ violates subsection (1) commits
 64 ~~shall be guilty of~~ a felony of the third degree, punishable as
 65 provided in s. 775.082, s. 775.083, or s. 775.084.

66 Section 2. Paragraph (f) of subsection (3) of section
 67 921.0022, Florida Statutes, is amended to read:
 68 921.0022 Criminal Punishment Code; offense severity ranking
 69 chart.-

70 (3) OFFENSE SEVERITY RANKING CHART
 71 (f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction

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history, transaction
 information, or transaction
 statement.

77 499.0051(3) 2nd Knowing purchase or receipt of
 prescription drug from
 unauthorized person.

78 499.0051(4) 2nd Knowing sale or transfer of
 prescription drug to
 unauthorized person.

79 775.0875(1) 3rd Taking firearm from law
 enforcement officer.

80 784.021(1)(a) 3rd Aggravated assault; deadly
 weapon without intent to kill.

81 784.021(1)(b) 3rd Aggravated assault; intent to
 commit felony.

82 784.041 3rd Felony battery; domestic
 battery by strangulation.

83 784.048(3) 3rd Aggravated stalking; credible
 threat.

84 784.048(5) 3rd Aggravated stalking of person
 under 16.

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85	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
86	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
87	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
88	784.081(2)	2nd	Aggravated assault on specified official or employee.
89	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
90	784.083(2)	2nd	Aggravated assault on code inspector.
91	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
92	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
93	790.161(2)	2nd	Make, possess, or throw

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	24-01410-18		20181886__
			destructive device with intent to do bodily harm or damage property.
94	790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
95	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
96	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
97	794.05(1)	2nd	Unlawful sexual activity with specified minor.
98	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
99	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or

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	24-01410-18		20181886__	
				older.
100	806.031(2)	2nd		Arson resulting in great bodily harm to firefighter or any other person.
101	810.02(3)(c)	2nd		Burglary of occupied structure; unarmed; no assault or battery.
102	810.145(8)(b)	2nd		Video voyeurism; certain minor victims; 2nd or subsequent offense.
103	812.014(2)(b)1.	2nd		Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
104	812.014(6)	2nd		Theft; property stolen \$3,000 or more; coordination of others.
105	812.015(9)(a)	2nd		Retail theft; property stolen \$300 or more; second or subsequent conviction.
106	812.015(9)(b)	2nd		Retail theft; property stolen \$3,000 or more; coordination of others.
107				

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	812.13(2)(c)	2nd		Robbery, no firearm or other weapon (strong-arm robbery).
108	817.4821(5)	2nd		Possess cloning paraphernalia with intent to create cloned cellular telephones.
109	817.505(4)(b)	2nd		Patient brokering; 10 or more patients.
110	825.102(1)	3rd		Abuse of an elderly person or disabled adult.
111	825.102(3)(c)	3rd		Neglect of an elderly person or disabled adult.
112	825.1025(3)	3rd		Lewd or lascivious molestation of an elderly person or disabled adult.
113	825.103(3)(c)	3rd		Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
114	827.03(2)(c)	3rd		Abuse of a child.
115	827.03(2)(d)	3rd		Neglect of a child.
116	827.071(2) & (3)	2nd		Use or induce a child in a

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sexual performance, or promote
or direct such performance.

117 836.05 2nd Threats; extortion.

118 836.10 2nd Written threats to kill or do
bodily injury.

119 843.12 3rd Aids or assists person to
escape.

120 847.011 3rd Distributing, offering to
distribute, or possessing with
intent to distribute obscene
materials depicting minors.

121 847.012 3rd Knowingly using a minor in the
production of materials harmful
to minors.

122 847.0135(2) 3rd Facilitates sexual conduct of
or with a minor or the visual
depiction of such conduct.

123 914.23 2nd Retaliation against a witness,
victim, or informant, with
bodily injury.

124 944.35(3)(a)2. 3rd Committing malicious battery

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upon or inflicting cruel or
inhuman treatment on an inmate
or offender on community
supervision, resulting in great
bodily harm.

125 944.40 2nd Escapes.

126 944.46 3rd Harboring, concealing, aiding
escaped prisoners.

127 944.47(1)(a)5. 2nd Introduction of contraband
(firearm, weapon, or explosive)
into correctional facility.

128 951.22(1) 3rd Introduction of contraband into
county detention facility
~~Intoxicating drug, firearm, or~~
~~weapon introduced into county~~
~~facility.~~

129

130 Section 3. This act shall take effect October 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-18

Meeting Date

SB 1886

Bill Number (if applicable)

Topic CONTRABAND IN COUNTY DET. FAC.

Amendment Barcode (if applicable)

Name ANTHONY MARCIANO

Job Title SERGEANT

Address 23370 CAROLWOOD LN

Phone 954 632 6878

BOCA RATON FL 33428

City State Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing MYSELF

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

2-20-18

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

1886

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jess McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

City

State

Zip

Email jmm2@miamidade.gov

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing Miami-Dade County

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)

2/20/18

Meeting Date

1886

Bill Number (if applicable)

Topic Contraband in County Detention Facilities

Amendment Barcode (if applicable)

Name Brice Gyurisko, PhD (Jur-ish-ko)

Job Title Internal Affairs Administrator

Address 3723 Vision Blvd

Phone (407)836-3302

Street

Orlando

FL

Email Brice.Gyurisko@afl.net

City

State

Zip

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

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Orange County

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

Lobbyist registered with Legislature: [] Yes [X] 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 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-20-18

SB 1886

Meeting Date

Bill Number (if applicable)

Topic Contraband in County Detention Facilities

Amendment Barcode (if applicable)

Name Brian Sullivan

Job Title Chief Legal Counsel

Address 100 S. Monroe

Phone 810-335-0150

Street

Tallahassee FL 32301

Email bsullivan@flcounties.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Association of Counties

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/18

Meeting Date

SB 1886

Bill Number (if applicable)

Topic Contraband in County Facilities

Amendment Barcode (if applicable)

Name Dennis J. Foran

Job Title Captain

Address 2400 West Colonial Dr

Phone 407-254-7000

Street

Del

City

FL

State

32804

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Orange County Sheriff

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 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Randolph Bracy
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 13, 2018

I respectfully request that **Senate Bill #1886**, relating to the **Contraband in County Detention Facilities**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 2/20/2018 11:08:30 AM

Ends: 2/20/2018 11:33:46 AM

Length: 00:25:17

11:08:31 AM Meeting called to order by Chair Bracy
11:09:27 AM Comment by Senator Baxley
11:10:07 AM Roll call by Administrative Assistant Sue Arnold
11:10:19 AM Quorum present
11:10:27 AM Announcements
11:10:52 AM SB 1886 presented by Senator Brandes
11:11:09 AM Amendment 671436 presented
11:11:58 AM Amendment adopted
11:12:12 AM Dennis Strange waives in support
11:12:18 AM Brian Sullivan waives in support
11:12:38 AM Speaker Dr. Brice Gyurisho
11:12:54 AM Jess McCarty waives in support
11:13:02 AM Anthony Marciano waives in support
11:13:10 AM Senator Brandes waives close
11:13:24 AM CS/SB 1886 Reported Favorably
11:14:04 AM SB 570 Amendment barcode 736902 presented by Senator Bracy
11:15:22 AM Amendment adopted
11:15:36 AM Robert Trammell waives in support
11:15:51 AM Debate by Senator Brandes
11:19:19 AM Senator Bracy closes
11:20:25 AM CS/SB 570 Reported Favorably
11:20:40 AM SB 1178 presented by Senator Bracy
11:21:35 AM Dennis Strange waives in support
11:21:52 AM Senator Bracy waives close
11:22:17 AM SB 1178 Reported Unfavorably
11:22:37 AM Senator Brandes moves to reconsider SB 1178 then temporarily postpone
11:23:14 AM Comments by Chair Baxley
11:24:12 AM Comments by Chair Bracy
11:25:03 AM Recess
11:25:07 AM Recording Paused
11:26:07 AM Recording Resumed
11:26:24 AM Comment by Senator Bradley
11:27:45 AM Comment by Senator Baxley
11:30:06 AM Move to take SB 1178 back up
11:30:21 AM SB 1178 re-introduced by Senator Bracy
11:31:10 AM Senator Bracy waives close
11:31:33 AM SB 1178 Reported Favorably
11:31:41 AM Comments by Chair Bracy
11:32:31 AM Comment by Senator Bean
11:33:09 AM Response by Chair Bracy
11:33:39 AM Meeting adjourned without objection



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Transportation, *Vice Chair*
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Pre-K - 12 Education
Criminal Justice
Governmental Oversight and Accountability

SELECT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR DARRYL ROUSON

19th District

February 18, 2018

Chair Bracy,

I will be out of town on Tuesday the 20th due to work obligations and will be absent from the Criminal Justice Committee meeting.

Thank you,

Darryl Rouson

A handwritten signature in cursive script that reads "Darryl Rouson".

State Senator, District 19

REPLY TO:

- 535 Central Avenue, Suite 302, St. Petersburg, Florida 33701 (727) 822-6828
- 212 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore